

ernment in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2301 et seq.], the Arms Export Control Act [22 U.S.C. 2751 et seq.], title 10 (including a law enacted pursuant to section 8677(a) of title 10), or chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms “defense articles” and “defense services” mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act [22 U.S.C. 2778] (22 CFR part 121);

(3) the term “transfer” means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term “value” means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

(July 26, 1947, ch. 343, title V, § 505, formerly § 503, as added Pub. L. 99-569, title VI, § 602(a), Oct. 27, 1986, 100 Stat. 3203; renumbered § 505 and amended Pub. L. 102-88, title VI, §§ 602(a)(1), (c)(2), 604, Aug. 14, 1991, 105 Stat. 441, 444, 445; Pub. L. 103-160, div. A, title VIII, § 828(d)(1), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 115-232, div. A, title VIII, § 809(r), Aug. 13, 2018, 132 Stat. 1844.)

#### REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(2)(B)(i), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424. Part II of the Act is classified generally to subchapter II (§ 2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For provisions deeming references to subchapter II to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, see section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of Title 22, and sections 2348c and 2349aa-5 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Arms Export Control Act, referred to in subsec. (a)(2)(B)(i), is Pub. L. 90-269, Oct. 22, 1968, 82 Stat. 1320,

which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

#### CODIFICATION

Section was formerly classified to section 415 of this title prior to editorial reclassification and renumbering as this section. Some section numbers of this title referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification.

In subsec. (a)(2)(B)(i), “chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### AMENDMENTS

2018—Subsec. (a)(2)(B)(i). Pub. L. 115-232 substituted “(including a law enacted pursuant to section 8677(a) of title 10)” for “(including a law enacted pursuant to section 7307(a) of that title)”.

1993—Subsec. (a)(2)(B)(i). Pub. L. 103-160 substituted “section 7307(a)” for “section 7307(b)(1)”.

1991—Subsec. (a)(1). Pub. L. 102-88 inserted “, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services,” after “service” and substituted “this subchapter” for “section 413 of this title”.

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of Title 10, Armed Forces.

### § 3096. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence

#### (a) In general

The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31 shall set forth separately the aggregate amount requested for that fiscal year for the National Intelligence Program for each of the following:

- (1) Counterterrorism.
- (2) Counterproliferation.
- (3) Counternarcotics.
- (4) Counterintelligence.

#### (b) Election of classified or unclassified form

Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of National Intelligence.

(July 26, 1947, ch. 343, title V, § 506, as added Pub. L. 107-306, title III, § 311(a), Nov. 27, 2002, 116 Stat. 2390; amended Pub. L. 108-458, title I, § 1074(b)(1)(A), Dec. 17, 2004, 118 Stat. 3694; Pub. L. 112-87, title V, § 505(2), Jan. 3, 2012, 125 Stat. 1897.)

#### CODIFICATION

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

## AMENDMENTS

2012—Subsec. (b). Pub. L. 112-87 substituted “Director of National Intelligence.” for “Director of Central Intelligence.”

2004—Pub. L. 108-458, §1074(b)(1)(A)(ii), struck out “Foreign” before “Intelligence” in section catchline.

Subsec. (a). Pub. L. 108-458, §1074(b)(1)(A)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

## EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

**§ 3097. Budget treatment of costs of acquisition of major systems by the intelligence community**

**(a) Independent cost estimates**

(1) The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

(2)(A) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year of the proposed period of development, procurement, and operation of the major system.

(B) For major system acquisitions requiring a service or capability from another acquisition or program to deliver the end-to-end functionality for the intelligence community end users, independent cost estimates shall include, to the maximum extent practicable, all estimated costs across all pertinent elements of the intelligence community. For collection programs, such cost estimates shall include the cost of new analyst training, new hardware and software for data exploitation and analysis, and any unique or additional costs for data processing, storing, and power, space, and cooling across the life cycle of the program. If such costs for processing, exploitation, dissemination, and storage are scheduled to be executed in other elements of the intelligence community, the independent cost estimate shall identify and annotate such costs for such other elements accordingly.

(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for

which development or procurement commenced before December 13, 2003, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed \$500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are anticipated to be obligated for such major system.

(4) The independent cost estimate for a major system shall be updated upon—

(A) the completion of any preliminary design review associated with the major system;

(B) any significant modification to the anticipated design of the major system; or

(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

**(b) Preparation of independent cost estimates**

(1) The Director shall establish within the Office of the Director of National Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a), unless a designation is made under paragraph (2).

(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A)<sup>1</sup> of title 10.

**(c) Utilization in budgets of President**

(1) If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall, subject to paragraph (2), request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget.

(2) If the amount of appropriations requested in the budget of the President for the development or procurement of a major system is less than the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for

<sup>1</sup> See References in Text note below.