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(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

# H. R. 1294

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To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. RUTHERFORD (for himself and Mr. McCAUL) introduced the following bill; which was referred to the Committee on

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## A BILL

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, 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.**

4 This Act may be cited as the “Reducing DHS Acqui-  
5 sition Cost Growth Act”.

1 **SEC. 2. CONGRESSIONAL NOTIFICATION FOR MAJOR AC-**  
2 **QUISITION PROGRAMS.**

3 (a) IN GENERAL.—Subtitle D of title VIII of the  
4 Homeland Security Act of 2002 (6 U.S.C. 391 et seq.)  
5 is further amended by adding at the end the following new  
6 section:

7 **“SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER RE-**  
8 **QUIREMENTS FOR MAJOR ACQUISITION PRO-**  
9 **GRAM BREACH.**

10 “(a) REQUIREMENTS WITHIN DEPARTMENT IN  
11 EVENT OF BREACH.—

12 “(1) NOTIFICATIONS.—

13 “(A) NOTIFICATION OF BREACH.—If a  
14 breach occurs in a major acquisition program,  
15 the program manager for such program shall  
16 notify the Component Acquisition Executive for  
17 such program, the head of the component con-  
18 cerned, the Executive Director of the Program  
19 Accountability and Risk Management division,  
20 the Under Secretary for Management, and the  
21 Deputy Secretary not later than 30 calendar  
22 days after such breach is identified.

23 “(B) NOTIFICATION TO SECRETARY.—If a  
24 breach occurs in a major acquisition program  
25 and such breach results in a cost overrun great-  
26 er than 15 percent, a schedule delay greater

1 than 180 days, or a failure to meet any of the  
2 performance thresholds from the cost, schedule,  
3 or performance parameters specified in the  
4 most recently approved acquisition program  
5 baseline for such program, the Component Ac-  
6 quisition Executive for such program shall no-  
7 tify the Secretary and the Inspector General of  
8 the Department not later than five business  
9 days after the Component Acquisition Executive  
10 for such program, the head of the component  
11 concerned, the Executive Director of the Pro-  
12 gram Accountability and Risk Management Di-  
13 vision, the Under Secretary for Management,  
14 and the Deputy Secretary are notified of the  
15 breach pursuant to subparagraph (A).

16 “(2) REMEDIATION PLAN AND ROOT CAUSE  
17 ANALYSIS.—

18 “(A) IN GENERAL.—If a breach occurs in  
19 a major acquisition program, the program man-  
20 ager for such program shall submit to the head  
21 of the component concerned, the Executive Di-  
22 rector of the Program Accountability and Risk  
23 Management division, and the Under Secretary  
24 for Management in writing a remediation plan  
25 and root cause analysis relating to such breach

1 and program. Such plan and analysis shall be  
2 submitted at a date established at the discretion  
3 of the Under Secretary for Management.

4 “(B) REMEDIATION PLAN.—The remedi-  
5 ation plan required under this subparagraph  
6 (A) shall—

7 “(i) explain the circumstances of the  
8 breach at issue;

9 “(ii) provide prior cost estimating in-  
10 formation;

11 “(iii) include a root cause analysis  
12 that determines the underlying cause or  
13 causes of shortcomings in cost, schedule,  
14 or performance of the major acquisition  
15 program with respect to which such breach  
16 has occurred, including the role, if any,  
17 of—

18 “(I) unrealistic performance ex-  
19 pectations;

20 “(II) unrealistic baseline esti-  
21 mates for cost or schedule or changes  
22 in program requirements;

23 “(III) immature technologies or  
24 excessive manufacturing or integra-  
25 tion risk;

1                   “(IV) unanticipated design, engi-  
2                   neering, manufacturing, or technology  
3                   integration issues arising during pro-  
4                   gram performance;

5                   “(V) changes to the scope of such  
6                   program;

7                   “(VI) inadequate program fund-  
8                   ing or changes in planned out-year  
9                   funding from one 5-year funding plan  
10                  to the next 5-year funding plan as  
11                  outlined in the Future Years Home-  
12                  land Security Program required under  
13                  section 874;

14                  “(VII) legislative, legal, or regu-  
15                  latory changes; or

16                  “(VIII) inadequate program  
17                  management personnel, including lack  
18                  of sufficient number of staff, training,  
19                  credentials, certifications, or use of  
20                  best practices;

21                  “(iv) propose corrective action to ad-  
22                  dress cost growth, schedule delays, or per-  
23                  formance issues;

1           “(v) explain the rationale for why a  
2           proposed corrective action is recommended;  
3           and

4           “(vi) in coordination with the Compo-  
5           nent Acquisition Executive for such pro-  
6           gram, discuss all options considered, in-  
7           cluding the estimated impact on cost,  
8           schedule, or performance of such program  
9           if no changes are made to current require-  
10          ments, the estimated cost of such program  
11          if requirements are modified, and the ex-  
12          tent to which funding from other programs  
13          will need to be reduced to cover the cost  
14          growth of such program.

15          “(3) REVIEW OF CORRECTIVE ACTIONS.—

16                 “(A) IN GENERAL.—The Under Secretary  
17                 for Management shall review the remediation  
18                 plan required under paragraph (2). The Under  
19                 Secretary may approve such plan or provide an  
20                 alternative proposed corrective action within 30  
21                 days of the submission of such plan under such  
22                 paragraph.

23                 “(B) SUBMISSION TO CONGRESS.—Not  
24                 later than 30 days after the review required  
25                 under subparagraph (A) is completed, the

1 Under Secretary for Management shall submit  
2 to the congressional homeland security commit-  
3 tees the following:

4 “(i) A copy of the remediation plan  
5 and the root cause analysis required under  
6 paragraph (2).

7 “(ii) A statement describing the cor-  
8 rective action or actions that have occurred  
9 pursuant to paragraph (2)(b)(iv) for the  
10 major acquisition program at issue, with a  
11 justification for such action or actions.

12 “(b) REQUIREMENTS RELATING TO CONGRESSIONAL  
13 NOTIFICATION IF BREACH OCCURS.—

14 “(1) NOTIFICATION TO CONGRESS.—If a notifi-  
15 cation to the Secretary is made under subsection  
16 (a)(1)(B) relating to a breach in a major acquisition  
17 program, the Under Secretary for Management shall  
18 notify the congressional homeland security commit-  
19 tees of such breach in the next quarterly Com-  
20 prehensive Acquisition Status Report, as required by  
21 title I of division D of the Consolidated Appropria-  
22 tions Act, 2016, (Public Law 114–113) following re-  
23 ceipt by the Under Secretary of notification under  
24 such subsection.

1           “(2) SIGNIFICANT VARIANCES IN COSTS OR  
2           SCHEDULE.—If a likely cost overrun is greater than  
3           20 percent or a likely delay is greater than 12  
4           months from the costs and schedule specified in the  
5           acquisition program baseline for a major acquisition  
6           program, the Under Secretary for Management shall  
7           include in the notification required in paragraph (1)  
8           a written certification, with supporting explanation,  
9           that—

10                   “(A) such program is essential to the ac-  
11                   complishment of the Department’s mission;

12                   “(B) there are no alternatives to the capa-  
13                   bility or asset provided by such program that  
14                   will provide equal or greater capability in both  
15                   a more cost-effective and timely manner;

16                   “(C) the new acquisition schedule and esti-  
17                   mates for total acquisition cost are reasonable;  
18                   and

19                   “(D) the management structure for such  
20                   program is adequate to manage and control  
21                   cost, schedule, and performance.

22           “(c) DEFINITIONS.—In this section:

23                   “(1) ACQUISITION.—The term ‘acquisition’ has  
24                   the meaning given such term in section 131 of title  
25                   41, United States Code.

1           “(2) ACQUISITION PROGRAM.—The term ‘acqui-  
2           sition program’ means the process by which the De-  
3           partment acquires, with any appropriated amounts,  
4           by contract for purchase or lease, property or serv-  
5           ices (including construction) that support the mis-  
6           sions and goals of the Department.

7           “(3) ACQUISITION PROGRAM BASELINE.—The  
8           term ‘acquisition program baseline’, with respect to  
9           an acquisition program, means a summary of the  
10          cost, schedule, and performance parameters, ex-  
11          pressed in standard, measurable, quantitative terms,  
12          which must be met in order to accomplish the goals  
13          of such program.

14          “(4) BEST PRACTICES.—The term ‘best prac-  
15          tices’, with respect to acquisition, means a knowl-  
16          edge-based approach to capability development that  
17          includes—

18                 “(A) identifying and validating needs;

19                 “(B) assessing alternatives to select the  
20                 most appropriate solution;

21                 “(C) clearly establishing well-defined re-  
22                 quirements;

23                 “(D) developing realistic cost assessments  
24                 and schedules;

1           “(E) securing stable funding that matches  
2 resources to requirements;

3           “(F) demonstrating technology, design,  
4 and manufacturing maturity;

5           “(G) using milestones and exit criteria or  
6 specific accomplishments that demonstrate  
7 progress;

8           “(H) adopting and executing standardized  
9 processes with known success across programs;

10          “(I) establishing an adequate workforce  
11 that is qualified and sufficient to perform nec-  
12 essary functions; and

13          “(J) integrating the capabilities described  
14 in subparagraphs (A) through (I) into the De-  
15 partment’s mission and business operations.

16          “(5) BREACH.—The term ‘breach’, with respect  
17 to a major acquisition program, means a failure to  
18 meet any cost, schedule, or performance threshold  
19 specified in the most recently approved acquisition  
20 program baseline.

21          “(6) CONGRESSIONAL HOMELAND SECURITY  
22 COMMITTEES.—The term ‘congressional homeland  
23 security committees’ means—

24                 “(A) the Committee on Homeland Security  
25 of the House of Representatives and the Com-

1           committee on Homeland Security and Govern-  
2           mental Affairs of the Senate; and

3           “(B) the Committee on Appropriations of  
4           the House of Representatives and of the Sen-  
5           ate.

6           “(7) COMPONENT ACQUISITION EXECUTIVE.—

7           The term ‘Component Acquisition Executive’ means  
8           the senior acquisition official within a component  
9           who is designated in writing by the Under Secretary  
10          for Management, in consultation with the component  
11          head, with authority and responsibility for leading a  
12          process and staff to provide acquisition and program  
13          management oversight, policy, and guidance to en-  
14          sure that statutory, regulatory, and higher level pol-  
15          icy requirements are fulfilled, including compliance  
16          with Federal law, the Federal Acquisition Regula-  
17          tion, and Department acquisition management direc-  
18          tives established by the Under Secretary for Man-  
19          agement.

20          “(8) MAJOR ACQUISITION PROGRAM.—The term  
21          ‘major acquisition program’ means a Department  
22          acquisition program that is estimated by the Sec-  
23          retary to require an eventual total expenditure of at  
24          least \$300,000,000 (based on fiscal year 2017 con-  
25          stant dollars) over its life cycle cost.”.

1           (b) CLERICAL AMENDMENT.—The table of contents  
2 in section 1(b) of the Homeland Security Act of 2002 is  
3 amended by inserting after the item relating to section  
4 835 the following new item:

“Sec. 836. Congressional notification and other requirements for major acquisition program breach.”.