

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

Pub. L. 99-661, div. A, title XII, §1208(d), Nov. 14, 1986, 100 Stat. 3976, 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

Pub. L. 98-94, title XII, §1203(b), Sept. 24, 1983, 97 Stat. 683, 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, programming, budgeting, and selection process for major defense acquisition programs of the Department.

Pub. L. 98-94, title XII, §1203(c), Sept. 24, 1983, 97 Stat. 683, 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, programming, 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

Pub. L. 98-94, title XII, §1203(d), Sept. 24, 1983, 97 Stat. 683, 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) BASELINE 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 acquisition program or any designated major sub-

program under the program may be obligated after the program or subprogram enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) SCHEDULE.—A baseline description for a major defense acquisition program or any designated major subprogram under the program shall be prepared under this section—

- (1) before the program or subprogram enters system development and demonstration;
- (2) before the program or subprogram enters production and deployment; and
- (3) before the program or subprogram enters full rate production.

(d) ORIGINAL BASELINE ESTIMATE.—(1) In this chapter, the term “original Baseline Estimate”, with respect to a major defense acquisition program or any designated major subprogram under the program, means the baseline description established with respect to the program or subprogram under subsection (a) prepared before the program or subprogram enters system development and demonstration, or at program or subprogram initiation, whichever occurs later, without adjustment or revision (except as provided in paragraph (2)).

(2) An adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program may be treated as the original Baseline Estimate for the program or subprogram for purposes of this chapter only if the percentage increase in the program acquisition unit cost or procurement unit cost under such adjustment or revision exceeds the critical cost growth threshold for the program or subprogram under section 2433 of this title, as determined by the Secretary of the military department concerned under subsection (d) of such section.

(3) In the event of an adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program, the Secretary of Defense shall include in the next Selected Acquisition Report to be submitted under section 2432 of this title after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

- (1) The content of baseline descriptions under this section.
- (2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition, Technology, and Logistics by the program manager for a program for which there is an approved baseline description (or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms) under this section of reports of deviations from any such baseline description of the cost, schedule, performance, supportability, or any other factor of the program or subprogram.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99-500, § 101(c) [title X, § 904(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-133, and Pub. L. 99-591, § 101(c) [title X, § 904(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-133; Pub. L. 99-661, div. A, title IX, formerly title IV, § 904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-26, § 7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100-180, div. A, title VIII, § 803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100-370, § 1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100-456, div. A, title XII, § 1233(l)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101-189, div. A, title VIII, § 811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101-510, div. A, title XII, § 1207(b), title XIV, § 1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103-160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103-355, title III, § 3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107-107, div. A, title VIII, § 821(d), title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225; Pub. L. 109-163, div. A, title VIII, § 802(d)(1), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109-364, div. A, title VIII, § 806, Oct. 17, 2006, 120 Stat. 2315; Pub. L. 110-417, [div. A], title VIII, § 811(d), Oct. 14, 2008, 122 Stat. 4524.)

#### HISTORICAL AND REVISION NOTES 1988 ACT

Subsection (c) is based on Pub. L. 98-525, title XII, § 1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100-26, § 110(a)(1), Apr. 21, 1987, 101 Stat. 288.

#### CODIFICATION

Pub. L. 110-417, § 811(d)(2)(B), (3)(B), (4)(B)(i), which directed amendment of this section by inserting “or subprogram” after “the program” in subsec. (b) and after “the program” each place it appeared in subsecs. (c) and (d), was executed by making the insertions after “the program” each place it appeared in those subsecs. except after “designated major subprogram under the program”, to reflect the probable intent of Congress.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-417, § 811(d)(1), inserted “and for each designated major subprogram under the program” after “major defense acquisition program” in par. (1) and “or designated major subprogram” after “major defense acquisition program” in par. (2).

Subsec. (b). Pub. L. 110-417, § 811(d)(2), inserted “or any designated major subprogram under the program” after “major defense acquisition program” and “or subprogram” after “after the program”. See Codification note above.

Subsec. (c). Pub. L. 110-417, § 811(d)(3), inserted “or any designated major subprogram under the program” after “major defense acquisition program” in introductory provisions and “or subprogram” after “the program” in pars. (1) to (3). See Codification note above.

Subsec. (d). Pub. L. 110-417, § 811(d)(4), inserted “or any designated major subprogram under the program” after “major defense acquisition program” wherever appearing, in par. (1), inserted “or subprogram” after “to the program”, “before the program”, and “at program”, and, in par. (2), inserted “or subprogram” after “for the program” in two places. See Codification note above.

Subsec. (e)(2). Pub. L. 110-417, §811(d)(5), inserted “(or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms)” after “baseline description” and “or subprogram” before period at end and substituted “any such baseline description” for “the baseline”.

2006—Subsec. (d). Pub. L. 109-163 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 109-364 inserted “prepared before the program enters system development and demonstration, or at program initiation, whichever occurs later” after “program under subsection (a)”.

Subsec. (e). Pub. L. 109-163 redesignated subsec. (d) as (e).

2001—Subsec. (b). Pub. L. 107-107, §§821(d)(1), 1048(b)(2), substituted “system development and demonstration” for “engineering and manufacturing development” and “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

Subsec. (c)(1). Pub. L. 107-107, §821(d)(2)(A), substituted “system development and demonstration” for “demonstration and validation”.

Subsec. (c)(2). Pub. L. 107-107, §821(d)(2)(B), substituted “production and deployment” for “engineering and manufacturing development”.

Subsec. (c)(3). Pub. L. 107-107, §821(d)(2)(C), substituted “full rate production” for “production and deployment”.

Subsec. (d)(2). Pub. L. 107-107, §1048(b)(2), substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1994—Pub. L. 103-355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1990—Subsec. (b)(1). Pub. L. 101-510, §1484(k)(11), struck out closing parenthesis after “such Secretary” in introductory provisions.

Subsec. (c). Pub. L. 101-510, §1207(b), struck out subsec. (c) which read as follows: “STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

“(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.”

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101-189, §811(b)(1), substituted “production” for “development”.

Subsec. (b)(1). Pub. L. 101-189, §811(b)(2)(A), substituted “service acquisition executive designated by such Secretary” for “senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)))”.

Subsec. (b)(2). Pub. L. 101-189, §811(b)(2)(B), substituted “180 days” for “90 days” in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100-456 clarified amendment by Pub. L. 100-180, §803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100-370 added subsec. (c).  
1987—Subsec. (b)(2). Pub. L. 100-180, as amended by Pub. L. 100-456, substituted “under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a development stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days” for first reference to “under paragraph (1)”.

Subsec. (c). Pub. L. 100-26, §7(b)(6), struck out subsec. (c) which defined “major defense acquisition program”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 effective on Jan. 6, 2006, and applicable with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after Jan. 6, 2006, see section 802(e) of Pub. L. 109-163, set out as a note under section 2433 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title XII, §1207(b), Nov. 5, 1990, 104 Stat. 1665, provided that the amendment made by that section is effective Oct. 1, 1991.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 applicable as if included in the enactment of Pub. L. 100-180, see section 1233(l)(5) of Pub. L. 100-456 set out as a note under section 2366 of this title.

#### EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §904(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-134, and Pub. L. 99-591, §101(c) [title X, §904(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-134, and Pub. L. 99-661, div. A, title IX, formerly title IV, §904(b), Nov. 14, 1986, 100 Stat. 3914, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2435 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].”

#### REVIEW OF ACQUISITION PROGRAM CYCLE

Pub. L. 103-355, title V, §5002(a), Oct. 13, 1994, 108 Stat. 3350, provided that: “The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.”

### § 2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for a major defense acquisition program for offerors with eligible capital assets.

(Added Pub. L. 108-136, div. A, title VIII, §822(a)(1), Nov. 24, 2003, 117 Stat. 1546.)

#### REFERENCES IN TEXT

Section 814 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (b), is