

In subsection (a)(5), the source law's reference to "section 104" of the National Aeronautics and Space Administration Authorization Act of 2005 (Public Law 109-155, 119 Stat. 2910) is translated as "section 20144" of title 51. Section 104 of the National Aeronautics and Space Administration Authorization Act of 2005 amended the National Aeronautics and Space Act of 1958 (Public Law 85-568, 72 Stat. 426) by inserting a new section 314, which is restated as section 20144 of title 51.

In subsection (b), in the matter before paragraph (1), the words "Committee on Science and Technology" are substituted for "Committee on Science" on authority of Rule X(1)(o) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

In subsection (c), in the matter before paragraph (1), the words "For fiscal year 2009 and hereafter" are omitted as unnecessary.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

ESTIMATES OF RECEIPTS AND COLLECTIONS AND PROPOSED USE OF FUNDS FROM LEASES OF NON-EXCESS PROPERTY

Pub. L. 115-31, div. B, title III, May 5, 2017, 131 Stat. 214, provided in part: "That each annual budget request shall include an annual estimate of gross receipts and collections and proposed use of all funds collected pursuant to section 20145 of title 51, United States Code."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 114-113, div. B, title III, Dec. 18, 2015, 129 Stat. 2318.

Pub. L. 113-235, div. B, title III, Dec. 16, 2014, 128 Stat. 2203.

Pub. L. 113-76, div. B, title III, Jan. 17, 2014, 128 Stat. 72.

Pub. L. 113-6, div. B, title III, Mar. 26, 2013, 127 Stat. 263.

Pub. L. 112-55, div. B, title III, Nov. 18, 2011, 125 Stat. 625.

Pub. L. 111-117, div. B, title III, Dec. 16, 2009, 123 Stat. 3144.

TRANSMISSION OF BUDGET ESTIMATES

Pub. L. 102-588, title II, §210, Nov. 4, 1992, 106 Stat. 5115, provided that: "The Administrator [of the National Aeronautics and Space Administration] shall, at the time of submission of the President's annual budget, transmit to the Congress—

"(1) a five-year budget detailing the estimated development costs for each individual program under the jurisdiction of the National Aeronautics and Space Administration for which development costs are expected to exceed \$200,000,000; and

"(2) an estimate of the life-cycle costs associated with each such program."

Similar provisions were contained in the following prior appropriation authorization act:

Pub. L. 102-195, §11, Dec. 9, 1991, 105 Stat. 1612.

§ 30104. Baselines and cost controls

(a) DEFINITIONS.—In this section:

(1) DEVELOPMENT.—The term "development" means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation, as defined in the Administration's Procedural Requirements 7120.5E, dated August 14, 2012.

(2) DEVELOPMENT COST.—The term "development cost" means the total of all costs, including construction of facilities and civil

servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program.

(3) LIFE-CYCLE COST.—The term "life-cycle cost" means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control.

(4) MAJOR PROGRAM.—The term "major program" means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than \$250,000,000.

(b) CONDITIONS FOR DEVELOPMENT.—

(1) IN GENERAL.—The Administration shall not enter into a contract for the development of a major program unless the Administrator determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment; and

(C) the program complies with all relevant policies, regulations, and directives of the Administration.

(2) REPORT.—The Administrator shall transmit a report describing the basis for the determination required under paragraph (1) to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before entering into a contract for development under a major program.

(3) NONDELEGATION.—The Administrator may not delegate the determination requirement under this subsection, except in cases in which the Administrator has a conflict of interest.

(c) MAJOR PROGRAM ANNUAL REPORTS.—

(1) REQUIREMENT.—Annually, at the same time as the President's annual budget submission to Congress, the Administrator shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes the information required by this section for each major program for which the Administration proposes to expend funds in the subsequent fiscal year. Reports under this paragraph shall be known as Major Program Annual Reports.

(2) BASELINE REPORT.—The first Major Program Annual Report for each major program shall include a Baseline Report that shall, at a minimum, include—

(A) the purposes of the program and key technical characteristics necessary to fulfill those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the

development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (b)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (d), who shall be an individual whose primary responsibility is overseeing the program.

(3) INFORMATION UPDATES.—For major programs for which a Baseline Report has been submitted, each subsequent Major Program Annual Report shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(d) NOTIFICATION.—

(1) REQUIREMENT.—The individual identified under subsection (c)(2)(E) shall immediately notify the Administrator any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) REASONS.—Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (c)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) NOTIFICATION OF CONGRESS.—Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(e) FIFTEEN PERCENT THRESHOLD.—

(1) DETERMINATION, REPORT, AND INITIATION OF ANALYSIS.—Not later than 30 days after receiving a written notification under subsection (d)(2), the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(A) transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 15 days after making the determination, a report that includes—

(i) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(ii) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(iii) a description of any impacts the cost increase or schedule delay, or the actions described under clause (ii), will have on any other program within the Administration; and

(B) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(i) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(ii) the projected cost and the schedule for completing the program after instituting the actions described under subparagraph (A)(ii); and

(iii) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

(2) COMPLETION OF ANALYSIS AND TRANSMITTAL TO COMMITTEES.—The Administration shall complete an analysis initiated under paragraph (1)(B) not later than 6 months after the Administrator makes a determination under this subsection. The Administrator shall transmit the analysis to the Committee on Science and Technology of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(f) THIRTY PERCENT THRESHOLD.—If the Administrator determines under subsection (e) that the development cost of a program will exceed the estimate provided in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Administrator transmits a report under subsection (e)(1)(A), the Administrator shall not expend any additional funds on the program, other than termination costs, unless Congress has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

(Pub. L. 111–314, § 3, Dec. 18, 2010, 124 Stat. 3360; Pub. L. 115–10, title VIII, § 828, Mar. 21, 2017, 131 Stat. 66.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30104	42 U.S.C. 16613.	Pub. L. 109–155, title I, § 103, Dec. 30, 2005, 119 Stat. 2907.

In subsections (b)(2), (c)(1), (d)(3), and (e)(1)(A), (2), the words “Committee on Science and Technology” are substituted for “Committee on Science” on authority of Rule X(1)(o) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-10 substituted “Procedural Requirements 7120.5E, dated August 14, 2012” for “Procedural Requirements 7120.5c, dated March 22, 2005”.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

CHAPTER 303—CONTRACTING AND PROCUREMENT

Sec.

- 30301. Guaranteed customer base.
- 30302. Quality assurance personnel.
- 30303. Tracking and data relay satellite services.
- 30304. Award of contracts to small businesses and disadvantaged individuals.
- 30305. Outreach program.
- 30306. Small business contracting.
- 30307. Requirement for independent cost analysis.
- 30308. Cost effectiveness calculations.
- 30309. Use of abandoned and underutilized buildings, grounds, and facilities.
- 30310. Exception to alternative fuel procurement requirement.

DETECTION AND AVOIDANCE OF COUNTERFEIT PARTS

Pub. L. 115-10, title VIII, §823, Mar. 21, 2017, 131 Stat. 62, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) A 2012 investigation by the Committee on Armed Services of the Senate of counterfeit electronic parts in the Department of Defense supply chain from 2009 through 2010 uncovered 1,800 cases and over 1,000,000 counterfeit parts and exposed the threat such counterfeit parts pose to service members and national security.

“(2) Since 2010, the Comptroller General of the United States has identified in 3 separate reports the risks and challenges associated with counterfeit parts and counterfeit prevention at both the Department of Defense and NASA, including inconsistent definitions of counterfeit parts, poorly targeted quality control practices, and potential barriers to improvements to these practices.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that the presence of counterfeit electronic parts in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

“(c) REGULATIONS.—

“(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Mar. 21, 2017], the Administrator shall revise the NASA Supplement to the Federal Acquisition Regulation to improve the detection and avoidance of counterfeit electronic parts in the supply chain.

“(2) CONTRACTOR RESPONSIBILITIES.—In revising the regulations under paragraph (1), the Administrator shall—

“(A) require each covered contractor—

“(i) to detect and avoid the use or inclusion of any counterfeit parts in electronic parts or products that contain electronic parts;

“(ii) to take such corrective actions as the Administrator considers necessary to remedy the use or inclusion described in clause (i); and

“(iii) including a subcontractor, to notify the applicable NASA contracting officer not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA,

or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part; and

“(B) prohibit the cost of counterfeit electronic parts, suspect counterfeit electronic parts, and any corrective action described under subparagraph (A)(ii) from being included as allowable costs under agency contracts, unless—

“(i)(I) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense; and

“(II) the covered contractor has provided the notice under subparagraph (A)(iii); or

“(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

“(3) SUPPLIERS OF ELECTRONIC PARTS.—In revising the regulations under paragraph (1), the Administrator shall—

“(A) require NASA and covered contractors, including subcontractors, at all tiers—

“(i) to obtain electronic parts that are in production or currently available in stock from—

“(I) the original manufacturers of the parts or their authorized dealers; or

“(II) suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers; and

“(ii) to obtain electronic parts that are not in production or currently available in stock from suppliers that meet qualification requirements established under subparagraph (C);

“(B) establish documented requirements consistent with published industry standards or Government contract requirements for—

“(i) notification of the agency; and

“(ii) inspection, testing, and authentication of electronic parts that NASA or a covered contractor, including a subcontractor, obtains from any source other than a source described in subparagraph (A);

“(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code, pursuant to which NASA may identify suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

“(D) authorize a covered contractor, including a subcontractor, to identify and use additional suppliers beyond those identified under subparagraph (C) if—

“(i) the standards and processes for identifying such suppliers comply with established industry standards;

“(ii) the covered contractor assumes responsibility for the authenticity of parts provided by such suppliers under paragraph (2); and

“(iii) the selection of such suppliers is subject to review and audit by NASA.

“(d) DEFINITIONS.—In this section:

“(1) COVERED CONTRACTOR.—The term ‘covered contractor’ means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.

“(2) ELECTRONIC PART.—The term ‘electronic part’ means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.”

[For definitions of terms used in section 823 of Pub. L. 115-10, set out above, see section 2 of Pub. L. 115-10, set out as a note under section 10101 of this title.]

AVOIDING ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR ADMINISTRATION ACQUISITION PROGRAMS

Pub. L. 115-10, title VIII, §830, Mar. 21, 2017, 131 Stat. 66, provided that: