

Amendment by section 1314(a)(1) of 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. 99-500, §101(c) [title X, §961(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-176, Pub. L. 99-591, §101(c) [title X, §961(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-176, and Pub. L. 99-661, div. A, title IX, formerly title IV, §961(c), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 2433 of this title] shall take effect on January 1, 1987."

#### EFFECTIVE DATE

Pub. L. 97-252, title XI, §1107(c), Sept. 8, 1982, 96 Stat. 746, provided that: "Sections 139a and 139b [now 2432 and 2433] of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1983, and shall apply beginning with respect to reports for the first quarter of fiscal year 1983. The repeal made by subsection (b) [repealing Pub. L. 94-106, as amended, set out as Reports to Congress of Acquisitions for Major Defense Systems note under section 2431 of this title] shall take effect on January 1, 1983."

#### SELECTED ACQUISITION REPORTS FOR CERTAIN PROGRAMS

Pub. L. 100-180, div. A, title I, §127, Dec. 4, 1987, 101 Stat. 1044, as amended by Pub. L. 102-484, div. A, title VIII, §817(a), Oct. 23, 1992, 106 Stat. 2454, provided that:

"(a) SAR COVERAGE FOR ATB, ACM, AND ATA PROGRAMS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, in accordance with the provisions of subsection (b) of section 2432 of title 10, United States Code, a Selected Acquisition Report with respect to each program referred to in subsection (b), notwithstanding that such a report would not otherwise be required under section 2432 of title 10, United States Code.

"(b) COVERED PROGRAMS.—Subsection (a) applies to the Advanced Technology Bomber program, the Advanced Cruise Missile program, and the Advanced Tactical Aircraft program.

"(c) SELECTED ACQUISITION REPORT DEFINED.—As used in subsection (a), the term 'Selected Acquisition Report' means a report containing the information referred to in section 2432 of title 10, United States Code."

#### SENSE OF CONGRESS ON PREPARATION OF CERTAIN ECONOMIC IMPACT AND EMPLOYMENT INFORMATION CONCERNING NEW ACQUISITION PROGRAMS

Pub. L. 100-180, div. A, title VIII, §825, Dec. 4, 1987, 101 Stat. 1134, related to the sense of Congress on preparation of certain economic impact and employment information concerning new acquisition programs, prior to repeal by Pub. L. 104-106, div. D, title XLIII, §4321(i)(4), Feb. 10, 1996, 110 Stat. 676.

#### DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Pub. L. 98-525, title XII, §1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100-26, §11(a)(1), Apr. 21, 1987, 101 Stat. 288, which related to waivable minimum four-year tour of duty of program managers for major defense acquisition programs, was repealed and restated in section 2435(c) of this title by Pub. L. 100-370, §1(i), July 19, 1988, 102 Stat. 848.

### § 2433. Unit cost reports

(a) In this section:

(1) Except as provided in section 2430a(d) of this title, the terms "program acquisition unit

cost", "procurement unit cost", and "major contract" have the same meanings as provided in section 2432(a) of this title.

(2) The term "Baseline Estimate", with respect to a unit cost report that is submitted under this section to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program or designated major subprogram, means the cost estimate included in the baseline description for the program or subprogram under section 2435 of this title.

(3) The term "procurement program" means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(4) The term "significant cost growth threshold" means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 15 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 15 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(5) The term "critical cost growth threshold" means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 25 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 25 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(6) The term “original Baseline Estimate” has the same meaning as provided in section 2435(d) of this title.

(b) The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program (or of each designated major subprogram under the program). Each report shall be submitted not more than 30 calendar days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(2) In the case of a procurement program, the procurement unit cost for the program (or for each designated major subprogram under the program).

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 2435 of this title that are known, expected, or anticipated by the program manager.

(5) Any significant changes in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(c) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold; and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by

the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(3) If, based upon the service acquisition executive’s determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1)(A) Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 2432(e) of this title and shall be submitted in accordance with section 2432(f) of this title.

(B) Whenever the Secretary makes a determination referred to in subparagraph (A) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not re-

quired to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of section 2433a of this title.

(3) If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B) with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B) and the certification of the Secretary of Defense under paragraph (2)(A) with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

(f) Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars (as described in section 2430 of this title).

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

(A) The name of the major defense acquisition program.

(B) The date of the preparation of the report.

(C) The program phase as of the date of the preparation of the report.

(D) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(G) The completion status of the program and each designated major subprogram under the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(H) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the “base year”) and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.

(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.

(J) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars.

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars and the procurement unit cost for the program (or for each designated major subprogram under the program) for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(L) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(M) The identities of the military and civilian officers responsible for program management and cost control of the program.

(N) The action taken and proposed to be taken to control future cost growth of the program.

(O) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(P) The following contract performance assessment information with respect to each major contract under the program or subprogram:

- (i) The name of the contractor.
- (ii) The phase that the contract is in at the time of the preparation of the report.
- (iii) The percentage of work under the contract that has been completed.
- (iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.
- (v) The percentage by which the contract is currently ahead of or behind schedule.
- (vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program and any designated major subprogram under the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(Q) In any case in which one or more problems with the software component of the program or any designated major subprogram under the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program or designated major subprogram that results in a report under this subsection is due to termination or cancellation of the entire program or subprogram, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report. The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program or subprogram.

(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 2432(h) of this title.

(Added Pub. L. 97-252, title XI, §1107(a)(1), Sept. 8, 1982, 96 Stat. 741, §139b; amended Pub. L. 98-94, title XII, §1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98-525, title XII, §1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99-145, title XIII, §1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered §2433 and amended Pub. L. 99-433, title I, §§101(a)(5), 110(d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99-500, §101(c) [title X, §961(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-176, and Pub. L. 99-591, §101(c) [title X, §961(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-176; Pub. L. 99-661, div. A, title IX, formerly title IV, §961(b), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100-180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, §811(a), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101-510, div. A, title XIV, §1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102-484, div. A, title VIII, §817(d), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103-35, title II, §201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103-355, title III, §3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105-85, div. A, title VIII, §833, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 108-375, div. A, title VIII,

§801(a), (b)(1), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109-163, div. A, title VIII, §802(a)-(c), (d)(2), Jan. 6, 2006, 119 Stat. 3367-3370; Pub. L. 109-364, div. A, title II, §213(a), Oct. 17, 2006, 120 Stat. 2121; Pub. L. 110-181, div. A, title IX, §942(e), Jan. 28, 2008, 122 Stat. 288; Pub. L. 110-417, [div. A], title VIII, §811(c), Oct. 14, 2008, 122 Stat. 4522; Pub. L. 111-23, title II, §206(a)(3), May 22, 2009, 123 Stat. 1728; Pub. L. 111-84, div. A, title X, §1073(c)(4), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-383, div. A, title X, §1075(b)(34), Jan. 7, 2011, 124 Stat. 4371.)

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### AMENDMENTS

Subsec. (a)(1). Pub. L. 111-383 substituted “section 2430a(d)” for “section 2430a(c)”.

2009—Subsec. (e)(2). Pub. L. 111-23 amended par. (2) generally. Prior to amendment, par. (2) related to cost growths in major defense acquisition programs or designated major subprograms.

Subsec. (g)(1)(G). Pub. L. 111-84 made technical amendment to directory language of Pub. L. 110-417, §811(c)(6)(A)(iv)(I). See 2008 Amendment note below.

2008—Subsec. (a)(1). Pub. L. 110-417, §811(c)(1)(A), substituted “Except as provided in section 2430a(c) of this title, the terms” for “The terms”.

Subsec. (a)(2). Pub. L. 110-417, §811(c)(1)(B), inserted “or designated major subprogram” after “major defense acquisition program” and “or subprogram” after “the program”.

Subsec. (a)(4), (5). Pub. L. 110-417, §811(c)(1)(C), (D), inserted “or designated major defense subprogram” after “major defense acquisition program” wherever appearing and “or subprogram” after “for the program” wherever appearing.

Subsec. (b). Pub. L. 110-417, §811(c)(2)(A), inserted “(or of each designated major subprogram under the program)” after “unit costs of the program” in introductory provisions.

Subsec. (b)(1), (2). Pub. L. 110-417, §811(c)(2)(B), (C), inserted “for the program (or for each designated major subprogram under the program)” before period at end.

Subsec. (b)(5). Pub. L. 110-417, §811(c)(2)(D), inserted “or subprogram” after “software component of the program” wherever appearing.

Subsec. (c). Pub. L. 110-417, §811(c)(3), substituted “the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram)” for “the program acquisition unit cost for the program or the procurement unit cost for the program” and struck out “for the program” after “significant cost growth threshold”.

Subsec. (d)(1), (2). Pub. L. 110-417, §811(c)(4)(A), (B), inserted “or any designated major subprogram under the program” after “major defense acquisition program” and “or subprogram” after “for the program” wherever appearing.

Subsec. (d)(3). Pub. L. 110-417, §811(c)(4)(C), substituted “the program or subprogram concerned” for “such program”.

Subsec. (e)(1)(A). Pub. L. 110-417, §811(c)(5)(A)(i), inserted “or designated major subprogram” after “major defense acquisition program” and “or subprogram” after “for the program”.

Subsec. (e)(1)(B). Pub. L. 110-417, §811(c)(5)(A)(ii), inserted “or designated major subprogram” after “major defense acquisition program” and “or subprogram” after “that program”.

Subsec. (e)(2). Pub. L. 110-417, §811(c)(5)(B), in introductory provisions, inserted “or designated major subprogram” after “major defense acquisition program” and “or subprogram” after “for the program”.

Pub. L. 110-181 inserted “, after consultation with the Joint Requirements Oversight Council regarding pro-

gram requirements,” after “Secretary of Defense” in introductory provisions.

Subsec. (g)(1)(D). Pub. L. 110–417, § 811(c)(6)(A)(i), inserted “(and for each designated major subprogram under the program)” after “for the program” and “or subprogram” after “in which the program”.

Subsec. (g)(1)(E). Pub. L. 110–417, § 811(c)(6)(A)(ii), inserted “for the program (and for each designated major subprogram under the program)” after “program acquisition cost”.

Subsec. (g)(1)(F). Pub. L. 110–417, § 811(c)(6)(A)(iii), inserted “for the program (or for any designated major subprogram under the program)” before period at end.

Subsec. (g)(1)(G). Pub. L. 110–417, § 811(c)(6)(A)(iv)(I), as amended by Pub. L. 111–84, inserted “and each designated major subprogram under the program” after “of the program”.

Subsec. (g)(1)(G)(i), (ii). Pub. L. 110–417, § 811(c)(6)(A)(iv)(II), inserted “or subprogram” after “for the program” in two places.

Subsec. (g)(1)(H). Pub. L. 110–417, § 811(c)(6)(A)(v), inserted “and each designated major subprogram under the program” after “year in which information on the program” and “or subprogram” after “Report in which information on the program”.

Subsec. (g)(1)(J). Pub. L. 110–417, § 811(c)(6)(A)(vi), inserted “for the program (or for each designated major subprogram under the program)” after “program acquisition unit cost”.

Subsec. (g)(1)(K). Pub. L. 110–417, § 811(c)(6)(A)(vii), inserted “for the program (or for each designated major subprogram under the program)” after “procurement unit cost” in two places.

Subsec. (g)(1)(O). Pub. L. 110–417, § 811(c)(6)(A)(viii), inserted “for the program (or for any designated major subprogram under the program)” before period at end.

Subsec. (g)(1)(P). Pub. L. 110–417, § 811(c)(6)(A)(ix), inserted “or subprogram” after “the program” in introductory provisions and “and any designated major subprogram under the program” after “major contracts of the program” in cl. (vi).

Subsec. (g)(1)(Q). Pub. L. 110–417, § 811(c)(6)(A)(x), inserted “or any designated major subprogram under the program” after “the program”.

Subsec. (g)(2). Pub. L. 110–417, § 811(c)(6)(B), inserted “or designated major subprogram” after “major defense acquisition program” and “or subprogram” after “the entire program” and after “cancellation of a program”.

2006—Subsec. (a)(4), (5). Pub. L. 109–163, § 802(a), added pars. (4) and (5).

Subsec. (a)(6). Pub. L. 109–163, § 802(d)(2), added par. (6).

Subsec. (c). Pub. L. 109–163, § 802(b)(1), substituted “cause to believe that the program acquisition unit cost for the program or the procurement unit cost for the program, as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold for the program” for “cause to believe—

“(1) that the program acquisition unit cost for the program has increased by at least 15 percent over the program acquisition unit cost for the program as shown in the Baseline Estimate; or

“(2) in the case of a major defense acquisition program that is a procurement program, that the procurement unit cost for the program has increased by at least 15 percent over the procurement unit cost for the program as reflected in the Baseline Estimate”.

Subsec. (d)(1). Pub. L. 109–163, § 802(b)(2)(A), substituted “by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program” for “by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate”.

Subsec. (d)(2). Pub. L. 109–163, § 802(b)(2)(B), substituted “by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program” for “by at least 15 percent, or by at least 25 percent, over the procurement

unit cost for the program as reflected in the Baseline Estimate”.

Subsec. (d)(3). Pub. L. 109–163, § 802(b)(2)(C), substituted “by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that” for “by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that” and “by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary” for “by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary”.

Subsec. (e)(1)(A). Pub. L. 109–163, § 802(b)(3)(A), substituted “by a percentage equal to or greater than the significant cost growth threshold for the program” for “by at least 15 percent”.

Subsec. (e)(2). Pub. L. 109–163, § 802(c), redesignated subpar. (B) as (C) and substituted “the Secretary of Defense shall—”, par. (A) and introductory provisions of par. (B) for “the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

“(A) a written certification, stating that—”.

Pub. L. 109–163, § 802(b)(3)(B), in introductory provisions, struck out “percentage increase in the” before “program acquisition” and substituted “increases by a percentage equal to or greater than the critical cost growth threshold for the program” for “exceeds 25 percent”.

Subsec. (e)(2)(A). Pub. L. 109–364 added cl. (i) and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

Subsec. (e)(3). Pub. L. 109–163, § 802(b)(3)(C)(ii), substituted “by a percentage equal to or greater than the critical cost growth threshold” for “of at least 25 percent” in introductory provisions and subpar. (B).

Pub. L. 109–163, § 802(b)(3)(C)(i), substituted “by a percentage equal to or greater than the significant cost growth threshold” for “of at least 15 percent” in introductory provisions and subpar. (A).

2004—Subsec. (b)(5). Pub. L. 108–375, § 801(a), added par. (5).

Subsec. (g)(1)(Q). Pub. L. 108–375, § 801(b)(1), added subpar. (Q).

1997—Subsec. (c). Pub. L. 105–85, § 833(a), in concluding provisions, struck out “during the current fiscal year (other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)” after “designated by the Secretary concerned”.

Subsec. (c)(1) to (3). Pub. L. 105–85, § 833(b), inserted “or” at end of par. (1), struck out “or” at end of par. (2), and struck out par. (3), which read as follows: “that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 15 percent over the cost of the contract as of the time the contract was made;”.

Subsec. (d)(3). Pub. L. 105–85, § 833(c), struck out “(for the first time since the beginning of the current fiscal year)” after “the Secretary concerned determines”.

1994—Subsec. (a)(2). Pub. L. 103–355, § 3003(a)(1)(A), substituted “Baseline Estimate” for “Baseline Selected Acquisition Report” and “cost estimate included in the baseline description for the program under section 2435 of this title.” for “Selected Acquisition Report in which information on the program is first included or the comprehensive annual Selected Acquisition Report for the fiscal year immediately before the fiscal year containing the quarter with respect to which the unit cost report is submitted, whichever is later.”

Subsec. (a)(4). Pub. L. 103–355, § 3003(a)(1)(B), struck out par. (4) which defined “Baseline Report”.

Subsec. (b)(3). Pub. L. 103–355, § 3003(b), substituted “contract was entered into” for “Baseline Report was submitted”.

Subsec. (c). Pub. L. 103–355, §§ 3002(a)(2)(A), 3003(a)(2)(A), (c), struck out par. (1) designation and par. (2), redesignated subpars. (A) to (C) as pars. (1) to

(3), respectively, substituted “Baseline Estimate” for “Baseline Report” in pars. (1) and (2), and struck out “current” before “procurement unit cost” in par. (2). Prior to amendment, former par. (2) related to submission of unit cost reports by major defense acquisition program manager to service acquisition executive designated by Secretary of Defense in certain circumstances.

Subsec. (d)(1). Pub. L. 103-355, §3003(a)(2)(B), substituted “Baseline Estimate” for “Baseline Report”.

Subsec. (d)(2). Pub. L. 103-355, §§3002(a)(2)(B), 3003(a)(2)(B), struck out “current” before “procurement unit cost” and substituted “Baseline Estimate” for “Baseline Report”.

Subsec. (d)(3). Pub. L. 103-355, §3002(a)(2)(B), struck out “current” before “procurement unit cost”.

Subsec. (e)(1)(A), (2). Pub. L. 103-355, §3002(a)(2)(C), struck out “current” before “procurement unit cost”.

Subsec. (f). Pub. L. 103-355, §3003(d), substituted “be stated in terms of constant base year dollars (as described in section 2430 of this title)” for “include expected inflation”.

Subsec. (g)(1)(I). Pub. L. 103-355, §3003(e), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: “The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.”

1993—Subsec. (e)(3). Pub. L. 103-35 substituted “an increase of at least 15 percent” for “a at least 15 percent increase” in introductory provisions and in subpar. (A), and substituted “an increase of at least 25 percent” for “a at least 25 percent increase” in introductory provisions and in subpar. (B).

1992—Subsec. (a)(4)(C). Pub. L. 102-484, §817(d)(1), substituted “(e)(2)(B)” for “(e)(2)(B)(ii)”.

Subsec. (b). Pub. L. 102-484, §817(d)(2), substituted “30 calendar days” for “7 days (excluding Saturdays, Sundays, and legal public holidays)” in second sentence.

Subsec. (c)(1)(A), (B), (2)(A), (B). Pub. L. 102-484, §817(d)(3), substituted “at least” for “more than”.

Subsec. (d)(1), (2). Pub. L. 102-484, §817(d)(4)(A), substituted “at least” for “more than” wherever appearing.

Subsec. (d)(3). Pub. L. 102-484, §817(d)(4)(B), substituted “at least” for “more than” wherever appearing and “program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.” for “program within 30 days after the date on which the service acquisition executive reports his determination of such increase in such unit cost to the Secretary and shall include in such notification the date on which the determination was made.”

Subsec. (e)(1)(A). Pub. L. 102-484, §817(d)(5)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the current program acquisition cost of a major defense acquisition program has increased by more than 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination and such report shall include the information described in section 2432(e) of this title. The report shall be submitted within 45 days after the end of that quarter.”

Subsec. (e)(2). Pub. L. 102-484, §817(d)(5)(B), substituted “program acquisition unit cost or current procurement unit cost” for “current program acquisition cost”.

Subsec. (e)(3). Pub. L. 102-484, §817(d)(5)(C), substituted “at least” for “more than” wherever appearing.

1990—Subsec. (c). Pub. L. 101-510 struck out “the” before “such service acquisition executive” wherever appearing.

1989—Subsec. (a)(2). Pub. L. 101-189, §811(a)(1)(A), inserted “the service acquisition executive designated by” before “the Secretary concerned”.

Subsec. (a)(4). Pub. L. 101-189, §811(a)(1)(B)(i), inserted “the service acquisition executive designated by” before “the Secretary concerned” in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 101-189, §811(a)(1)(B)(ii), substituted “Selected Acquisition Report submitted under subsection (e)(2)(B) that includes information on” for “unit cost report submitted under subsection (e)(2)(B)(ii) with respect to”.

Subsec. (a)(4)(B). Pub. L. 101-189, §811(a)(1)(B)(iii), substituted “subsection (e)(2)(B) with respect to the program during that three-quarter period, the most recent Selected Acquisition Report submitted under subsection (e)(1) that includes information on the program” for “subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program”.

Subsec. (b). Pub. L. 101-189, §811(a)(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):”

Subsec. (b)(4). Pub. L. 101-189, §811(a)(2)(B), substituted “description established under section 2435 of this title” for “Selected Acquisition Report”.

Subsec. (c)(1). Pub. L. 101-189, §811(a)(3)(A), in introductory provisions, struck out “fiscal-year” after “time during a”, and in concluding provisions, inserted “the service acquisition executive designated by” before “the Secretary concerned during” and substituted “(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)” for “(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)” and “such service acquisition executive a unit” for “Secretary concerned a unit”.

Subsec. (c)(2). Pub. L. 101-189, §811(a)(3)(B), in introductory provisions, inserted “the service acquisition executive designated by” before “the Secretary concerned a unit” and substituted “(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)” for “(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)”, and in cls. (A), (B), and (C), and concluding provisions, substituted “such service acquisition executive” for “Secretary concerned”.

Subsec. (d)(1). Pub. L. 101-189, §811(a)(4)(A), inserted “the service acquisition executive designated by” before “the Secretary concerned” and substituted “service acquisition executive shall determine” for “Secretary shall determine”.

Subsec. (d)(2). Pub. L. 101-189, §811(a)(4)(B), inserted “the service acquisition executive designated by” before “the Secretary concerned under” and substituted “service acquisition executive, in addition to the determination under paragraph (1), shall determine” for “Secretary concerned shall, in addition to the determination under paragraph (1), determine”.

Subsec. (d)(3). Pub. L. 101-189, §811(a)(4)(C), substituted (d)(3) consisting of a single par., for former par. (3) consisting of subpars. (A) and (B).

Subsec. (e)(1), (2). Pub. L. 101-189, §811(a)(5)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which contained exceptions to the prohibitions in subsec. (d)(3)(B)(i) and (ii).

Subsec. (e)(3). Pub. L. 101-189, §811(a)(5)(B), in introductory provisions, inserted “If a determination of a more than 15 percent increase is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of a more than 25 percent increase is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.” and struck out “in subsection (d)(3)(B)” after “prohibition”, in subpar. (A), substituted “Selected Acquisition Report” for “report of the Secretary concerned” and “(2)(B)” for “(2)(B)(ii)”, and in subpar. (B), substituted “Selected Acquisition Report” for “report of the Secretary concerned”, “(2)(B)” for “(2)(B)(ii)”, and “(2)(A)” for “(2)(B)(i)”.

Subsec. (g)(2). Pub. L. 101-189, §811(a)(6), inserted at end “The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.”

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. (a)(1). Pub. L. 100-26, §7(b)(4), substituted “(1) The terms ‘program’” for “(1) ‘Major defense acquisition program’, ‘program’”.

Subsec. (a)(2). Pub. L. 100-26, §7(k)(7)(A), inserted “The term” after par. designation.

Subsec. (a)(3). Pub. L. 100-26, §7(k)(7)(B), substituted “The term ‘procurement’” for “‘Procurement’”.

Subsec. (a)(4). Pub. L. 100-26, §7(k)(7)(A), inserted “The term” after par. designation.

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

Pub. L. 99-433, §110(d)(14), substituted “Unit cost reports” for “Oversight of cost growth of major programs: unit cost reports” in section catchline.

Subsec. (a)(1). Pub. L. 99-433, §110(g)(8)(A), substituted “section 2432(a)” for “section 139a(a)”.

Subsec. (b). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§961(b)(1)], Pub. L. 99-661, §961(b)(1), amended subsec. (b) identically, inserting “(excluding Saturdays, Sundays, and legal public holidays)” in two places in second sentence.

Pub. L. 99-433, §110(g)(8)(B), substituted “section 2432(b)(3)” for “section 139a(b)(3)” in first sentence.

Subsec. (h). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§961(b)(2)], Pub. L. 99-661, §961(b)(2), amended section identically, adding subsec. (h).

1985—Subsec. (d)(3)(B)(i). Pub. L. 99-145 inserted “percent” after “15”.

1984—Subsec. (a)(4). Pub. L. 98-525, §1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98-525, §1242(b)(2)(A), (B), struck out “not more than 7 days” before “after the end of that quarter” and inserted “Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter.”

Subsec. (b)(3). Pub. L. 98-525, §1242(b)(2)(C), substituted “Baseline Report” for “baseline Selected Acquisition Report”.

Subsec. (c)(1)(A), (B). Pub. L. 98-525, §1242(b)(3), substituted “Baseline Report” for “baseline Selected Acquisition Report”.

Subsec. (d)(1), (2). Pub. L. 98-525, §1242(b)(4)(A), substituted “Baseline Report” for “baseline Selected Acquisition Report”.

Subsec. (d)(3)(B). Pub. L. 98-525, §1242(b)(4)(B)(i), substituted “funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program” for “additional funds may not be obligated in connection with such program”.

Subsec. (d)(3)(B)(i). Pub. L. 98-525, §1242(b)(4)(B)(ii), struck out “but less than 25 percent” after “more than 15”.

Subsec. (e)(1). Pub. L. 98-525, §1242(b)(5)(A), substituted “subsection (d)(3)(B)(i)” for “subsection (d)(3)(B)” and inserted “more than” before “15 percent”.

Subsec. (e)(2). Pub. L. 98-525, §1242(b)(5)(B), substituted “subsection (d)(3)(B)(ii)” for “subsection (d)(3)(B)” and inserted “more than” before “25 percent”.

Subsec. (e)(2)(A). Pub. L. 98-525, §1242(b)(5)(B)(iii), inserted “and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)”.

Subsec. (e)(2)(B). Pub. L. 98-525, §1242(b)(5)(B)(iv), substituted “subsection (d)(3)(B)(ii)” for “such subsection”.

Subsec. (e)(3). Pub. L. 98-525, §1242(b)(5)(C), substituted “at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

“(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

“(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).”.

for “in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program.”

Subsec. (g)(1)(I). Pub. L. 98-525, §1242(b)(6)(A), substituted “The type of the Baseline Report (under subsection (a)(4) and the date of the Baseline Report” for “The date of the baseline Selected Acquisition Report”.

Subsec. (g)(1)(K). Pub. L. 98-525, §1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98-94 substituted “procurement” for “procurment”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(4) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110-417 as enacted.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title VIII, §802(e), Jan. 6, 2006, 119 Stat. 3370, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 2435 of this title] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after that date.

“(2) APPLICABILITY TO CURRENT MAJOR DEFENSE ACQUISITION PROGRAMS.—In the case of a major defense acquisition program for which the program acquisition unit cost or procurement unit cost, as applicable, exceeds the original Baseline Estimate for the program by more than 50 percent on the date of the enactment of this Act—

“(A) the current Baseline Estimate for the program as of such date of enactment is deemed to be the original Baseline Estimate for the program for purposes of section 2433 of title 10, United States Code (as amended by this section); and

“(B) each Selected Acquisition Report submitted on the program after the date of the enactment of this Act shall reflect each of the following:

“(i) The original Baseline Estimate, as first established for the program, without adjustment or revision.

“(ii) The Baseline Estimate for the program that is deemed to be the original Baseline Estimate for the program under subparagraph (A).

“(iii) The current original Baseline Estimate for the program as adjusted or revised, if at all, in accordance with subsection (d)(2) of section 2435 of title 10, United States Code (as added by subsection (d) of this section).”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 effective on the date occurring 60 days after Oct. 28, 2004, and applicable with respect to reports due to be submitted to Congress on or after that date, see section 801(c) of Pub. L. 108-375, set out as a note under section 2432 of this title.

#### 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

Amendment by Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 effective Jan. 1, 1987, see section 101(c) [§ 961(c)] of Pub. L. 99-500 and Pub. L. 99-591, and section 961(c) of Pub. L. 99-661, set out as a note under section 2432 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97-252, set out as a note under section 2432 of this title.

### § 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 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 for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval 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;