

fense non-standard acquisition and requirements processes and responsibilities unless, with respect to those proposed changes—

(A) the Secretary, without delegation, has taken each of the actions specified in paragraph (2); and

(B) a period of 120 days has elapsed following the date on which the Secretary submits the report under subparagraph (C) of such paragraph.

(2) If the Secretary proposes to make changes to the missile defense non-standard acquisition and requirements processes and responsibilities, the Secretary shall—

(A) consult with the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, the Commander of the United States Strategic Command, the Commander of the United States Northern Command, and the Director of the Missile Defense Agency, regarding the changes;

(B) certify to the congressional defense committees that the Secretary has coordinated the changes with, and received the views of, the individuals referred to in subparagraph (A);

(C) submit to the congressional defense committees a report that contains—

(i) a description of the changes, the rationale for the changes, and the views of the individuals referred to in subparagraph (A) with respect to the changes;

(ii) a certification that the changes will not impair the missile defense capabilities of the United States nor degrade the unique special acquisition authorities of the Missile Defense Agency; and

(iii) with respect to any such changes to Department of Defense Directive 5134.09, or successor directive issued in accordance with this subsection, a final draft of the proposed modified directive, both in an electronic format and in a hard copy format; and

(D) with respect to any such changes to Department of Defense Directive 5134.09, or successor directive issued in accordance with this subsection, provide to such committees a briefing on the proposed modified directive described in subparagraph (C)(iii).

(3) In this subsection, the term “non-standard acquisition and requirements processes and responsibilities” means the processes and responsibilities described in—

(A) the memorandum of the Secretary of Defense titled “Missile Defense Program Direction” signed on January 2, 2002, as in effect on the date of the enactment of this subsection or as modified in accordance with this subsection, or any successor memorandum issued in accordance with this subsection;

(B) Department of Defense Directive 5134.09, as in effect on the date of the enactment of this subsection (without regard to any modifications described in Directive-type Memorandum 20-002 of the Deputy Secretary of Defense, or any amendments or extensions there-

to made before the date of such enactment), or as modified in accordance with this subsection, or any successor directive issued in accordance with this subsection; and

(C) United States Strategic Command Instruction 538-3 titled “MD Warfighter Involvement Process”, as in effect on the date of the enactment of this subsection or as modified in accordance with this subsection, or any successor instruction issued in accordance with this subsection.

(Added Pub. L. 118-159, div. A, title XVI, §1649(a), Dec. 23, 2024, 138 Stat. 2187.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(3), is the date of enactment of Pub. L. 118-159, which was approved Dec. 23, 2024.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 205 of this title prior to repeal by Pub. L. 118-159, div. A, title XVI, §1649(b)(1), Dec. 23, 2024, 138 Stat. 2199.

Statutory Notes and Related Subsidiaries

RESCISSION OF MEMORANDUM ON MISSILE DEFENSE GOVERNANCE

Pub. L. 118-31, div. A, title XVI, §1667, Dec. 22, 2023, 137 Stat. 607, provided that: “Not later than May 31, 2024, the Secretary of Defense shall—

“(1) rescind Directive-type Memorandum 20-002 relating to ‘Missile Defense System Policies and Governance’; and

“(2) in accordance with [former] section 205(b) of title 10, United States Code, replace such memorandum with governance documents, policies, and procedures, that balance—

“(A) providing the Missile Defense Agency with greater flexibility and agility, particularly with regards to milestone a [probably should be “Milestone A”] (or equivalent) acquisition decisions to rapidly meet warfighter needs; and

“(B) the need for continued oversight to ensure integration into joint-force air and missile defense capabilities.”

DIRECTED ENERGY PROGRAMS FOR BALLISTIC AND HYPERSONIC MISSILE DEFENSE

Pub. L. 117-81, div. A, title XVI, §1664, Dec. 27, 2021, 135 Stat. 2104, provided that:

“(a) AUTHORITY OF THE MISSILE DEFENSE AGENCY.—The Secretary of Defense shall delegate to the Director of the Missile Defense Agency the authority to budget for, direct, and manage directed energy programs applicable for ballistic and hypersonic missile defense missions, in coordination with other directed energy efforts of the Department of Defense.

“(b) PRIORITIZATION.—In budgeting for and directing directed energy programs applicable for ballistic and hypersonic defensive missions pursuant to subsection (a), the Director of the Missile Defense Agency shall—

“(1) prioritize the early research and development of technologies; and

“(2) address the transition of such technologies to industry to support future operationally relevant capabilities.”

SUBCHAPTER II—BUDGET AND ACQUISITION MATTERS

§ 5511. Ballistic missile defense programs: program elements

(a) PROGRAM ELEMENTS SPECIFIED BY PRESIDENT.—In the budget justification materials sub-

mitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Missile Defense Agency shall be set forth in accordance with such program elements as the President may specify.

(b) SEPARATE PROGRAM ELEMENTS FOR PROGRAMS ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT.—(1) The Secretary of Defense shall ensure that each ballistic missile defense program that enters engineering and manufacturing development is assigned a separate, dedicated program element.

(2) In this subsection, the term “engineering and manufacturing development” means the period in the course of an acquisition program during which the primary objectives are to—

(A) translate the most promising design approach into a stable, interoperable, producible, supportable, and cost-effective design;

(B) validate the manufacturing or production process; and

(C) demonstrate system capabilities through testing.

(c) MANAGEMENT AND SUPPORT.—The amount requested for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a) shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

(Added Pub. L. 118–159, div. A, title XVI, § 1649(a), Dec. 23, 2024, 138 Stat. 2189.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 223 of this title prior to repeal by Pub. L. 118–159, div. A, title XVI, § 1649(b)(1), Dec. 23, 2024, 138 Stat. 2199.

Statutory Notes and Related Subsidiaries

BUDGET AND ACQUISITION REQUIREMENTS FOR MISSILE DEFENSE AGENCY ACTIVITIES

Pub. L. 110–181, div. A, title II, § 223, Jan. 28, 2008, 122 Stat. 39, as amended by Pub. L. 112–81, div. A, title II, § 231(b)(2), Dec. 31, 2011, 125 Stat. 1339, provided that:

“(a) REVISED BUDGET STRUCTURE.—The budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall set forth separately amounts requested for the Missile Defense Agency for each of the following:

“(1) Research, development, test, and evaluation.

“(2) Procurement.

“(3) Operation and maintenance.

“(4) Military construction.

“(b) REVISED BUDGET STRUCTURE FOR FISCAL YEAR 2009.—The budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall—

“(1) identify all known and estimated operation and support costs; and

“(2) set forth separately amounts requested for the Missile Defense Agency for each of the following:

“(A) Research, development, test, and evaluation.

“(B) Procurement or advance procurement of long lead items, including for Terminal High Altitude

Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

“(C) Military construction.

“(c) AVAILABILITY OF RDT&E FUNDS FOR FISCAL YEAR 2009.—Upon approval by the Secretary of Defense, and consistent with the plan submitted under subsection (f), funds appropriated pursuant to an authorization of appropriations or otherwise made available for fiscal year 2009 for research, development, test, and evaluation for the Missile Defense Agency—

“(1) may be used for the fielding of ballistic missile defense capabilities approved previously by Congress; and

“(2) may not be used for—

“(A) military construction activities; or

“(B) procurement or advance procurement of long lead items, including for Terminal High Altitude Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

“(d) FULL FUNDING REQUIREMENT NOT APPLICABLE TO USE OF PROCUREMENT FUNDS FOR FISCAL YEARS 2009 AND 2010.—In any case in which funds appropriated pursuant to an authorization of appropriations or otherwise made available for procurement for the Missile Defense Agency for fiscal years 2009 and 2010 are used for the fielding of ballistic missile defense capabilities, the funds may be used for the fielding of those capabilities on an ‘incremental’ basis, notwithstanding any law or policy of the Department of Defense that would otherwise require a ‘full funding’ basis.

“(e) RELATIONSHIP TO OTHER LAW.—Nothing in this provision shall be construed to alter or otherwise affect in any way the applicability of the requirements and other provisions of section 234(a) through (d) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1837; [former] 10 U.S.C. 2431 note).

“(f) PLAN REQUIRED.—Not later than March 1, 2008, the Director of the Missile Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for transitioning the Missile Defense Agency from using exclusively research, development, test, and evaluation funds to using procurement, military construction, operations and maintenance, and research, development, test, and evaluation funds for the appropriate budget activities, and for transitioning from incremental funding to full funding for fiscal years after fiscal year 2010.’”

REFERENCES TO NEW NAME FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 107–314, div. A, title II, § 225(a), Dec. 2, 2002, 116 Stat. 2486, provided that: “Any reference to the Ballistic Missile Defense Organization in any provision of law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Missile Defense Agency.”

§ 5512. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation

(a) REQUIREMENT.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for the integration of a ballistic missile defense element into the overall ballistic missile defense architecture shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation and, within that account, under the subaccount (or other budget activity level) for the Missile Defense Agency.

(b) TRANSFER CRITERIA.—(1) The Secretary of Defense shall establish criteria for the transfer of responsibility for a ballistic missile defense program from the Director of the Missile De-