

10 U.S. Code § 2366 - Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

U.S. Code	Notes
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(a) REQUIREMENTS.—

(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—

(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—

(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—

(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term “covered system” means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 2302(5) of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term “major munitions program” means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term “realistic survivability testing” means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term “realistic lethality testing” means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term “configured for combat”, with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term “covered product improvement program” means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term “Milestone B approval” means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term “Milestone C approval” means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99-500, § 101(c) [title X, § 910(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-143, and Pub. L. 99-591, § 101(c) [title X, § 910(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-143; Pub. L. 99-661, div. A, title IX, formerly title IV, § 910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-180, div. A, title VIII, § 802, title XII, § 1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100-456, div. A, title XII, § 1233(l)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101-189, div. A, title VIII, §§ 802(c)(1)-(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101-510, div. A, title XIV, § 1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103-160, div. A, title VIII, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103-355, title III, § 3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104-106, div. A, title XV, § 1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107-314, div. A, title VIII, § 818,

Dec. 2, 2002, 116 Stat. 2611; Pub. L. 108-136, div. A, title X, § 1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110-417, [div. A], title II, § 251(a), (b), Oct. 14, 2008, 122 Stat. 4400.)