

114TH CONGRESS
2D SESSION

H. R. 4741

To amend title 10, United States Code, to provide for modular open system architecture in major defense acquisition programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2016

Mr. THORNBERRY introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to provide for modular open system architecture in major defense acquisition programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Acquisition Agility Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Modular open system architecture in development of major weapon systems.

Sec. 3. Weapon system component development, prototyping, and deployment.

Sec. 4. Cost, schedule, and performance of major defense acquisition programs.

Sec. 5. Transparency in major defense acquisition programs.

Sec. 6. Amendments relating to technical data rights.

1 **SEC. 2. MODULAR OPEN SYSTEM ARCHITECTURE IN DE-**
 2 **VELOPMENT OF MAJOR WEAPON SYSTEMS.**

3 (a) IN GENERAL.—Part IV of subtitle A of title 10,
 4 United States Code, is amended by inserting after chapter
 5 144A the following new chapter:

6 **“CHAPTER 144B—WEAPON SYSTEMS**
 7 **DEVELOPMENT AND RELATED MATTERS**

“Subchapter	Sec.
“I. Modular Open System Architecture in Development of Weapon Systems	2446a
“II. Weapon System Component Development, Prototyping, and Deployment	2447a
“III. Cost, Schedule, and Performance of Major Defense Acquisition Programs	2448a

8 **“SUBCHAPTER I—MODULAR OPEN SYSTEM AR-**
 9 **CHITECTURE IN DEVELOPMENT OF WEAP-**
 10 **ON SYSTEMS**

“Sec.

“2446a. Requirement for modular open system architecture in major defense acquisition programs; definitions.

“2446b. Requirement to address modular open system architecture in program capabilities development and acquisition weapon system design.

“2446c. Requirements relating to availability of major system interfaces and support for modular open system architecture.

“2446d. Requirement to include modular open system architecture in Selected Acquisition Reports.

11 **“§ 2446a. Requirement for modular open system ar-**
 12 **chitecture in major defense acquisition**
 13 **programs; definitions**

14 **“(a) MODULAR OPEN SYSTEM ARCHITECTURE RE-**
 15 **QUIREMENT.—**A major defense acquisition program initi-
 16 **ated after October 1, 2018, shall be designed and devel-**

1 oped with a modular open system architecture to enable
2 incremental development.

3 “(b) DEFINITIONS.—In this chapter:

4 “(1) The term ‘modular open system architec-
5 ture’ means, with respect to a major defense acquisi-
6 tion program, an integrated business and technical
7 strategy that—

8 “(A) employs a modular design and uses,
9 if available and suitable, widely supported and
10 consensus-based standards for major system
11 interfaces between the major system platform
12 being developed under the program and its
13 major system components;

14 “(B) is subjected to testing to ensure
15 major system interfaces comply with widely
16 supported and consensus-based standards; and

17 “(C) uses a system architecture that allows
18 major system components to be incrementally
19 added, removed, or replaced throughout the life
20 cycle of the major system platform to afford op-
21 portunities for enhanced competition and inno-
22 vation while yielding—

23 “(i) significant cost savings or avoid-
24 ance;

25 “(ii) schedule reduction; or

1 “(iii) increased interoperability.

2 “(2) The term ‘major system platform’ means
3 the structure of a major weapon system on which a
4 major system component can be mounted or inte-
5 grated.

6 “(3) The term ‘major system component’—

7 “(A) means a subsystem or assembly that
8 can be mounted or installed on a major system
9 platform through well-defined, open major sys-
10 tem interfaces; and

11 “(B) includes a subsystem or assembly
12 that is likely to have additional capability re-
13 quirements, is likely to change because of evol-
14 ving technology or threat, is needed for inter-
15 operability, facilitates incremental deployment
16 of capabilities, or is expected to be replaced.

17 “(4) The term ‘major system interface’ means
18 a shared boundary between a major system platform
19 and its major system components, defined by various
20 characteristics pertaining to—

21 “(A) physical standards for mounting
22 major system components;

23 “(B) functional standards for integrating
24 major system components, such as electrical,
25 radio frequency, data, or software elements; and

1 “(C) open intellectual property rights con-
2 sistent with section 2320 of this title.

3 “(5) The term ‘program capability document’
4 means, with respect to a major defense acquisition
5 program, a document that specifies capability re-
6 quirements for the program, such as a capability de-
7 velopment document or a capability production docu-
8 ment.

9 “(6) The terms ‘program cost target’ and ‘field-
10 ing target’ have the meanings provided in section
11 2448a(a) of this title.

12 “(7) The term ‘major defense acquisition pro-
13 gram’ has the meaning provided in section 2430 of
14 this title.

15 “(8) The term ‘major weapon system’ has the
16 meaning provided in section 2379(f) of this title.

17 **“§ 2446b. Requirement to address modular open sys-**
18 **tem architecture in program capabilities**
19 **development and acquisition weapon sys-**
20 **tem design**

21 “(a) PROGRAM CAPABILITY DOCUMENT.—A program
22 capability document for a major defense acquisition pro-
23 gram shall identify and characterize—

24 “(1) the extent to which requirements for sys-
25 tem performance are likely to evolve during the life

1 cycle of the system because of evolving technology,
2 threat, or interoperability needs; and

3 “(2) for requirements that are expected to
4 evolve, the minimum acceptable capability that will
5 be available upon initial operating capability of the
6 major defense acquisition program.

7 “(b) ANALYSIS OF ALTERNATIVES.—The Director of
8 Cost Assessment and Performance Evaluation, in formu-
9 lating study guidance for analyses of alternatives for
10 major defense acquisition programs and performing such
11 analyses under section 139a(d)(4) of this title, shall en-
12 sure that any such analysis for a major defense acquisition
13 program includes consideration of an incremental develop-
14 ment approach and modular open system architecture.

15 “(c) ACQUISITION STRATEGY.—An acquisition strat-
16 egy for a major defense acquisition program, as required
17 under section 2431a of this title, shall—

18 “(1) clearly describe the modular open system
19 architecture to be used for the program;

20 “(2) differentiate between the major system
21 platform and major system components being devel-
22 oped under the program;

23 “(3) clearly describe the incremental approach
24 to major system components that are anticipated to
25 meet requirements for system performance;

1 “(4) identify additional major system compo-
2 nents that may be added later in the life cycle of the
3 major system platform; and

4 “(5) clearly describe how intellectual property
5 and related issues, such as data deliverables and li-
6 cense rights, that are necessary to support a mod-
7 ular open system architecture will be addressed.

8 “(d) REQUEST FOR PROPOSALS.—The milestone de-
9 cision authority for a major defense acquisition program
10 shall ensure that a request for proposals for the develop-
11 ment or production phases of the program shall address
12 the modular open system architecture to be used.

13 “(e) MILESTONE B.—A major defense acquisition
14 program may not receive Milestone B approval under sec-
15 tion 2366b of this title until the milestone decision author-
16 ity determines in writing that—

17 “(1) the program incorporates a modular open
18 system architecture with clearly defined major sys-
19 tem interfaces between the major system platform
20 and major system components to be developed under
21 the program;

22 “(2) such major system interfaces are con-
23 sistent with the widely supported and consensus-
24 based standards that exist at the time of the mile-
25 stone decision, unless such standards are unavailable

1 or unsuitable for particular major system interfaces;
2 and

3 “(3) the Government has arranged to obtain
4 appropriate and necessary intellectual property
5 rights with respect to such major system interfaces
6 upon completion of the development of the major
7 system platform.

8 **“§ 2446c. Requirements relating to availability of**
9 **major system interfaces and support for**
10 **modular open system architecture**

11 “The Secretary of each military department shall—

12 “(1) coordinate with the other military depart-
13 ments, the defense agencies, defense and other pri-
14 vate sector entities, and national standards-setting
15 organizations with respect to the identification, de-
16 velopment, and maintenance of major system inter-
17 faces and standards for use in major system plat-
18 forms, where practicable;

19 “(2) ensure that major system interfaces incor-
20 porate commercial standards to the maximum extent
21 practicable;

22 “(3) ensure sufficient systems engineering and
23 development expertise and resources are available to
24 support modular open system architecture in re-

1 requirements development and acquisition program
2 planning;

3 “(4) ensure that necessary planning, program-
4 ming, and budgeting resources are provided to iden-
5 tify, develop, and maintain modular open system ar-
6 chitecture and associated major system interfaces;
7 and

8 “(5) ensure adequate training in modular open
9 system architecture is provided to members of the
10 requirements and acquisition workforce.

11 **“§ 2446d. Requirement to include modular open sys-**
12 **tem architecture in Selected Acquisition**
13 **Reports**

14 “For each major defense acquisition program that re-
15 ceives Milestone B approval after October 1, 2018, a de-
16 scription of the key elements of the modular open system
17 architecture or, if a modular open system architecture was
18 not used, the rationale for not using such an architecture,
19 shall be submitted to the congressional defense committees
20 with the first Selected Acquisition Report required under
21 section 2432 of this title for the program.”.

22 (b) CLERICAL AMENDMENT.—The table of chapters
23 for title 10, United States Code, is amended by adding
24 after the item relating to chapter 144A the following new
25 item:

**“144B. Weapon Systems Development and Related Mat-
ters2446a”.**

1 (c) CONFORMING AMENDMENT.—Section
2 2366b(a)(3) of such title is amended—

3 (1) by striking “and” at the end of subpara-
4 graph (K); and

5 (2) by inserting after subparagraph (L) the fol-
6 lowing new subparagraph:

7 “(M) the requirements of section 2446b(e)
8 of this title are met; and”.

9 (d) EFFECTIVE DATE.—Subchapter I of chapter
10 144B of title 10, United States Code, as added by sub-
11 section (a), shall take effect on October 1, 2016.

12 **SEC. 3. WEAPON SYSTEM COMPONENT DEVELOPMENT,
13 PROTOTYPING, AND DEPLOYMENT.**

14 (a) IN GENERAL.—Chapter 144B of title 10, United
15 States Code, as added by section 2, is further amended
16 by adding at the end the following new subchapter:

17 **“SUBCHAPTER II—WEAPON SYSTEM COMPO-
18 NENT DEVELOPMENT, PROTOTYPING, AND
19 DEPLOYMENT**

“Sec.

“2447a. Technology development in the acquisition of major weapon systems.

“2447b. Weapon system component prototype projects: display of budget infor-
mation.

“2447c. Weapon system component prototype projects: oversight.

“2447d. Requirements and limitations for weapon system component prototype
projects.

“2447e. Mechanisms to speed deployment of successful weapon system compo-
nent prototypes.

“2447f. Definition of weapon system component.

1 **“§ 2447a. Technology development in the acquisition**
2 **of major weapon systems**

3 “Technology shall be developed in a major defense
4 acquisition program that is initiated after October 1,
5 2018, only if the milestone decision authority for the pro-
6 gram determines with a high degree of confidence that
7 such development will not delay the fielding target of the
8 program. If the milestone decision authority does not
9 make such determination for a major system component
10 being developed under the program, the milestone decision
11 authority shall ensure that technology related to the major
12 system component shall be sufficiently matured separate
13 from the major defense acquisition program using the
14 prototyping authorities of this section or other authorities,
15 as appropriate.

16 **“§ 2447b. Weapon system component prototype**
17 **projects: display of budget information**

18 “(a) REQUIREMENTS FOR BUDGET DISPLAY.—In the
19 defense budget materials for any fiscal year after fiscal
20 year 2017, the Secretary of Defense shall, with respect
21 to advanced component development and prototype activi-
22 ties (within the research, development, test, and evaluation
23 budget), set forth separately the amounts requested for
24 each of the following:

25 “(1) Acquisition programs of record.

1 “(2) Experimentation and rapid prototyping of
2 weapon system components or other technologies
3 and subsystems.

4 “(3) Other budget line items as determined by
5 the Secretary of Defense.

6 “(b) **ADDITIONAL REQUIREMENTS.**—For purposes of
7 subsection (a)(2), the amounts requested for experimen-
8 tation and rapid prototyping of weapon system compo-
9 nents or other technologies and subsystems shall be—

10 “(1) displayed in separate budget lines struc-
11 tured into either capability or weapon system compo-
12 nent portfolios that reflect the priority areas for pro-
13 totype projects; and

14 “(2) justified with general descriptions of the
15 types of capability areas and technologies being
16 funded or expected to be funded during the fiscal
17 year concerned.

18 “(c) **DEFINITIONS.**—In this section, the terms ‘budg-
19 et’ and ‘defense budget materials’ have the meaning given
20 those terms in section 234 of this title.

21 **“§ 2447c. Weapon system component prototype**
22 **projects: oversight**

23 “(a) **ESTABLISHMENT.**—The Secretary of each mili-
24 tary department shall establish or appoint an oversight
25 board or similar group of senior advisors for managing

1 prototype projects for weapon system components and
2 other technologies and subsystems, including the use of
3 funds for such projects, within the military department
4 concerned.

5 “(b) MEMBERSHIP.—Each oversight board shall be
6 comprised of senior officials with—

7 “(1) expertise in requirements; research, devel-
8 opment, test, and evaluation; acquisition; or other
9 relevant areas within the military department con-
10 cerned; and

11 “(2) awareness of the component capability re-
12 quirements of major weapon systems, including
13 scheduling and fielding goals for such component ca-
14 pabilities.

15 “(c) FUNCTIONS.—The functions of each oversight
16 board are as follows:

17 “(1) To issue a strategic plan every three years
18 that prioritizes the capability and weapon system
19 component portfolio areas for conducting prototype
20 projects, based on assessments of high priority
21 warfighter needs, capability gaps on existing major
22 weapon systems, opportunities to incrementally inte-
23 grate new components into major weapon systems,
24 and technologies that are expected to be sufficiently
25 mature to prototype within 3 years.

1 “(2) To annually recommend funding levels for
2 weapon system component prototype projects across
3 capability or weapon system component portfolios.

4 “(3) To annually recommend to the service ac-
5 quisition executive of the military department con-
6 cerned specific weapon system component prototype
7 projects, subject to the requirements and limitations
8 in section 2447d of this title.

9 “(4) To ensure projects are managed by experts
10 within the Department of Defense who are knowl-
11 edgeable in research, development, test, and evalua-
12 tion and who are aware of opportunities for incre-
13 mental deployment of component capabilities to
14 major weapon systems.

15 “(5) To ensure projects are conducted in a
16 manner that allows for appropriate experimentation
17 and technology risk.

18 “(6) To ensure necessary technical, contracting,
19 and financial management resources are available to
20 support each project.

21 “(7) To submit to the congressional defense
22 committees a semiannual notification that includes
23 the following:

24 “(A) A description of each weapon system
25 component prototype project initiated during

1 the preceding six months, including an expla-
2 nation of each project and its required funding.

3 “(B) A description of the results achieved
4 from weapon system component prototype
5 projects completed and tested during the pre-
6 ceding six months.

7 **“§ 2447d. Requirements and limitations for weapon**
8 **system component prototype projects**

9 “(a) LIMITATION ON PROTOTYPE PROJECT DURA-
10 TION.—A prototype project shall be completed within
11 three years of its initiation.

12 “(b) MERIT-BASED SELECTION PROCESS.—A proto-
13 type project shall be selected by the service acquisition ex-
14 ecutive of the military department concerned through a
15 merit-based selection process that identifies the most
16 promising and cost-effective prototypes that address a
17 high priority warfighter need and are expected to be suc-
18 cessfully demonstrated in a relevant environment.

19 “(c) TYPE OF TRANSACTION.—Prototype projects
20 shall be funded through contracts, cooperative agree-
21 ments, or other transactions.

22 “(d) FUNDING LIMIT.—(1) Each prototype project
23 may not exceed a total amount of \$5,000,000 (based on
24 fiscal year 2017 constant dollars), unless—

1 “(A) the Secretary of the military department,
2 or the Secretary’s designee, approves a larger
3 amount of funding for the project, not to exceed
4 \$25,000,000; and

5 “(B) the Secretary, or the Secretary’s designee,
6 submits to the congressional defense committees,
7 within 30 days after approval of such funding for
8 the project, a notification that includes—

9 “(i) a description of the project;

10 “(ii) expected funding for the project; and

11 “(iii) a statement of the anticipated out-
12 come of the project.

13 “(2) The Secretary of Defense may adjust the
14 amounts (and the base fiscal year) provided in paragraph
15 (1) on the basis of Department of Defense escalation
16 rates.

17 **“§ 2447e. Mechanisms to speed deployment of suc-**
18 **cessful weapon system component proto-**
19 **types**

20 “(a) SELECTION OF PROTOTYPE PROJECT FOR PRO-
21 DUCTION.—A weapon system component or technology
22 prototype project may be selected by the service acquisi-
23 tion executive of the military department concerned for a
24 follow-on production contract or other transaction without

1 the use of competitive procedures, notwithstanding the re-
2 quirements of section 2304 of this title, if—

3 “(1) a prototype project addresses a high pri-
4 ority warfighter need;

5 “(2) competitive procedures were used for the
6 selection of parties for participation in the prototype
7 project;

8 “(3) the participants in the project successfully
9 completed the project provided for in the trans-
10 action; and

11 “(4) the prototype was demonstrated in a rel-
12 evant environment.

13 “(b) SPECIAL TRANSFER AUTHORITY.—(1) The Sec-
14 retary of a military department may transfer funds that
15 remain available for obligation in procurement appropria-
16 tion accounts of the military department to fund the low-
17 rate initial production of a prototype until required fund-
18 ing for full-rate production can be submitted and approved
19 through the regular budget process of the Department of
20 Defense.

21 “(2) The funds transferred under this subsection to
22 be used for production of a prototype shall be for a period
23 not to exceed two years, the amount for such period may
24 not exceed \$10,000,000, and the special transfer authority

1 provided in this subsection may not be used more than
2 once to fund procurement of a particular prototype.

3 “(3) The special transfer authority provided in this
4 subsection is in addition to any other transfer authority
5 available to the Department of Defense.

6 “(c) NOTIFICATION TO CONGRESS.—Within 30 days
7 after the service acquisition executive of a military depart-
8 ment selects a weapon system component or technology
9 prototype project for a follow-on production contract or
10 other transaction, the service acquisition executive shall
11 notify the congressional defense committees of the selec-
12 tion.

13 **“§ 2447f. Definition of weapon system component**

14 “In this subchapter, the term ‘weapon system compo-
15 nent’ has the meaning provided the term ‘major system
16 component’ in section 2446a of this title.”.

17 (b) EFFECTIVE DATE.—Subchapter II of chapter
18 144B of title 10, United States Code, as added by sub-
19 section (a), shall take effect on October 1, 2016.

20 **SEC. 4. COST, SCHEDULE, AND PERFORMANCE OF MAJOR**
21 **DEFENSE ACQUISITION PROGRAMS.**

22 (a) IN GENERAL.—Chapter 144B of title 10, United
23 States Code, as added by section 2, is amended by adding
24 at the end the following new subchapter:

1 “SUBCHAPTER III—COST, SCHEDULE, AND PER-
2 FORMANCE OF MAJOR DEFENSE ACQUI-
3 TION PROGRAMS

“Sec.

“2448a. Program cost and fielding targets in planning major defense acquisition programs.

“2448b. Independent technical risk assessments.

“2448c. Adherence to requirements and thresholds in major defense acquisition programs.

4 “§ 2448a. **Program cost and fielding targets in plan-**
5 **ning major defense acquisition programs**

6 “(a) PROGRAM COST AND FIELDING TARGETS.—Be-
7 fore Milestone A approval is granted for a major defense
8 acquisition program, the Secretary of Defense shall ensure
9 the program will be affordable and fielded when needed
10 by establishing targets for—

11 “(1) the program acquisition unit cost (referred
12 to in this section as the ‘program cost target’; and

13 “(2) the date for initial operational capability
14 (referred to in this section as the ‘fielding target’).

15 “(b) CONSIDERATIONS.—In establishing targets
16 under subsection (a) for the program, the Secretary of De-
17 fense shall consider each of the following:

18 “(1) The capability needs and timeframe speci-
19 fied in the initial capabilities document, opportuni-
20 ties for incremental deployment of capabilities, and
21 minimum acceptable capability increments.

1 “(2) Resources available to fund the develop-
2 ment, production, and life cycle of the program,
3 using a reasonable estimate of future defense budg-
4 ets.

5 “(3) Procurement quantity objectives.

6 “(4) Trade-offs among cost, schedule, technical
7 risk, and performance objectives identified in the
8 analysis of alternatives required under section 2366a
9 of this title.

10 “(5) The independent cost estimate prepared or
11 approved under section 2334(a)(6) of this title.

12 “(6) The independent technical risk assessment
13 conducted or approved under section 2448b of this
14 title.

15 “(c) DELEGATION.—The responsibilities of the Sec-
16 retary of Defense in subsection (a) may be delegated only
17 to the Deputy Secretary of Defense or the Under Sec-
18 retary of Defense for Acquisition, Technology, and Logis-
19 tics.

20 “(d) DEFINITIONS.—In this section:

21 “(1) The term ‘program acquisition unit cost’
22 has the meaning provided in section 2432(a) of this
23 title.

1 “(2) The term ‘initial capabilities document’
2 has the meaning provided in section 2366a(d)(2) of
3 this title.

4 **“§ 2448b. Independent technical risk assessments**

5 “(a) IN GENERAL.—The Under Secretary of Defense
6 for Acquisition, Technology, and Logistics shall conduct
7 or approve an independent technical risk assessment for
8 a major defense acquisition program—

9 “(1) before any decision to grant milestone ap-
10 proval pursuant to section 2366a or 2366b of this
11 title;

12 “(2) before any decision to enter into low-rate
13 initial production or full-rate production; and

14 “(3) at any other time considered appropriate
15 by the Under Secretary.

16 “(b) CATEGORIZATION OF TECHNICAL RISK LEV-
17 ELS.—The Under Secretary shall issue guidance and a
18 framework for categorizing the degree of technical risk in
19 a major defense acquisition program and a major auto-
20 mated information system.

21 **“§ 2448c. Adherence to requirements and thresholds**
22 **in major defense acquisition programs**

23 “(a) CAPABILITIES DETERMINATION.—The Sec-
24 retary of the military department concerned shall ensure
25 that the capability development document supporting a

1 Milestone A or subsequent milestone for a major defense
2 acquisition program may not be submitted to the Joint
3 Requirements Oversight Council for approval until the
4 Chief of the armed force concerned determines in writing
5 that the requirements in the document are necessary and
6 realistic in relation to the program cost and fielding tar-
7 gets established under section 2448a(a) of this title.

8 “(b) COMPLIANCE WITH TARGETS BEFORE MILE-
9 STONE B APPROVAL.—A major defense acquisition pro-
10 gram may not receive Milestone B approval until the mile-
11 stone decision authority for the program determines in
12 writing that the estimated program acquisition unit cost
13 and the estimated date for initial operational capability
14 for the baseline description for the program (established
15 under section 2435) do not exceed the program cost and
16 fielding targets established under section 2448a(a) of this
17 title. If such estimated cost is higher than the program
18 cost target or if such estimated date is later than the field-
19 ing target, the milestone decision authority may request
20 that the Secretary of Defense increase the program cost
21 target or delay the fielding target, as applicable.”.

22 (b) EFFECTIVE DATE.—Subchapter III of chapter
23 144B of title 10, United States Code, as added by sub-
24 section (a), shall apply with respect to major defense ac-

1 quision programs that reach Milestone A after October
2 1, 2016.

3 (c) MODIFICATION OF MILESTONE DECISION AU-
4 THORITY.—Effective October 1, 2016, subsection (d) of
5 section 2430 of title 10, United States Code, as added by
6 section 825(a) of the National Defense Authorization Act
7 for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 907),
8 is amended—

9 (1) in paragraph (2)(A), by inserting “subject
10 to paragraph (5),” before “the Secretary deter-
11 mines”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(5) The authority of the Secretary of Defense to
15 designate an alternative milestone decision authority for
16 a program with respect to which the Secretary determines
17 that the program is addressing a joint requirement, as set
18 forth in paragraph (2)(A), shall apply only for a major
19 defense acquisition program that reaches Milestone A
20 after October 1, 2016, and before October 1, 2019.”.

21 **SEC. 5. TRANSPARENCY IN MAJOR DEFENSE ACQUISITION**
22 **PROGRAMS.**

23 (a) REPORTS ON MILESTONE DECISION METRICS.—
24 Subchapter III of chapter 144B of title 10, United States

1 Code, as added by section 2, is amended by adding at the
2 end the following new section:

3 **“§ 2448d. Reports on milestone decision metrics**

4 “(a) REPORT ON MILESTONE A.—Not later than 15
5 days after granting Milestone A approval for a major de-
6 fense acquisition program, the milestone decision author-
7 ity for the program shall provide to the congressional de-
8 fense committees a brief summary report that contains the
9 following:

10 “(1) The program cost and fielding targets es-
11 tablished by the Secretary of Defense under section
12 2448a(a) of this title.

13 “(2) The cost and schedule estimates for the
14 program conducted by the military department con-
15 cerned.

16 “(3) The independent cost estimate for the pro-
17 gram conducted or approved under section
18 2334(a)(6) of this title, and any independent sched-
19 ule estimate conducted for the program.

20 “(4) A summary of the technical risks associ-
21 ated with the program, as determined by the mili-
22 tary department concerned.

23 “(5) A summary of the independent technical
24 risk assessment conducted or approved under section
25 2448b of this title.

1 “(6) A summary of the sufficiency review con-
2 ducted by the Director of Cost Assessment and Pro-
3 gram Evaluation of the analysis of alternatives per-
4 formed for the program (as referred to in section
5 2366a(b)(6) of this title).

6 “(7) Any other information the milestone deci-
7 sion authority considers relevant.

8 “(b) REPORT ON MILESTONE B.—Not later than 15
9 days after granting Milestone B approval for a major de-
10 fense acquisition program, the milestone decision author-
11 ity for the program shall provide to the congressional de-
12 fense committees a brief summary report that contains the
13 following:

14 “(1) The program cost and fielding targets es-
15 tablished by the Secretary of Defense under section
16 2448a(a) of this title.

17 “(2) The cost and schedule estimates for the
18 program conducted by the military department con-
19 cerned.

20 “(3) The independent cost estimate for the pro-
21 gram conducted or approved under section
22 2334(a)(6) of this title, and any independent sched-
23 ule estimate conducted for the program.

24 “(4) The cost and schedule estimates approved
25 for the program by the milestone decision authority.

1 “(5) A summary of the technical risks associ-
2 ated with the program, as determined by the mili-
3 tary department concerned.

4 “(6) A summary of the independent technical
5 risk assessment conducted or approved under section
6 2448b of this title.

7 “(7) A list of critical technologies, if any, asso-
8 ciated with the program, that have not been success-
9 fully tested in a relevant environment.

10 “(8) A statement of whether the preliminary
11 design review for the program (referred to in section
12 2366b(a)(1) of this title) has been completed.

13 “(9) A statement of whether a modular open
14 system architecture is being used for the program.

15 “(10) Any other information the milestone deci-
16 sion authority considers relevant.

17 “(c) REPORT ON MILESTONE C.—Not later than 15
18 days after granting Milestone C approval for a major de-
19 fense acquisition program, the milestone decision author-
20 ity for the program shall provide to the congressional de-
21 fense committees a brief summary report that contains the
22 following:

23 “(1) The cost and schedule estimates for the
24 program conducted by the military department con-
25 cerned.

1 “(2) The independent cost estimate for the pro-
2 gram conducted or approved under section
3 2334(a)(6) of this title, and any independent sched-
4 ule estimate conducted for the program.

5 “(3) The cost and schedule estimates approved
6 by the milestone decision authority for the program.

7 “(4) A summary of the production, manufac-
8 turing, and fielding risks associated with the pro-
9 gram.

10 “(d) ADDITIONAL INFORMATION.—At the request of
11 any of the congressional defense committees, the milestone
12 decision authority shall submit to the committee further
13 information or underlying documentation for the informa-
14 tion in a report submitted under subsection (a), (b), or
15 (c), including the independent cost and schedule estimates
16 and the independent technical risk assessments referred
17 to in those subsections.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of such subchapter is amended by adding
20 at the end the following new item:

“2448d. Reports on milestone decision metrics.”.

21 **SEC. 6. AMENDMENTS RELATING TO TECHNICAL DATA**
22 **RIGHTS.**

23 (a) RIGHTS RELATING TO ITEM OR PROCESS DEVEL-
24 OPED EXCLUSIVELY AT PRIVATE EXPENSE.—

1 (1) Subsection (a)(2)(C) of section 2320 of title
2 10, United States Code, is amended—

3 (A) by striking clause (ii) and inserting the
4 following:

5 “(ii) relates to form, fit, function, or the
6 external interface of an item or process with
7 other items or processes, including any major
8 system interface of a major system component
9 with a major system platform or other major
10 system component;” and

11 (B) in clause (iii), by inserting after “or
12 process data” the following: “, including data
13 pertaining to a major system component”.

14 (2) Subsection (a)(2)(D)(i) of such section is
15 amended—

16 (A) by inserting “or” at the end of sub-
17 clause (I);

18 (B) by striking subclause (II); and

19 (C) by redesignating subclause (III) as
20 subclause (II).

21 (b) RIGHTS RELATING TO ITEM OR PROCESS DEVEL-
22 OPED IN PART WITH FEDERAL FUNDS AND IN PART AT
23 PRIVATE EXPENSE.—Subsection (a)(2) of section 2320 of
24 such title is further amended—

1 (1) by redesignating subparagraphs (F) and
2 (G) as subparagraphs (G) and (H), respectively;

3 (2) in subparagraph (E), by striking “In the
4 case of” and inserting “Except as provided in sub-
5 paragraph (F), in the case of”; and

6 (3) by inserting after subparagraph (E) the fol-
7 lowing new subparagraph (F):

8 “(F) Notwithstanding subparagraph (E), in the
9 case of an external interface that is developed in
10 part with Federal funds and in part at private ex-
11 pense, the United States shall have unlimited rights
12 to—

13 “(i) use technical data pertaining to such
14 external interface; or

15 “(ii) release or disclose the technical data
16 to persons outside the government or permit the
17 use of the technical data by such persons.”.

18 (c) DEFINITIONS.—Section 2320 of such title is fur-
19 ther amended—

20 (1) in subsection (f), by inserting “COVERED
21 GOVERNMENT SUPPORT CONTRACTOR DEFINED.—”
22 before “In this section”; and

23 (2) by adding at the end the following new sub-
24 section:

1 “(g) ADDITIONAL DEFINITIONS.—In this section, the
2 terms ‘major system platform’, ‘major system component’,
3 and ‘major system interface’ have the meanings provided
4 in section 2446a of this title.”.

5 (d) GOVERNMENT-INDUSTRY ADVISORY PANEL
6 AMENDMENTS.—Section 813(b) of the National Defense
7 Authorization Act for Fiscal Year 2016 (Public Law 114–
8 92; 129 Stat. 892) is amended—

9 (1) by adding at the end of the paragraph (1)
10 the following: “The panel shall develop recommenda-
11 tions for changes to sections 2320 and 2321 of title
12 10, United States Code, and the regulations imple-
13 menting such sections.”;

14 (2) in paragraph (3)—

15 (A) by redesignating subparagraphs (D)
16 and (E) as subparagraphs (E) and (F), respec-
17 tively; and

18 (B) by inserting after subparagraph (C)
19 the following new subparagraph (D):

20 “(D) Ensuring that the Department of De-
21 fense and Department of Defense contractors
22 have the technical data rights necessary to sup-
23 port the modular open system architecture re-
24 quirement set forth in section 2446a of title 10,
25 United States Code, taking into consideration

1 the distinct characteristics of major system
2 platforms, major system interfaces, and major
3 system components developed exclusively with
4 Federal funds, exclusively at private expense,
5 and with a combination of Federal funds and
6 private expense.”; and

7 (3) in paragraph (4), by striking “September
8 30, 2016” and inserting “December 15, 2016”.

9 (e) AMENDMENT RELATING TO NEGOTIATED RIGHTS
10 FOR ITEM OR PROCESS DEVELOPED WITH MIXED FUND-
11 ING.—Subsection (a)(2)(E) of section 2320 of title 10,
12 United States Code, is further amended by striking the
13 period at the end of the first sentence in the matter pre-
14 ceding clause (i) and all that follows through “establish-
15 ment of any such negotiated rights shall” and inserting
16 “and shall be based on negotiations between the United
17 States and the contractor, except in any case in which the
18 Secretary of Defense determines, on the basis of criteria
19 established in the regulations, that negotiations would not
20 be practicable. The establishment of such rights shall”.

21 (f) AMENDMENT RELATING TO DEFERRED ORDER-
22 ING.—Subsection (b)(9) of section 2320 of such title is
23 amended—

24 (1) by striking “at any time” and inserting “,
25 until the date occurring five years after acceptance

1 of the last item (other than technical data) under a
2 contract or the date of contract termination, which-
3 ever is later,”;

4 (2) by striking “or utilized in the performance
5 of a contract” and inserting “in the performance of
6 the contract”; and

7 (3) by striking clause (ii) of subparagraph (B)
8 and inserting the following:

9 “(ii) is described in subsection
10 (a)(2)(C); and”.

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