

13, 1994, 108 Stat. 3328, 3329; Pub. L. 105-85, div. A, title VIII, § 833(a), (b), Nov. 18, 1997, 111 Stat. 1842, 1843; Pub. L. 109-163, div. A, title VIII, § 802(b)(1), Jan. 6, 2006, 119 Stat. 3368; Pub. L. 110-417, [div. A], title VIII, § 811(c)(3), Oct. 14, 2008, 122 Stat. 4522.

AMENDMENTS

2021—Pub. L. 116-283, § 1850(f), transferred subsec. (c) of section 2433 of this title to this section, struck out subsec. designation, and substituted “section 4372 of this title” for “subsection (b)” in two places.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4374. Unit cost reports: determinations by service acquisition executive and secretary concerned of breach of significant cost growth threshold or critical cost growth threshold; reports to Congress

(a) DETERMINATION OF BREACH BY SERVICE ACQUISITION EXECUTIVE.—When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(b) ADDITIONAL DETERMINATION BY SERVICE ACQUISITION EXECUTIVE WHEN PROGRAM OR SUBPROGRAM IS A PROCUREMENT PROGRAM.—When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under subsection (a), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(c) DETERMINATION OF BREACH BY SECRETARY CONCERNED; NOTIFICATION TO CONGRESS.—

(1) IN GENERAL.—If, based upon the service acquisition executive’s determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned.

(2) TIME FOR SUBMISSION OF NOTIFICATION TO CONGRESS.—In the case of a determination based on a quarterly report submitted in accordance with section 4372 of this title, the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with section 4373 of this title, the Secretary shall submit the notification to Congress within 45 days after the date of that report.

(3) INCLUSION OF DATE OF DETERMINATION.—The Secretary shall include in the notification the date on which the determination was made.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1850(a), (g), Jan. 1, 2021, 134 Stat. 4265, 4267.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1850(g)(1), was based on Pub. L. 97-252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98-525, title XII, § 1242(b)(4), Oct. 19, 1984, 98 Stat. 2608; Pub. L. 99-145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered § 2433, Pub. L. 99-433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100-180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, § 811(a)(4), Nov. 29, 1989, 103 Stat. 1491; Pub. L. 102-484, div. A, title VIII, § 817(d)(4), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103-355, title III, §§ 3002(a)(2)(B), 3003(a)(2)(B), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105-85, div. A, title VIII, § 833(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 109-163, div. A, title VIII, § 802(b)(2), Jan. 6, 2006, 119 Stat. 3368; Pub. L. 110-417, [div. A], title VIII, § 811(c)(4), Oct. 14, 2008, 122 Stat. 4523.

AMENDMENTS

2021—Pub. L. 116-283, § 1850(g)(1), transferred subsec. (d) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116-283, § 1850(g)(2), inserted heading and substituted “under this chapter” for “under this section”.

Subsec. (b). Pub. L. 116-283, § 1850(g)(3), inserted heading and substituted “under this chapter” for “under this section” and “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, § 1850(g)(4)(B), which directed amendment of subsec. (c) by designating second sentence as par. (2) and fourth sentence as par. (3), was executed by designating second and third sentences as par. (2) and fourth sentence as par. (3) to reflect the probable intent of Congress.

Pub. L. 116-283, § 1850(g)(4)(A), inserted subsec. heading, designated first sentence as par. (1) and inserted par. heading.

Subsec. (c)(2). Pub. L. 116-283, § 1850(g)(4)(C), inserted heading and substituted “section 4372 of this title” for “subsection (b)” and “section 4373 of this title” for “subsection (c)”.

Subsec. (c)(3). Pub. L. 116-283, § 1850(g)(4)(D), inserted heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4375. Breach of significant cost growth threshold or critical cost growth threshold: required action

(a) BREACH OF SIGNIFICANT COST GROWTH THRESHOLD; SUBMISSION OF A SELECTED ACQUISITION REPORT.—

(1) GENERAL RULE.—Except as provided in paragraph (2), whenever the Secretary concerned determines under section 4374 of this title that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the termination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 4351(e) of this title and shall be submitted in accordance with section 4351(f) of this title.

(2) Whenever the Secretary makes a determination referred to in paragraph (1) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under paragraph (1) but shall include the information described in subsection (d) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(b) BREACH OF CRITICAL COST GROWTH THRESHOLD.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under section 4374 of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of sections 4376 and 4377 of this title.

(c) PROHIBITION ON OBLIGATION OF FUNDS FOR CERTAIN PURPOSES WHEN REQUIRED ACTION NOT TAKEN.—

(1) PROHIBITION.—If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under section 4374 of this title and a Selected Acquisition Report containing the information described in subsection (d) is not submitted to Congress under subsection (a), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under section 4374 of this title and the certification of the Secretary of Defense is not submitted to Congress under subsection (b), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.

(2) TERMINATION OF PROHIBITION.—The prohibition under paragraph (1) on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 8677(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under subsection (a) with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in section 4374 of this title); or

(B) on which Congress has received both the Selected Acquisition Report under subsection (a) and the certification of the Secretary of Defense under section 4376 with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under section 4374 of this title).

(d) MATTER TO BE INCLUDED IN REPORTS.—Except as provided in subsection (e), each report under this section with respect to a major defense acquisition program shall include the following:

(1) The name of the major defense acquisition program.

(2) The date of the preparation of the report.

(3) The program phase as of the date of the preparation of the report.

(4) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(5) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(6) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(7) The completion status of the program and each designated major subprogram under the program—

(A) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram; and

(B) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(8) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the “base year”) and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.