

shown in the original Baseline Estimate for the program or subprogram.

(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.

(Added Pub. L. 111-23, title II, §206(a)(1), May 22, 2009, 123 Stat. 1726; amended Pub. L. 111-383, div. A, title X, §1075(b)(35), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112-81, div. A, title VIII, §§801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503.)

#### REFERENCES IN TEXT

Section 205 of the Weapon Systems Acquisition Reform Act of 2009, referred to in subsec. (c)(1)(E), is section 205 of Pub. L. 111-23, which amended section 2366b of this title and enacted provisions set out as notes under this section and section 2366b of this title.

#### AMENDMENTS

2011—Subsec. (b)(2)(B). Pub. L. 111-383 substituted “section 181(g)(1)” for “section 181(g)(1)”.

Subsec. (c)(1)(B), (C). Pub. L. 112-81, §801(e)(4), struck out “, or Key Decision Point approval in the case of a space program,” after “Milestone approval”.

Subsec. (c)(3). Pub. L. 112-81, §831, added par. (3).

#### REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

Pub. L. 111-23, title II, §205(c), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111-383, div. A, title VIII, §813(e), title X, §1075(k)(2), Jan. 7, 2011, 124 Stat. 4266, 4378, provided that: “The official designated to perform oversight of performance assessment pursuant to section 103 of this Act [set out as a note under section 2430 of this title], shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(1)(C) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.”

[Pub. L. 111-383, div. A, title VIII, §813(e), Jan. 7, 2011, 124 Stat. 4266, provided that the amendment made by section 813(e) to section 205(c) of Pub. L. 111-23, set out above, is effective as of May 22, 2009, and as if included in Pub. L. 111-23, as enacted.]

[For definition of “major defense acquisition program” as used in section 205(c) of Pub. L. 111-23, set out above, see section 2(2) of Pub. L. 111-23, set out as a note under section 2430 of this title.]

#### § 2434. Independent cost estimates; operational manpower requirements

(a) REQUIREMENT FOR APPROVAL.—(1) The Secretary of Defense may not approve the system development and demonstration, or the production and deployment, of a major defense acquisition

program unless an independent estimate of the full life-cycle cost of the program and a manpower estimate for the program have been considered by the Secretary.

(2) The provisions of this section shall apply to any major subprogram of a major defense acquisition program (as designated under section 2430a(a)(1) of this title) in the same manner as those provisions apply to a major defense acquisition program, and any reference in this section to a program shall be treated as including such a subprogram.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

(1) that the independent estimate of the full life-cycle cost of a program—

(A) be prepared or approved by the Director of Cost Assessment and Program Evaluation; and

(B) include all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control; and

(2) that the manpower estimate include an estimate of the total number of personnel required—

(A) to operate, maintain, and support the program upon full operational deployment; and

(B) to train personnel to carry out the activities referred to in subparagraph (A).

(Added Pub. L. 98-94, title XII, §1203(a)(1), Sept. 24, 1983, 97 Stat. 682, §139c; renumbered §2434 and amended Pub. L. 99-433, title I, §§101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99-661, div. A, title XII, §1208(a)-(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100-26, §7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100-180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100-456, div. A, title V, §525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102-190, div. A, title VIII, §801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103-355, title III, §3004, Oct. 13, 1994, 108 Stat. 3330; Pub. L. 104-106, div. A, title VIII, §814, Feb. 10, 1996, 110 Stat. 395; Pub. L. 107-107, div. A, title VIII, §821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 111-23, title I, §101(d)(5), May 22, 2009, 123 Stat. 1710; Pub. L. 111-383, div. A, title VIII, §814(e), Jan. 7, 2011, 124 Stat. 4267.)

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383 designated existing provisions as par. (1) and added par. (2).

2009—Subsec. (b)(1)(A). Pub. L. 111-23 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “be prepared—

“(i) by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; or

“(ii) if the decision authority for the program has been delegated to an official of a military department, Defense Agency, or other component of the Department of Defense, by an office or other entity that is not directly responsible for carrying out the development or acquisition of the program; and”.

2001—Subsec. (a). Pub. L. 107-107 substituted “system development and demonstration” for “engineering and manufacturing development”.

1996—Subsec. (b)(1)(A). Pub. L. 104-106 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and”.

1994—Subsec. (a). Pub. L. 103-355, §3004(b), substituted “engineering and manufacturing development” for “full-scale engineering development” and “full life-cycle cost of the program and a manpower estimate for the program have” for “cost of the program, together with a manpower estimate, has”.

Subsec. (b). Pub. L. 103-355, §3004(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined “independent estimate”, “cost of the program”, and “manpower estimate”.

1991—Subsec. (a). Pub. L. 102-190, §801(a), substituted “unless an independent estimate of the cost of the program, together with a manpower estimate, has been considered by the Secretary.” for “unless—

“(1) an independent estimate of the cost of the program is first submitted to (and considered by) the Secretary; and

“(2) the Secretary submits a manpower estimate of the program to the Committees on Armed Services of the Senate and the House of Representatives at least 30 days in advance of such approval.”

Subsecs. (b), (c). Pub. L. 102-190, §801(b)(1), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

“(b) EXCEPTIONS.—(1) Subsection (a)(2) shall not apply during time of war or during a national emergency declared by Congress or the President.

“(2) The 30-day period specified in subsection (a)(2) shall be reduced to 10 days in the case of a major defense acquisition program if the manpower estimate submitted by the Secretary of Defense under subsection (a)(2) with respect to that program indicates that no increase in military or civilian personnel end strengths described in subsection (c)(3)(B) will be required.”

1988—Subsec. (a)(2). Pub. L. 100-456, §525(1), substituted “30 days” for “90 days”.

Subsec. (b). Pub. L. 100-456, §525(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 100-456, §525(2), redesignated subsec. (b) as (c), and in par. (3)(A), substituted “in total personnel or in” for “both in total personnel and”.

1987—Pub. L. 100-180 made technical amendment to directory language of Pub. L. 99-433, §101(a)(5). See 1986 Amendment note below.

Subsec. (b). Pub. L. 100-26 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined “major defense acquisition program”.

1986—Pub. L. 99-433, §101(a)(5), as amended by Pub. L. 100-180, §1314(a)(1), renumbered section 139c of this title as this section.

Pub. L. 99-661, §1208(c)(1), substituted “Independent cost estimates; operational manpower requirements” for “Independent cost estimates” in section catchline.

Pub. L. 99-433, §110(d)(15), substituted “Independent cost estimates” for “Major defense acquisition programs: independent cost estimates” in section catchline.

Subsec. (a). Pub. L. 99-661, §1208(a), inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 99-661, §1208(b)(1), inserted heading.

Subsec. (b)(1). Pub. L. 99-661, §1208(b)(2), substituted “The term ‘Major’” for “‘Major’”.

Pub. L. 99-433, §110(g)(9), substituted “section 2432(a)(1)” for “section 139a(a)(1)”.

Subsec. (b)(2). Pub. L. 99-661, §1208(b)(3), substituted “The term ‘independent’” for “‘Independent’”.

Subsec. (b)(3). Pub. L. 99-661, §1208(b)(4), substituted “The term ‘cost’” for “‘Cost’”.

Subsec. (b)(4). Pub. L. 99-661, §1208(b)(5), added par. (4).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99-433, see section 1314(e) of Pub. L. 100-180, set out as a note under section 743 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1208(d) of Pub. L. 99-661 provided that: “The amendments made by this section [amending this section] shall apply to approvals of full-scale engineering development and to approvals of production and deployment of major defense acquisition programs made after December 31, 1986.”

#### EFFECTIVE DATE

Section 1203(b) of Pub. L. 98-94 provided that: “Section 139c [now 2434] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.”

#### REPORT TO CONGRESS ON USE OF INDEPENDENT COST ESTIMATES IN PLANNING, PROGRAMING, BUDGETING, AND SELECTION FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 99-145, title IX, §952, Nov. 8, 1985, 99 Stat. 701, directed Secretary of Defense, not later than Apr. 1, 1986, to submit to Congress a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs of the Department.

Section 1203(c) of Pub. L. 98-94 directed Secretary of Defense, not later than May 1, 1984, to submit a written report to Congress on use of independent cost estimates in planning, programing, budgeting, and selection process for major defense acquisition programs in Department, such report to include an overall assessment of extent to which such estimates were adopted by Department in making decisions on the FY 1985 budget and a general explanation of why such estimates might have been modified or rejected, and a discussion of current and future initiatives to make greater or more productive use of independent cost estimates in the Department.

#### ALLOCATION OF ADEQUATE PERSONNEL AND FINANCIAL RESOURCES IN DEVELOPING OR ASSESSING INDEPENDENT ESTIMATES OF COSTS

Section 1203(d) of Pub. L. 98-94 provided that: “It is the sense of the Congress that the Secretary of Defense should ensure that adequate personnel and financial resources are allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.”

### § 2435. Baseline description

(a) **BASILINE DESCRIPTION REQUIREMENT.**—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program and for each designated major subprogram under the program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the “Baseline Estimate” in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program or designated major subprogram.

(b) **FUNDING LIMIT.**—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense ac-