

ment and root cause analysis conducted pursuant to subsection (a), that—

(I) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in subparagraph (B); and

(II) the change in quantity of items described in subclause (I) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(ii) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(iii) 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—

(I) a copy of the written determination under clause (i) and an explanation of the basis for the determination; and

(II) a copy of the written determination under clause (ii) and an explanation of the basis for the determination.

(B) The cost growth thresholds specified in this subparagraph are as follows:

(i) 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) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(ii) 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) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(d) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added Pub. L. 111-23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; amended Pub. L. 111-383, div. A, title X, § 1075(b)(35), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112-81, div. A, title VIII, §§ 801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112-239, div. A, title VIII, § 813, Jan. 2, 2013, 126 Stat. 1829.)

REFERENCES IN TEXT

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

AMENDMENTS

2013—Subsec. (c)(3)(A). Pub. L. 112-239 substituted “subparagraphs (B), (C), and (E)” for “subparagraphs (B) and (C)” in introductory provisions.

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

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

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

REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

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

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

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

[§ 2434. Repealed. Pub. L. 114-328, div. A, title VIII, § 842(c)(1), Dec. 23, 2016, 130 Stat. 2290]

Section, 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, related to independent cost estimates.

§ 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 and Sustainment.

(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 and Sustainment 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; Pub. L. 116-92, div. A, title IX, §902(71), Dec. 20, 2019, 133 Stat. 1551.)

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