

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) REPORT.—A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

(c) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (j), Jan. 1, 2021, 134 Stat. 4265, 4269; Pub. L. 117–81, div. A, title XVII, § 1701(o)(6)(E)(v), Dec. 27, 2021, 135 Stat. 2148.)

Editorial Notes

CODIFICATION

The text of subssecs. (a) and (b) of section 2433a of this title, which was transferred to this section by Pub. L. 116–283, § 1850(j)(1), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; Pub. L. 111–383, div. A, title X, § 1075(b)(35), Jan. 7, 2011, 124 Stat. 4371.

The text of subsec. (d) of section 2433a of this title, which was transferred to this section and redesignated subsec. (c) by Pub. L. 116–283, § 1850(j)(2), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(j)(1), (2), transferred subssecs. (a), (b), and (d) of section 2433a of this title to this section and redesignated subsec. (d) as (c).

Subsec. (a). Pub. L. 116–283, § 1850(j)(3)(A), substituted “section 4374” for “section 2433(d)” in introductory provisions.

Subsec. (b)(1). Pub. L. 116–283, § 1850(j)(4)(A), inserted heading.

Pub. L. 116–283, § 1850(j)(3)(B), as amended by Pub. L. 117–81, § 1701(o)(6)(E)(v), substituted “section 4375(d) and (e)” for “section 2433(g)” and “section 4351(f)” for “section 2432(f)”.

Subsec. (b)(2), (3). Pub. L. 116–283, § 1850(j)(4)(B)–(D), realigned margins and inserted headings.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283

as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

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.

§ 4377. Breach of critical cost growth threshold: actions if program not terminated

(a) ACTIONS IF PROGRAM NOT TERMINATED.—If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b) of section 4376 of this title, the Secretary shall—

(1) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a) of that section, and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E) of that section;

(2) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 4251 or 4252 of this title;

(3) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(4) include in the report specified in subsection (b) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(5) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(b) IDENTIFICATION OF REPORT FOR DESCRIPTION OF FUNDING CHANGES.—For purposes of subsection (a)(4), the report specified in this subsection is the first Selected Acquisition Report for the program submitted pursuant to section 4351 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(c) INAPPLICABILITY OF CERTAIN SUBSECTION (A) REQUIREMENTS.—

(1) CONDITIONS FOR INAPPLICABILITY.—The requirements of paragraphs (2), (3), and (5) of subsection (a) shall not apply to a program or subprogram if—

(A) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to section 4376(a) of this title, that—

(i) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in paragraph (2); and

(ii) the change in quantity of items described in clause (i) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(B) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(C) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsections (d) and (e) of section 4375 of this title is required to be submitted under section 4351(f) of this title—

(i) a copy of the written determination under subparagraph (A) and an explanation of the basis for the determination; and

(ii) a copy of the written determination under subparagraph (B) and an explanation of the basis for the determination.

(2) **COST GROWTH THRESHOLDS.**—The cost growth thresholds specified in this paragraph are as follows:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(ii) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(ii) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (k), Jan. 1, 2021, 134 Stat. 4265, 4270; Pub. L. 117–81, div. A, title XVII, § 1701(o)(6)(E)(vi), (vii), Dec. 27, 2021, 135 Stat. 2148.)

Editorial Notes

REFERENCES IN TEXT

Section 205 of the Weapon Systems Acquisition Reform Act of 2009, referred to in subsec. (a)(5), is section 205 of Pub. L. 111–23, which amended section 4252 of this title and enacted provisions set out as notes under this section and former section 2366b of this title.

CODIFICATION

The text of subsec. (c) of section 2433a of this title, which was transferred to this section and redesignated as subsec. (a) by Pub. L. 116–283, § 1850(k)(1), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; Pub. L. 112–81, div. A, title VIII, §§ 801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112–239, div. A, title VIII, § 813, Jan. 2, 2013, 126 Stat. 1829.

PRIOR PROVISIONS

Prior sections 4381 to 4387 were repealed by Pub. L. 88–647, title III, § 301(10), Oct. 13, 1964, 78 Stat. 1072.

Section 4381, act Aug. 10, 1956, ch. 1041, 70A Stat. 246, defined “advanced training” for purposes of chapter 405.

Section 4382, act Aug. 10, 1956, ch. 1041, 70A Stat. 246, provided for the establishment and composition of the Reserve Officers’ Training Corps.

Section 4383, act Aug. 10, 1956, ch. 1041, 70A Stat. 247, related to admission and training of medical, dental, pharmacy, and veterinary students.

Section 4384, act Aug. 10, 1956, ch. 1041, 70A Stat. 247; Pub. L. 85–861, § 1(104), Sept. 2, 1958, 72 Stat. 1489, set out courses of training.

Section 4385, act Aug. 10, 1956, ch. 1041, 70A Stat. 247, authorized the operation and maintenance of training camps.

Section 4386, act Aug. 10, 1956, ch. 1041, 70A Stat. 248, provided for supplies and uniforms.

Section 4387, act Aug. 10, 1956, ch. 1041, 70A Stat. 248, provided for advanced training and compensation.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(k)(2), redesignated pars. (2) and (3) of subsec. (a) as subsections. (b) and (c), respectively.

Pub. L. 116–283, § 1850(k)(1), transferred subsec. (c) of section 2433a of this title to this section and redesignated it as subsec. (a).

Subsec. (a). Pub. L. 116–283, § 1850(k)(3)(A)–(C), struck out par. (1) designation before “If the Secretary”, inserted “of section 4376 of this title” after “subsection (b)” in introductory provisions, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1850(k)(3)(D), inserted “of that section” after “subsection (a)” and “subsection (b)(2)(E)”.

Subsec. (a)(2). Pub. L. 116–283, § 1850(k)(3)(E), substituted “section 4251 or 4252” for “section 2366a or 2366b”.

Subsec. (a)(4). Pub. L. 116–283, § 1850(k)(3)(F), substituted “subsection (b)” for “paragraph (2)”.

Subsec. (b). Pub. L. 116–283, § 1850(k)(4), as amended by Pub. L. 117–81, § 1701(o)(6)(E)(vi), inserted heading and substituted “subsection (a)(4)” for “paragraph (1)(D)”, “in this subsection” for “in this paragraph”, and “section 4351” for “section 2432”.

Subsec. (c). Pub. L. 116–283, § 1850(k)(5), inserted subsec. heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted par. headings, and substituted “The requirements of paragraphs (2), (3), and (5) of subsection (a)” for “The requirements of subparagraphs (B), (C), and (E) of paragraph (1)” in introductory provisions of par. (1).

Subsec. (c)(1). Pub. L. 116–283, § 1850(k)(6)(A), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(1)(A). Pub. L. 116–283, § 1850(k)(6)(C)(i), substituted “pursuant to section 4376(a) of this title” for “pursuant to subsection (a)” in introductory provisions.

Pub. L. 116-283, §1850(k)(6)(B), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Subsec. (c)(1)(A)(i). Pub. L. 116-283, §1850(k)(6)(C)(ii), substituted “paragraph (2)” for “subparagraph (B)”.

Subsec. (c)(1)(A)(ii). Pub. L. 116-283, §1850(k)(6)(C)(iii), substituted “clause (i)” for “subclause (I)”.

Subsec. (c)(1)(C). Pub. L. 116-283, §1850(k)(6)(D)(i), as amended by Pub. L. 117-81, §1701(o)(6)(E)(vii), substituted “subsections (d) and (e) of section 4375” for “section 2433(g)” and “section 4351(f)” for “section 2432(f)” in introductory provisions.

Pub. L. 116-283, §1850(k)(6)(B), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Subsec. (c)(1)(C)(i). Pub. L. 116-283, §1850(k)(6)(D)(ii), substituted “subparagraph (A)” for “clause (i)”.

Subsec. (c)(1)(C)(ii). Pub. L. 116-283, §1850(k)(6)(D)(iii), substituted “subparagraph (B)” for “clause (ii)”.

Subsec. (c)(2). Pub. L. 116-283, §1850(k)(7)(A), (B), substituted “this paragraph” for “this subparagraph” in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (c)(2)(A), (B). Pub. L. 116-283, §1850(k)(7)(C), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

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.

REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

Pub. L. 111-23, title II, §205(c), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111-383, div. A, title VIII, §813(e), title X, §1075(k)(2), Jan. 7, 2011, 124 Stat. 4266, 4378, provided that: “The official designated to perform oversight of performance assessment pursuant to section 103 of this Act [formerly set out as a note under section 2430 of this title, see 10 U.S.C. 4273], shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to [former] section 2433(e) of title 10, United States Code [see 10 U.S.C. 4375(a) to (c)], but has not been terminated in accordance with [former] section 2433a of such title [see 10 U.S.C. 4376, 4377] (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with [former] section 2433a(c)(1)(C) of such title [see 10 U.S.C. 4377(a)(3)] (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.”

[Pub. L. 111-383, div. A, title VIII, §813(e), Jan. 7, 2011, 124 Stat. 4266, provided that the amendment made by section 813(e) to section 205(c) of Pub. L. 111-23, set out above, is effective as of May 22, 2009, and as if included in Pub. L. 111-23, as enacted.]

[For definition of “major defense acquisition program” as used in section 205(c) of Pub. L. 111-23, set out above, see section 2(2) of Pub. L. 111-23, set out as a note preceding section 4321 of this title.]

CHAPTER 327—WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS

Subchapter	Sec.
I. Modular Open System Approach in Development of Weapon Systems	4401

Subchapter	Sec.
II. Development, Prototyping, and Deployment of Weapon System Components or Technology	4421

Editorial Notes

PRIOR PROVISIONS

A prior chapter 327 “RESEARCH AND DEVELOPMENT CENTERS AND FACILITIES”, consisting of reserved section 4401, was repealed by Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 329 “OPERATIONAL TEST AND EVALUATION; DEVELOPMENTAL TEST AND EVALUATION”, consisting of reserved section 4451, was repealed by Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

SUBCHAPTER I—MODULAR OPEN SYSTEM APPROACH IN DEVELOPMENT OF WEAPON SYSTEMS

Sec.	
4401.	Requirement for modular open system approach in major defense acquisition programs; definitions.
4402.	Requirement to address modular open system approach in program capabilities development and acquisition weapon system design.
4403.	Requirements relating to availability of major system interfaces and support for modular open system approach.

§ 4401. Requirement for modular open system approach in major defense acquisition programs; definitions

(a) MODULAR OPEN SYSTEM APPROACH REQUIREMENT.—A major defense acquisition program that receives Milestone A or Milestone B approval after January 1, 2019, shall be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability. Other defense acquisition programs shall also be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability.

(b) DISCLOSURE REQUIRED.—Not later than one year after the date of the enactment of this subsection, the Secretary of Defense shall make publicly available any standards for implementation of the modular open system approaches for contracts, unless the service acquisition executive with respect to a specific contract submits to the Secretary a request to not disclose such standards and the Secretary approves such request.

(c) DEFINITIONS.—In this chapter:

(1) The term “modular open system approach” means, with respect to a major defense acquisition program, an integrated business and technical strategy that—

(A) employs a modular design that uses modular system interfaces between major systems, major system components and modular systems;

(B) is subjected to verification to ensure that relevant modular system interfaces—

(i) comply with, if available and suitable, widely supported and consensus-based standards; or