

(g) Prohibition on obligation of funds

If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Director under subsection (d) and a Major System Congressional Report containing the information described in subsection (f) is not submitted to Congress under subsection (e)(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 Director under subsection (d) and the Major System Congressional Report containing the information described in subsection (f) and section 3102(b)(3) of this title and the certification required by section 3102(b)(2) of this title are not submitted to Congress under subsection (e)(2), funds appropriated for construction, research, development, test, evaluation, and procurement may not be obligated for a major contract under the major system. The prohibition on the obligation of funds for a major system shall cease to apply at the end of the 45-day period that begins on the date—

(1) on which Congress receives the Major System Congressional Report under subsection (e)(1) with respect to that major system, 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

(2) on which Congress receives both the Major System Congressional Report under subsection (e)(2) and the certification of the Director under section 3102(b)(2) of this title with respect to that major system, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

(h) Treatment of cost increases prior to October 7, 2010

(1) Not later than 180 days after October 7, 2010, the Director—

(A) shall, for each major system, determine if the total acquisition cost of such major system increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date;

(B) shall establish for each major system for which the total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date a revised current Baseline Estimate based upon an updated cost estimate;

(C) may, for a major system not described in subparagraph (B), establish a revised current Baseline Estimate based upon an updated cost estimate; and

(D) shall submit to Congress a report describing—

(i) each determination made under subparagraph (A);

(ii) each revised current Baseline Estimate established for a major system under subparagraph (B); and

(iii) each revised current Baseline Estimate established for a major system under subparagraph (C), including the percentage increase of the total acquisition cost of such

major system that occurred prior to October 7, 2010.

(2) The revised current Baseline Estimate established for a major system under subparagraph (B) or (C) of paragraph (1) shall be the 2010 adjusted total acquisition cost for the major system and may include the estimated cost of conducting any vulnerability assessments for such major system required under section 3099 of this title.

(i) Requirements to use base year dollars

Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars.

(j) Form of report

Any report required to be submitted under this section may be submitted in a classified form.

(July 26, 1947, ch. 343, title V, §506E, as added Pub. L. 111-259, title III, §323(a)(1), Oct. 7, 2010, 124 Stat. 2674.)

CODIFICATION

Section was formerly classified to section 415a-7 of this title prior to editorial reclassification and renumbering as this section.

APPLICABILITY DATE OF QUARTERLY REPORTS

Pub. L. 111-259, title III, §323(a)(2), Oct. 7, 2010, 124 Stat. 2678, provided that: “The first report required to be submitted under subsection (b) of section 506E of the National security [Security] Act of 1947 [50 U.S.C. 3101(b)], as added by paragraph (1) of this subsection, shall be submitted with respect to the first fiscal quarter that begins on a date that is not less than 180 days after the date of the enactment of this Act [Oct. 7, 2010].”

MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111-259, title III, §323(b), Oct. 7, 2010, 124 Stat. 2678, provided that: “Nothing in this section [enacting this section and provisions set out as a note under this section], section 324 [enacting section 3102 of this title], or an amendment made by this section or section 324, shall be construed to exempt an acquisition program of the Department of Defense from the requirements of chapter 144 of title 10, United States Code[,] or Department of Defense Directive 5000, to the extent that such requirements are otherwise applicable.”

§ 3102. Critical cost growth in major systems**(a) Reassessment of major system**

If the Director of National Intelligence determines under section 3101(d) of this title that the total acquisition cost of a major system has increased by a percentage equal to or greater than the critical cost growth threshold for the major system, the Director shall—

(1) determine the root cause or causes of the critical cost growth, in accordance with applicable statutory requirements, policies, procedures, and guidance; and

(2) carry out an assessment of—

(A) the projected cost of completing the major system if current requirements are not modified;

(B) the projected cost of completing the major system 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 systems due to the growth in cost of the major system.

(b) Presumption of termination

(1) After conducting the reassessment required by subsection (a) with respect to a major system, the Director shall terminate the major system unless the Director submits to Congress a Major System Congressional Report containing a certification in accordance with paragraph (2) and the information described in paragraph (3). The Director shall submit such Major System Congressional Report and certification not later than 90 days after the date the Director receives the relevant major system cost report under subsection (b) or (c) of section 3101 of this title.

(2) A certification described by this paragraph with respect to a major system is a written certification that—

(A) the continuation of the major system is essential to the national security;

(B) there are no alternatives to the major system that will provide acceptable capability to meet the intelligence requirement at less cost;

(C) the new estimates of the total acquisition cost have been determined by the Director to be reasonable;

(D) the major system is a higher priority than other systems whose funding must be reduced to accommodate the growth in cost of the major system; and

(E) the management structure for the major system is adequate to manage and control the total acquisition cost.

(3) A Major System Congressional Report accompanying a written certification under paragraph (2) shall include, in addition to the requirements of section 3101(e) of this title, the root cause analysis and assessment carried out pursuant to subsection (a), the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), and a description of all funding changes made as a result of the growth in the cost of the major system, including reductions made in funding for other systems to accommodate such cost growth, together with supporting documentation.

(c) Actions if major system not terminated

If the Director elects not to terminate a major system pursuant to subsection (b), the Director shall—

(1) restructure the major system 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 system has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(2) rescind the most recent Milestone approval for the major system;

(3) require a new Milestone approval for the major system before taking any action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the system, except to the extent determined necessary by the Milestone Decision Authority,

on a nondelegable basis, to ensure that the system may be restructured as intended by the Director without unnecessarily wasting resources;

(4) establish a revised current Baseline Estimate for the major system based upon an updated cost estimate; and

(5) conduct regular reviews of the major system.

(d) Actions if major system terminated

If a major system is terminated pursuant to subsection (b), the Director shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the major system;

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

(3) the course the Director plans to pursue to meet any intelligence requirements otherwise intended to be met by the major system.

(e) Form of report

Any report or certification required to be submitted under this section may be submitted in a classified form.

(f) Waiver

(1) The Director may waive the requirements of subsections (d)(2), (e), and (g) of section 3101 of this title and subsections (a)(2), (b), (c), and (d) of this section with respect to a major system if the Director determines that at least 90 percent of the amount of the current Baseline Estimate for the major system has been expended.

(2)(A) If the Director grants a waiver under paragraph (1) with respect to a major system, the Director shall submit to the congressional intelligence committees written notice of the waiver that includes—

(i) the information described in section 3101(f) of this title; and

(ii) if the current total acquisition cost of the major system has increased by a percentage equal to or greater than the critical cost growth threshold—

(I) a determination of the root cause or causes of the critical cost growth, as described in subsection (a)(1); and

(II) a certification that includes the elements described in subparagraphs (A), (B), and (E) of subsection (b)(2).

(B) The Director shall submit the written notice required by subparagraph (A) not later than 90 days after the date that the Director receives a major system cost report under subsection (b) or (c) of section 3101 of this title that indicates that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold.

(g) Definitions

In this section, the terms “cost estimate”, “critical cost growth threshold”, “current Baseline Estimate”, “major system”, and “total acquisition cost” have the meaning given those terms in section 3101(a) of this title.

(July 26, 1947, ch. 343, title V, §506F, as added Pub. L. 111-259, title III, §324(a), Oct. 7, 2010, 124 Stat. 2679.)

CODIFICATION

Section was formerly classified to section 415a-8 of this title prior to editorial reclassification and renumbering as this section.

§ 3103. Future budget projections**(a) Future Year Intelligence Plans**

(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Future Year Intelligence Plan, as described in paragraph (2), for—

(A) each expenditure center in the National Intelligence Program; and

(B) each major system in the National Intelligence Program.

(2)(A) A Future Year Intelligence Plan submitted under this subsection shall include the year-by-year proposed funding for each center or system referred to in subparagraph (A) or (B) of paragraph (1), for the budget year for which the Plan is submitted and not less than the 4 subsequent fiscal years.

(B) A Future Year Intelligence Plan submitted under subparagraph (B) of paragraph (1) for a major system shall include—

(i) the estimated total life-cycle cost of such major system; and

(ii) major milestones that have significant resource implications for such major system.

(b) Long-term Budget Projections

(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Long-term Budget Projection for each element of the intelligence community funded under the National Intelligence Program acquiring a major system that includes the budget for such element for the 5-year period that begins on the day after the end of the last fiscal year for which year-by-year proposed funding is included in a Future Year Intelligence Plan for such major system in accordance with subsection (a)(2)(A).

(2) A Long-term Budget Projection submitted under paragraph (1) shall include—

(A) projections for the appropriate element of the intelligence community for—

(i) pay and benefits of officers and employees of such element;

(ii) other operating and support costs and minor acquisitions of such element;

(iii) research and technology required by such element;

(iv) current and planned major system acquisitions for such element;

(v) any future major system acquisitions for such element; and

(vi) any additional funding projections that the Director of National Intelligence considers appropriate;

(B) a budget projection based on effective cost and schedule execution of current or planned major system acquisitions and application of Office of Management and Budget inflation estimates to future major system acquisitions;

(C) any additional assumptions and projections that the Director of National Intelligence considers appropriate; and

(D) a description of whether, and to what extent, the total projection for each year exceeds the level that would result from applying the most recent Office of Management and Budget inflation estimate to the budget of that element of the intelligence community.

(c) Submission to Congress

The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall submit to the congressional intelligence committees each Future Year Intelligence Plan or Long-term Budget Projection required under subsection (a) or (b) for a fiscal year at the time that the President submits to Congress the budget for such fiscal year pursuant section¹ 1105 of title 31.

(d) Major system affordability report

(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall prepare a report on the acquisition of a major system funded under the National Intelligence Program before the time that the President submits to Congress the budget for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

(2) The report on such major system shall include an assessment of whether, and to what extent, such acquisition, if developed, procured, and operated, is projected to cause an increase in the most recent Future Year Intelligence Plan and Long-term Budget Projection submitted under this section for an element of the intelligence community.

(3) The Director of National Intelligence shall update the report whenever an independent cost estimate must be updated pursuant to section 3097(a)(4) of this title.

(4) The Director of National Intelligence shall submit each report required by this subsection at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31.

(e) Definitions

In this section:

(1) Budget year

The term “budget year” means the next fiscal year for which the President is required to submit to Congress a budget pursuant to section 1105 of title 31.

(2) Independent cost estimate; major system

The terms “independent cost estimate” and “major system” have the meaning given those terms in section 3097(e) of this title.

(July 26, 1947, ch. 343, title V, §506G, as added Pub. L. 111-259, title III, §325(a), Oct. 7, 2010, 124 Stat. 2681.)

CODIFICATION

Section was formerly classified to section 415a-9 of this title prior to editorial reclassification and renumbering as this section.

¹ So in original. Probably should be preceded by “to”.