

[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

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

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

(2) include all costs of development, procurement, military construction, operations and support, and trained manpower to operate, maintain, and support the program upon full operational deployment, without regard to funding source or management control.

(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; Pub. L. 114-92, div. A, title VIII, §831(a)-(c)(1), Nov. 25, 2015, 129 Stat. 912.)

AMENDMENTS

2015—Pub. L. 114-92, §831(c)(1), substituted “Independent cost estimates” for “Independent cost estimates; operational manpower requirements” in section catchline.

Subsec. (a)(1). Pub. L. 114-92, §831(a), substituted “has” for “and a manpower estimate for the program have”.

Subsec. (b). Pub. L. 114-92, §831(b), substituted “shall require” for “shall require—”; struck out par. (1) des-

ignation before “that the independent”; redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins; in par. (2), substituted “operations and support, and trained manpower to operate, maintain, and support the program upon full operational deployment,” for “and operations and support,” and period at end for “; and”; and struck out former par. (2) which read as follows: “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).”

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

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, programing, 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, 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 initia-

tives 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 subprogram 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 sub-