



Nunn-McCurdy Act (10 U.S.C. §2433)

The Nunn-McCurdy Act (10 U.S.C. §2433) is legislation that allows Congress to better manage the cost of Major Defense Acquisition Programs, or MDAP, by establishing oversight protocols. The Program Executive Office, Assembled Chemical Weapons Alternatives, or PEO ACWA, is considered one of these programs.

Passed in 1983, the Nunn-McCurdy Act established reporting requirements for the Department of Defense, or DOD, when a MDAP, or a designated major sub-program of one, experiences cost overruns that exceed specific thresholds beyond original or current baseline estimates. The act established a mechanism for notifying Congress of these cost overruns.

Exceeding these thresholds is known as a Nunn-McCurdy breach. If a program manager believes a program has experienced a breach, he or she is required to submit a unit cost report that includes notification of the potential breach. Next, DOD evaluates if a breach has occurred and the type of breach. If a breach has taken place, DOD notifies Congress.

There are two types of breaches under Nunn-McCurdy: significant and critical. Both types of breaches are based on meeting or exceeding specific cost growth thresholds. In all cases, the cost growth is in relation to the baseline cost estimates, which act as reference points.

A significant breach occurs when a program's costs have increased 15% or more above the current baseline estimate or 30% or more above the original baseline estimate.

A critical breach occurs when a program's costs have increased 25% or more above the current baseline estimate or 50% or more above the original baseline estimate.

For critical breaches, a program is presumed terminated unless the Secretary of Defense certifies the program. Though this presumption is in place, critical breaches do not normally result in program cancellation; instead, programs go through a review and certification process. The review includes a root-cause analysis to determine what factors caused the cost growth that led to a critical breach.

The certification of a program, which allows a program to continue despite its critical breach, involves DOD providing an explanation to Congress that certifies four conditions:

1. The program is essential to national security,
2. the new cost estimates have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable,
3. the program is a higher priority than programs whose funding will be reduced to cover the increased cost of this program, and





4. the management structure is sufficient to control additional cost growth.

As part of certification, a program that is not terminated must:

1. be restructured in a manner that addresses the root cause of the cost growth,
2. have its prior milestone approval rescinded, and
3. receive a new milestone approval before taking any contract action—including signing new contracts or exercising options.

Additionally, the certification is accompanied by a root-cause analysis report.

As a MDAP, PEO ACWA has experienced three Nunn-McCurdy breaches to date. In 2006, the ACWA program experienced a critical breach, which required a review and certification process under Nunn-McCurdy. In 2007, DOD certified the ACWA program to Congress under the four conditions specified by the act.

The Selected Acquisition Report provides Congress with information on acquisition programs, noted design immaturity, incorporation of lessons learned from other facilities and funding instability as significant cost drivers for this Nunn-McCurdy breach.

In 2010, ACWA's program manager notified the Under Secretary of Defense for Acquisition, Technology and Logistics of a significant breach by the ACWA program, but after revision, it was reclassified as a critical breach. In turn, the Under Secretary notified Congress of the critical breach and initiated the program review process. In 2011, following the review, the Under Secretary again certified the ACWA program to Congress.

The root cause of the 2010 breach was determined by the Under Secretary to be that the baseline estimate did not adequately recognize program uncertainty or complexity. The program was directed to proceed with no significant changes to the selected destruction technologies.

In April 2017, a review of the 2017 ACWA Program Office Estimate revealed significant cost growth across the program, or 22% over the current Acquisition Program Baseline, leading the Program Executive Officer to submit to the Under Secretary a Program Deviation Report. This determination was subsequently verified by the Under Secretary to be a significant rather than a critical Nunn-McCurdy breach and Congress was so informed in July 2017. The subsequent Selected Acquisition Report attributed the cost growth primarily to increased funding required by schedule extensions at the Colorado and Kentucky sites.

PEO ACWA continues to monitor program costs and implement cost-savings initiatives to be good stewards of taxpayer dollars.

For more information about PEO ACWA, visit www.peoacwa.army.mil.