

“a technical data and intellectual property management plan for product support; and”; added subpars. (H) and (I) of par. (1); and added par. (2). Amendment adding par. (2) “at the end of” par. (1) was executed by adding par. (2) after par. (1) to reflect the probable intent of Congress.

Subsec. (d)(7), (8). Pub. L. 117–263, § 806(b), added par. (7) and redesignated former par. (7) as (8).

2021—Pub. L. 116–283, § 1848(d)(1), renumbered section 2337 of this title as this section.

Pub. L. 116–283, § 802(a)(1)–(3), substituted “covered system” for “major weapon system” and “weapon system” and “covered systems” for “major weapon systems” wherever appearing.

Subsec. (b). Pub. L. 116–283, § 802(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2)(A). Pub. L. 116–283, § 802(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “develop and implement a comprehensive product support strategy for the weapon system;”.

Subsec. (c)(2)(B). Pub. L. 116–283, § 802(a)(6)(B), substituted “ensure the life cycle sustainment plan is informed by” for “use”.

Subsec. (c)(2)(C). Pub. L. 116–283, § 802(a)(6)(C), inserted “and life cycle sustainment plan” after “product support strategy”.

Subsec. (c)(5). Pub. L. 116–283, § 1848(d)(2), which directed amendment of subsec. (c)(5) by substituting “section 3041(c)(1)” for “section 2302d(a)” and could not be executed, was repealed by Pub. L. 117–81, § 1701(b)(17).

Subsec. (d). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (c) as (d).

Subsec. (d)(5). Pub. L. 116–283, § 802(a)(7)(A), amended par. (5) generally. Prior to amendment, par. (5) defined “major weapon system”.

Subsec. (d)(5)(A). Pub. L. 117–81, § 1701(d)(11)(A), substituted “section 4201” for “section 2430”.

Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to “section 2430”, which was redesignated as multiple sections.

Subsec. (d)(5)(B). Pub. L. 117–81, § 1701(d)(11)(A), which directed the substitution of “section 4201(a)(2) of this title” for “section 2430(a)(1)(B)”, could not be executed because of the intervening amendment by Pub. L. 116–283, § 1883(b)(2). See note below.

Pub. L. 116–283, § 1883(b)(2), substituted “section 4201(a)(2)” for “section 2430(a)(1)(B)”.

Subsec. (d)(6). Pub. L. 117–81, § 1701(d)(11)(B), which directed the substitution of “section 4172(e)(7)” for “section 2366(e)(7)”, could not be executed because of the intervening amendment by Pub. L. 116–283, § 1883(b)(2). See note below.

Pub. L. 116–283, § 1883(b)(2), substituted “section 4172(e)(7)” for “section 2366(e)(7)”.

Pub. L. 116–283, § 802(a)(7)(B), added par. (6). Subsec. (d)(7). Pub. L. 117–81, § 1701(d)(11)(C), which directed the substitution of “section 4211(e)(3)” for “section 2431a(e)(5)”, could not be executed because of the intervening amendment by Pub. L. 116–283, § 1883(b)(2). See note below.

Pub. L. 116–283, § 1883(b)(2), substituted “section 4211(e)(3)” for “section 2431a(e)(5)”.

Pub. L. 116–283, § 802(a)(7)(B), added par. (7). 2013—Subsec. (b)(2)(I). Pub. L. 113–66 added subpar. (I).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(d)(11) of Pub. L. 117–81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116–283 have taken effect, see sec-

tion 1701(a)(3) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by sections 1848(d)(1), (2) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in section 805 of Pub. L. 111–84, which was set out as a note under section 2302 of this title prior to repeal by Pub. L. 112–239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

§ 4325. Major weapon systems: assessment, management, and control of operating and support costs

(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue and maintain guidance on actions to be taken to assess, manage, and control Department of Defense costs for the operation and support of major weapon systems.

(b) ELEMENTS.—The guidance required by subsection (a) shall, at a minimum—

(1) be issued in conjunction with the comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems required by section 4324 of this title;

(2) require the military departments to retain each estimate of operating and support costs that is developed at any time during the life cycle of a major weapon system, together with supporting documentation used to develop the estimate;

(3) require the military departments to update estimates of operating and support costs periodically throughout the life cycle of a major weapon system, to determine whether preliminary information and assumptions remain relevant and accurate, and identify and record reasons for variances;

(4) establish policies and procedures for the collection, organization, maintenance, and availability of standardized data on operating and support costs for major weapon systems in accordance with section 2222 of this title;

(5) establish standard requirements for the collection and reporting of data on operating and support costs for major weapon systems by contractors performing weapon system sustainment functions in an appropriate format, and develop contract clauses to ensure that contractors comply with such requirements;

(6) require the military departments—

(A) to collect and retain data from operational and developmental testing and evaluation on the reliability and maintainability of major weapon systems; and

(B) to use such data to inform system design decisions, provide insight into sustainment costs, and inform estimates of operating and support costs for such systems;

(7) require the military departments to ensure that sustainment factors are fully considered at key life-cycle management decision points and that appropriate measures are taken to reduce operating and support costs

by influencing system design early in development, developing sound sustainment strategies, and addressing key drivers of costs;

(8) require the military departments to conduct an independent logistics assessment of each major weapon system prior to key acquisition decision points (including milestone decisions) to identify features that are likely to drive future operating and support costs, changes to system design that could reduce such costs, and effective strategies for managing such costs;

(9) include—

(A) reliability metrics for major weapon systems; and

(B) requirements on the use of metrics under subparagraph (A) as triggers—

(i) to conduct further investigation and analysis into drivers of those metrics; and

(ii) to develop strategies for improving reliability, availability, and maintainability of such systems at an affordable cost; and

(10) require the military departments to conduct periodic reviews of operating and support costs of major weapon systems after such systems achieve initial operational capability to identify and address factors resulting in growth in operating and support costs and adapt support strategies to reduce such costs.

(C) RETENTION OF DATA ON OPERATING AND SUPPORT COSTS.—

(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall be responsible for developing and maintaining a database on operating and support estimates, supporting documentation, and actual operating and support costs for major weapon systems.

(2) SUPPORT.—The Secretary of Defense shall ensure that the Director, in carrying out such responsibility—

(A) promptly receives the results of all cost estimates and cost analyses conducted by the military departments with regard to operating and support costs of major weapon systems;

(B) has timely access to any records and data of the military departments (including classified and proprietary information) that the Director considers necessary to carry out such responsibility; and

(C) with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, may direct the military departments to collect and retain information necessary to support the database.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term “major weapon system” has the meaning given that term in section 3455(f) of this title.

(Added Pub. L. 115-91, div. A, title VIII, § 836(a)(1), Dec. 12, 2017, 131 Stat. 1472, § 2337a; amended Pub. L. 115-232, div. A, title X, § 1081(a)(20), Aug. 13, 2018, 132 Stat. 1984; renumbered § 4325 and amended Pub. L. 116-283, div. A, title XVIII, § 1848(d)(1), (3), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, § 1848(d)(3)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: “Assessment, management, and control of operating and support costs for major weapon systems”.

Pub. L. 116-283, § 1848(d)(1), renumbered section 2337a of this title as this section.

Subsec. (b)(1). Pub. L. 116-283, § 1848(d)(3)(A)(i), substituted “section 4324” for “section 2337”.

Subsec. (d). Pub. L. 116-283, § 1848(d)(3)(A)(ii), substituted “section 3455(f)” for “section 2379(f)”.

2018—Subsec. (d). Pub. L. 115-232 substituted “this title” for “title 10, United States Code”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

PILOT PROGRAM ON TIME-CERTAIN DEVELOPMENT IN ACQUISITION OF MAJOR WEAPON SYSTEMS

Pub. L. 109-364, div. A, title VIII, § 812, Oct. 17, 2006, 120 Stat. 2317, as amended by Pub. L. 110-417, [div. A], title VIII, § 813(d)(3), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111-84, div. A, title X, § 1073(c)(5), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 116-283, div. A, title XVIII, § 1806(e)(2)(D), Jan. 1, 2021, 134 Stat. 4155, provided that:

“(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program on the use of time-certain development in the acquisition of major weapon systems.

“(b) PURPOSE OF PILOT PROGRAM.—The purpose of the pilot program authorized by subsection (a) is to assess the feasibility and advisability of utilizing time-certain development in the acquisition of major weapon systems in order to deliver new capabilities to the warfighter more rapidly through—

“(1) disciplined decision-making;

“(2) emphasis on technological maturity; and

“(3) appropriate trade-offs between—

“(A) cost and system performance; and

“(B) program schedule.

“(c) INCLUSION OF SYSTEMS IN PILOT PROGRAM.—

“(1) IN GENERAL.—The Secretary of Defense may include a major weapon system in the pilot program only if—

“(A) the major weapon system meets the criteria under paragraph (2) in accordance with that paragraph; and

“(B) the Milestone Decision Authority nominates such program to the Secretary of Defense for inclusion in the program.

“(2) CRITERIA.—For purposes of paragraph (1) a major weapon system meets the criteria under this paragraph only if the Milestone Decision Authority determines, in consultation with the service acquisition executive for the military department carrying out the acquisition program for the system and one or more combatant commanders responsible for fielding the system, that—

“(A) the certification requirements of section 2366b of title 10, United States Code [now 10 U.S.C. 4252] (as amended by section 805 of this Act), have been met, and no waivers have been granted from such requirements;

“(B) a preliminary design has been reviewed using systems engineering, and the system, as so designed, will meet battlefield needs identified by the relevant combatant commanders after appropriate requirements analysis;

“(C) a representative model or prototype of the system, or key subsystems, has been demonstrated

in a relevant environment, such as a well-simulated operational environment;

“(D) an independent cost estimate has been conducted and used as the basis for funding requirements for the acquisition program for the system;

“(E) the budget of the military department responsible for carrying out the acquisition program for the system provides the funding necessary to execute the product development and production plan consistent with the requirements identified pursuant to subparagraph (D);

“(F) an appropriately qualified program manager has entered into a performance agreement with the Milestone Decision Authority that establishes expected parameters for the cost, schedule, and performance of the acquisition program for the system, consistent with a business case for such acquisition program;

“(G) the service acquisition executive and the program manager have developed a strategy to ensure stability in program management until, at a minimum, the delivery of the initial operational capability under the acquisition program for the system has occurred;

“(H) the service acquisition executive, the relevant combatant commanders, and the program manager have agreed that no additional requirements that would be inconsistent with the agreed-upon program schedule will be added during the development phase of the acquisition program for the system; and

“(I) a planned initial operational capability will be delivered to the relevant combatant commanders within a defined period of time as prescribed in regulations by the Secretary of Defense.

“(3) TIMING OF DECISION.—The decision whether to include a major weapon system in the pilot program shall be made at the time of milestone approval for the acquisition program for the system.

“(d) LIMITATION ON NUMBER OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The number of major weapon systems included in the pilot program at any time may not exceed six major weapon systems.

“(e) LIMITATION ON COST OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The Secretary of Defense may include a major weapon system in the pilot program only if, at the time a major weapon system is proposed for inclusion, the total cost for system design and development of the weapon system, as set forth in the cost estimate referred to in subsection (c)(2)(D), does not exceed \$1,000,000,000 during the period covered by the current future-years defense program.

“(f) SPECIAL FUNDING AUTHORITY.—

“(1) AUTHORITY FOR RESERVE ACCOUNT.—Notwithstanding any other provision of law, the Secretary of Defense may establish a special reserve account utilizing funds made available for the major weapon systems included in the pilot program.

“(2) ELEMENTS.—The special reserve account may include—

“(A) funds made available for any major weapon system included in the pilot program to cover termination liability;

“(B) funds made available for any major weapon system included in the pilot program for award fees that may be earned by contractors; and

“(C) funds appropriated to the special reserve account.

“(3) AVAILABILITY OF FUNDS.—Funds in the special reserve account may be used, in accordance with guidance issued by the Secretary for purposes of this section, for the following purposes:

“(A) To cover termination liability for any major weapon system included in the pilot program.

“(B) To pay award fees that are earned by any contractor for a major weapon system included in the pilot program.

“(C) To address unforeseen contingencies that could prevent a major weapon system included in the pilot program from meeting critical schedule or performance requirements.

“(4) REPORTS ON USE OF FUNDS.—Not later than 30 days after the use of funds in the special reserve account for the purpose specified in paragraph (3)(C), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of funds in the account for such purpose. The report shall set forth the purposes for which the funds were used and the reasons for the use of the funds for such purposes.

“(5) RELATIONSHIP TO APPROPRIATIONS.—Nothing in this subsection may be construed as extending any period of time for which appropriated funds are made available.

“(g) ADMINISTRATION OF PILOT PROGRAM.—The Secretary of Defense shall prescribe policies and procedures on the administration of the pilot program. Such policies and procedures shall—

“(1) provide for the use of program status reports based on earned value data to track progress on a major weapon system under the pilot program against baseline estimates applicable to such system at each systems engineering technical review point; and

“(2) grant authority, to the maximum extent practicable, to the program manager for the acquisition program for a major weapon system to make key program decisions and trade-offs, subject to management reviews only if cost or schedule deviations exceed the baselines for such acquisition program by 10 percent or more.

“(h) REMOVAL OF WEAPONS SYSTEMS FROM PILOT PROGRAM.—The Secretary of Defense shall remove a major weapon system from the pilot program if—

“(1) the weapon system receives Milestone C approval; or

“(2) the Secretary determines that the weapon system is no longer in substantial compliance with the criteria in subsection (c)(2) or is otherwise no longer appropriate for inclusion in the pilot program.

“(i) EXPIRATION OF AUTHORITY TO INCLUDE ADDITIONAL SYSTEMS IN PILOT PROGRAM.—

“(1) EXPIRATION.—A major weapon system may not be included in the pilot program after September 30, 2012.

“(2) RETENTION OF SYSTEMS.—A major weapon system included in the pilot program before the date specified in paragraph (1) in accordance with the requirements of this section may remain in the pilot program after that date.

“(j) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than one year after including the first major weapon system in the pilot program, and annually thereafter, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, and the major weapon systems included in the pilot program, during the one-year period ending on the date of such report.

“(2) ELEMENTS.—Each report under this subsection shall include—

“(A) a description of progress under the pilot program, and on each major weapon system included in the pilot program, during the period covered by such report;

“(B) a description of the use of all funds in the special reserve account established under subsection (f); and

“(C) such other matters as the Secretary considers appropriate.

“(k) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ‘major weapon system’ means a weapon system that is treatable as a major system under section 3041 of title 10, United States Code.”

[Pub. L. 111-84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(5) to section 813(d)(3) of Pub. L. 110-417 (which amended section 812 of Pub. L. 109-364, set out above) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110-417 as enacted.]

§ 4328. Weapon system design: sustainment factors

(a) **IN GENERAL.**—The Secretary of Defense shall ensure that the defense acquisition system gives ample emphasis to sustainment factors, particularly those factors that are affected principally by the design of a weapon system, in the development of a weapon system.

(b) **REQUIREMENTS PROCESS.**—The Secretary shall ensure that reliability and maintainability are included in the performance attributes of the key performance parameter on sustainment during the development of capabilities requirements.

(c) **SOLICITATION AND AWARD OF CONTRACTS.**—

(1) **REQUIREMENT.**—The program manager of a weapon system shall include in the solicitation for and terms of a covered contract for the weapon system clearly defined and measurable requirements for engineering activities and design specifications for reliability and maintainability.

(2) **EXCEPTION.**—If the program manager determines that engineering activities and design specifications for reliability or maintainability should not be a requirement in a covered contract or a solicitation for such a contract, the program manager shall document in writing the justification for the decision.

(3) **SOURCE SELECTION CRITERIA.**—The Secretary shall ensure that sustainment factors, including reliability and maintainability, are given ample emphasis in the process for source selection. The Secretary shall encourage the use of objective reliability and maintainability criteria in the evaluation of competitive proposals.

(d) **CONTRACT PERFORMANCE.**—

(1) **IN GENERAL.**—The Secretary shall ensure that the Department of Defense uses best practices for responding to the positive or negative performance of a contractor in meeting the sustainment requirements of a covered contract for a weapon system. The Secretary shall encourage the use of incentive fees and penalties as appropriate and authorized in paragraph (2) in all covered contracts for weapons systems.

(2) **AUTHORITY FOR INCENTIVE FEES AND PENALTIES.**—The Secretary of Defense is authorized to include in any covered contract provisions for the payment of incentive fees to the contractor based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract, or the imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements. Information about such fees or penalties shall be included in the solicitation for any covered contract that includes such fees or penalties.

(3) **MEASUREMENT OF RELIABILITY AND MAINTAINABILITY.**—In carrying out paragraph (2), the program manager shall base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the covered contract. To the max-

imum extent practicable, such data shall be shared with appropriate contractor and government organizations.

(4) **NOTIFICATION.**—The Secretary of Defense shall notify the congressional defense committees upon entering into a covered contract that includes incentive fees or penalties authorized in paragraph (2).

(e) **COVERED CONTRACT DEFINED.**—In this section, the term “covered contract”, with respect to a weapon system, means a contract—

(1) for the engineering and manufacturing development of a weapon system, including embedded software; or

(2) for the production of a weapon system, including embedded software.

(Added Pub. L. 115-91, div. A, title VIII, §834(a)(1), Dec. 12, 2017, 131 Stat. 1469, §2443; renumbered §4328 and amended Pub. L. 116-283, div. A, title XVIII, §1848(e), Jan. 1, 2021, 134 Stat. 4259.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 4331 to 4338 were renumbered sections 7431 to 7438 of this title, respectively.

A prior section 4339, act Aug. 10, 1956, ch. 1041, 70A Stat. 240, authorized public quarters and fuel and light therefor for the organist and choirmaster of the Academy and for civilian instructors in the departments of foreign languages and tactics, prior to repeal by Pub. L. 89-716, §1, Nov. 2, 1966, 80 Stat. 1114.

Prior sections 4340 to 4343 were renumbered sections 7440 to 7443 of this title, respectively.

Prior sections 4344 to 4345a were repealed by Pub. L. 114-328, div. A, title XII, §1248(b)(1), Dec. 23, 2016, 130 Stat. 2525.

Section 4344, act Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 98-94, title X, §1004(a)(1), Sept. 24, 1983, 97 Stat. 657; Pub. L. 105-85, div. A, title V, §543(a), Nov. 18, 1997, 111 Stat. 1743; Pub. L. 106-65, div. A, title V, §534(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106-398, §1 [[div. A], title V, §532(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-110; Pub. L. 107-107, div. A, title V, §533(a)(1), (2), Dec. 28, 2001, 115 Stat. 1105, related to selection of persons from foreign countries to receive instruction at the United States Military Academy. See section 347 of this title.

Section 4345, added Pub. L. 105-85, div. A, title V, §542(a)(1), Nov. 18, 1997, 111 Stat. 1740; amended Pub. L. 106-65, div. A, title V, §535(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109-364, div. A, title V, §531(a), Oct. 17, 2006, 120 Stat. 2198, related to an exchange program with foreign military academies.

A prior section 4345, act Aug. 10, 1956, ch. 1041, 70A Stat. 242, related to selection of Filipinos for instruction at the Military Academy, prior to repeal by Pub. L. 98-94, title X, §1004(a)(2), (d), Sept. 24, 1983, 97 Stat. 658, 660, effective one year after Sept. 24, 1983.

Section 4345a, added Pub. L. 110-417, [div. A], title V, §541(a)(1), Oct. 14, 2008, 122 Stat. 4454; amended Pub. L. 113-291, div. A, title V, §553(a), Dec. 19, 2014, 128 Stat. 3377, related to foreign and cultural exchange activities.

Prior sections 4346 to 4349 were renumbered sections 7446 to 7449 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116-283, §1848(e)(2), amended section catchline generally. Prior to amendment, section catchline read as follows: “Sustainment factors in weapon system design”.

Pub. L. 116-283, §1848(e)(1), renumbered section 2443 of this title as this section. Section was inserted after section 4325 of this title to reflect the probable intent of