SEC. 811. TREATMENT OF CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS WHEN COST GROWTH IS PRIMARILY DUE TO QUANTITY CHANGES.

Section 2433a of title 10, United States Code, is amended—

(1) in subsection (b)(1), by inserting "(except as provided under subsection (e))" after "the Secretary shall"; and

(2) by adding at the end the following new subsection:

"(e) INAPPLICABILITY IN THE EVENT OF QUANTITY CHANGES.—(1) If after conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary makes the determinations specified in paragraph (2), then upon submission to Congress of the statement specified in paragraph (3), the provisions of subsection (b) shall not apply with respect to that program by reason of the increase in unit cost that resulted in the reassessment being conducted.

"(2) The determinations specified in this paragraph are the following:

"(A) A determination by the Secretary, taking into consideration the results of the root cause analysis conducted pursuant to paragraph (1) of subsection (a) as part of the reassessment—

"(i) that the increase in unit cost was due primarily to variation in the quantity of items to be purchased under the program; and

"(ii) that such variation in quantity was not made as a result of that increase in unit cost.

"(B) A further determination by the Secretary, taking into consideration the results of the cost assessment conducted pursuant to paragraph (2) of subsection (a) as

part of the reassessment, that it is in the best interests of the Government not to terminate the program, notwithstanding the increase in unit cost.

"(3) A statement under this paragraph with respect to an increase in unit cost is a written statement submitted by the Secretary to Congress—

"(A) that is submitted before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title relating to that increase in unit cost is required to be submitted under section 2432(f) of this title; and

"(B) in which the Secretary states—

"(i) that the increase in unit cost is primarily attributable to variation in quantity; and

"(ii) that it is in the best interests of the Government not to terminate the program notwithstanding the increase in unit cost.".

Section-by-Section Analysis

This proposal would revise section 2433a of title 10, United States Code, and reduce the statutory requirements for critical Nunn-McCurdy breaches caused primarily by quantity changes (as long as the quantity change was not made as a result of an increase in unit cost). In response to changes in threat or other fielding requirements, the Department of Defense often adjusts the number of items to be purchased for a program. Due to the cost impact of learning curves and the amortization of development costs on average unit costs, significant reductions in a program's planned quantity may result in critical Nunn-McCurdy breaches. These unit cost breaches are unavoidable and not the result of poor performance or mismanagement. Since the statutory requirements of a Nunn-McCurdy critical breach under section 2433a are extensive and onerous, this section would reduce the requirements for quantity-related critical breaches. As currently specified by statutory and regulatory requirements, the Director of Performance Assessments and Root Cause Analyses will perform a root cause analysis to substantiate the causal effects of the unit cost increase, and the Director of Cost Assessment and Program Evaluation will quantify the cost impact of the causal effects. Upon a determination that the critical Nunn-McCurdy breach resulted primarily from a quantity variation driven by factors external to a program's management and cost performance, the Secretary of Defense shall provide a written statement to Congress that the unit cost increase is primarily attributable to

variation in quantity and that it is in the best interests of the Government to continue the acquisition program despite the increase in unit cost.

Budget Implications: There are no quantifiable budget implications associated with this proposal.

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. 2433a:

§ 2433a. Critical cost growth in major defense acquisition programs

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 2433(d) 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, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall **(except as provided under subsection (e))** terminate the program unless 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 section 2433(g) of this title is required to be submitted under section 2432(f) of this title, a written certification in accordance with paragraph (2).

(2) A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(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) 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 NOT TERMINATED.—(1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall—

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

(B) rescind the most recent Milestone approval, or Key Decision Point approval in the case of a space program, for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval, or Key Decision Point approval in the case of a space program, 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;

(D) include in the report specified in paragraph (2) 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

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

(2) For purposes of paragraph (1)(D), the report specified in this paragraph is the first Selected Acquisition Report for the program submitted pursuant to section 2432 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.

(d) 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.

(e) INAPPLICABILITY IN THE EVENT OF QUANTITY CHANGES.—(1) If, after conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary makes the determinations specified in paragraph (2), then upon submission to Congress of the statement specified in paragraph (3), the provisions of subsection (b) shall not apply with respect to that program by reason of the increase in unit cost that resulted in the reassessment being conducted.

(2) The determinations specified in this paragraph are the following:

(A) A determination by the Secretary, taking into consideration the results of the root cause analysis conducted pursuant to paragraph (1) of subsection (a) as part of the reassessment—

(i) that the increase in unit cost was due primarily to variation in the quantity of items to be purchased under the program; and

(ii) that such variation in quantity was not made as a result of that increase in unit cost.

(B) A further determination by the Secretary, taking into consideration the results of the cost assessment conducted pursuant to paragraph (2) of subsection (a) as part of the reassessment, that that it is in the best interests of the Government not to terminate the program, notwithstanding the increase in unit cost.

(3) A statement under this paragraph with respect to an increase in unit cost is a written statement submitted by the Secretary of Defense to Congress—

(A) that is submitted before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title relating to that increase in unit cost is required to be submitted under section 2432(f) of this title; and

(B) in which the Secretary states—

(i) that the increase in unit cost is primarily attributable to variation in quantity; and

(ii) that it is in the best interests of the Government not to terminate the program notwithstanding the increase in unit cost.