

115TH CONGRESS  
1ST SESSION

# H. R. 1294

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

MARCH 1, 2017

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

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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”.

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

8 (a) IN GENERAL.—Subtitle D of title VIII of the  
9 Homeland Security Act of 2002 (6 U.S.C. 391 et seq.)

1 is further amended by adding at the end the following new  
2 section:

3 **“SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER RE-**  
4 **QUIREMENTS FOR MAJOR ACQUISITION PRO-**  
5 **GRAM BREACH.**

6 “(a) REQUIREMENTS WITHIN DEPARTMENT IN  
7 EVENT OF BREACH.—

8 “(1) NOTIFICATIONS.—

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

19 “(B) NOTIFICATION TO SECRETARY.—If a  
20 breach occurs in a major acquisition program  
21 and such breach results in a cost overrun great-  
22 er than 15 percent, a schedule delay greater  
23 than 180 days, or a failure to meet any of the  
24 performance thresholds from the cost, schedule,  
25 or performance parameters specified in the

1 most recently approved acquisition program  
2 baseline for such program, the Component Ac-  
3 quisition Executive for such program shall no-  
4 tify the Secretary and the Inspector General of  
5 the Department not later than five business  
6 days after the Component Acquisition Executive  
7 for such program, the head of the component  
8 concerned, the Executive Director of the Pro-  
9 gram Accountability and Risk Management Di-  
10 vision, the Under Secretary for Management,  
11 and the Deputy Secretary are notified of the  
12 breach pursuant to subparagraph (A).

13 “(2) REMEDIATION PLAN AND ROOT CAUSE  
14 ANALYSIS.—

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

1           “(B) REMEDIATION PLAN.—The remedi-  
2           ation plan required under this subparagraph  
3           (A) shall—

4                   “(i) explain the circumstances of the  
5                   breach at issue;

6                   “(ii) provide prior cost estimating in-  
7                   formation;

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

15                   “(I) unrealistic performance ex-  
16                   pectations;

17                   “(II) unrealistic baseline esti-  
18                   mates for cost or schedule or changes  
19                   in program requirements;

20                   “(III) immature technologies or  
21                   excessive manufacturing or integra-  
22                   tion risk;

23                   “(IV) unanticipated design, engi-  
24                   neering, manufacturing, or technology

1 integration issues arising during pro-  
2 gram performance;

3 “(V) changes to the scope of such  
4 program;

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

12 “(VII) legislative, legal, or regu-  
13 latory changes; or

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

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

22 “(v) explain the rationale for why a  
23 proposed corrective action is recommended;  
24 and

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

12          “(3) REVIEW OF CORRECTIVE ACTIONS.—

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

20                 “(B) SUBMISSION TO CONGRESS.—Not  
21                 later than 30 days after the review required  
22                 under subparagraph (A) is completed, the  
23                 Under Secretary for Management shall submit  
24                 to the congressional homeland security commit-  
25                 tees the following:

1           “(i) A copy of the remediation plan  
2           and the root cause analysis required under  
3           paragraph (2).

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

9           “(b) REQUIREMENTS RELATING TO CONGRESSIONAL  
10          NOTIFICATION IF BREACH OCCURS.—

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

22           “(2) SIGNIFICANT VARIANCES IN COSTS OR  
23          SCHEDULE.—If a likely cost overrun is greater than  
24          20 percent or a likely delay is greater than 12  
25          months from the costs and schedule specified in the

1 acquisition program baseline for a major acquisition  
2 program, the Under Secretary for Management shall  
3 include in the notification required in paragraph (1)  
4 a written certification, with supporting explanation,  
5 that—

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

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

12 “(C) the new acquisition schedule and esti-  
13 mates for total acquisition cost are reasonable;  
14 and

15 “(D) the management structure for such  
16 program is adequate to manage and control  
17 cost, schedule, and performance.

18 “(c) DEFINITIONS.—In this section:

19 “(1) ACQUISITION.—The term ‘acquisition’ has  
20 the meaning given such term in section 131 of title  
21 41, United States Code.

22 “(2) ACQUISITION PROGRAM.—The term ‘acqui-  
23 sition program’ means the process by which the De-  
24 partment acquires, with any appropriated amounts,  
25 by contract for purchase or lease, property or serv-



1 ices (including construction) that support the mis-  
2 sions and goals of the Department.

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

10 “(4) BEST PRACTICES.—The term ‘best prac-  
11 tices’, with respect to acquisition, means a knowl-  
12 edge-based approach to capability development that  
13 includes—

14 “(A) identifying and validating needs;

15 “(B) assessing alternatives to select the  
16 most appropriate solution;

17 “(C) clearly establishing well-defined re-  
18 quirements;

19 “(D) developing realistic cost assessments  
20 and schedules;

21 “(E) securing stable funding that matches  
22 resources to requirements;

23 “(F) demonstrating technology, design,  
24 and manufacturing maturity;

1           “(G) using milestones and exit criteria or  
2           specific accomplishments that demonstrate  
3           progress;

4           “(H) adopting and executing standardized  
5           processes with known success across programs;

6           “(I) establishing an adequate workforce  
7           that is qualified and sufficient to perform nec-  
8           essary functions; and

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

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

17          “(6) CONGRESSIONAL HOMELAND SECURITY  
18          COMMITTEES.—The term ‘congressional homeland  
19          security committees’ means—

20                 “(A) the Committee on Homeland Security  
21                 of the House of Representatives and the Com-  
22                 mittee on Homeland Security and Govern-  
23                 mental Affairs of the Senate; and

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

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

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

24          (b) CLERICAL AMENDMENT.—The table of contents  
25          in section 1(b) of the Homeland Security Act of 2002 is

- 1 amended by inserting after the item relating to section
- 2 835 the following new item:

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

