

Section 3542 of title 44, referred to in subsec. (k)(5), was repealed by Pub. L. 113-283, §2(a), Dec. 18, 2014, 128 Stat. 3073. Provisions defining “national security system” are now contained in section 3552 of title 44, as enacted by Pub. L. 113-283.

CODIFICATION

Section was formerly classified to section 415a-6 of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2014—Subsec. (j). Pub. L. 113-126 substituted “2014” for “2015” in introductory provisions.

2013—Subsec. (e). Pub. L. 112-277 struck out subsec. (e) which required inclusion of certain budget information in the budget materials submitted to Congress for each fiscal year after fiscal year 2011.

Statutory Notes and Related Subsidiaries

IMPLEMENTATION

Pub. L. 111-259, title III, §322(b), Oct. 7, 2010, 124 Stat. 2673, provided that:

“(1) CERTAIN DUTIES.—Not later than 60 days after the date of the enactment of this Act [Oct. 7, 2010], the Director of National Intelligence shall designate a chair and other members to serve on the board established under subsection (f) of such section 506D of the National Security Act of 1947 [50 U.S.C. 3100(f)] (as added by subsection (a)).

“(2) ENTERPRISE ARCHITECTURE.—

“(A) SCHEDULE FOR DEVELOPMENT.—The Director shall develop the enterprise architecture required by subsection (b) of such section 506D [50 U.S.C. 3100(b)] (as so added), including the initial Business Enterprise Architecture for business transformation, not later than 60 days after the enactment of this Act.

“(B) REQUIREMENT FOR IMPLEMENTATION PLAN.—In developing such an enterprise architecture, the Director shall develop an implementation plan for such enterprise architecture that includes the following:

“(i) An acquisition strategy for new systems that are expected to be needed to complete such enterprise architecture, including specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

“(ii) An identification of the intelligence community business systems in operation or planned as of the date that is 60 days after the enactment of this Act that will not be a part of such enterprise architecture, together with the schedule for the phased termination of the utilization of any such systems.

“(iii) An identification of the intelligence community business systems in operation or planned as of such date, that will be a part of such enterprise architecture, together with a strategy for modifying such systems to ensure that such systems comply with such enterprise architecture.

“(C) SUBMISSION OF ACQUISITION STRATEGY.—Based on the results of an enterprise process management review and the availability of funds, the Director shall submit the acquisition strategy described in subparagraph (B)(i) to the congressional intelligence committees not later than March 31, 2011.”

[For definitions of terms used in section 322(b) of Pub. L. 111-259, set out above, see section 2 of Pub. L. 111-259, set out as a note under section 3003 of this title.]

§ 3101. Reports on the acquisition of major systems

(a) Definitions

In this section:

(1) The term “cost estimate”—

(A) means an assessment and quantification of all costs and risks associated with the acquisition of a major system based

upon reasonably available information at the time the Director establishes the 2010 adjusted total acquisition cost for such system pursuant to subsection (h) or restructures such system pursuant to section 3102(c) of this title; and

(B) does not mean an “independent cost estimate”.

(2) The term “critical cost growth threshold” means a percentage increase in the total acquisition cost for a major system of at least 25 percent over the total acquisition cost for the major system as shown in the current Baseline Estimate for the major system.

(3)(A) The term “current Baseline Estimate” means the projected total acquisition cost of a major system that is—

(i) approved by the Director, or a designee of the Director, at Milestone B or an equivalent acquisition decision for the development, procurement, and construction of such system;

(ii) approved by the Director at the time such system is restructured pursuant to section 3102(c) of this title; or

(iii) the 2010 adjusted total acquisition cost determined pursuant to subsection (h).

(B) A current Baseline Estimate may be in the form of an independent cost estimate.

(4) Except as otherwise specifically provided, the term “Director” means the Director of National Intelligence.

(5) The term “independent cost estimate” has the meaning given that term in section 3097(e) of this title.

(6) The term “major contract” means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of \$40,000,000 and that is not a firm, fixed price contract.

(7) The term “major system” has the meaning given that term in section 3097(e) of this title.

(8) The term “Milestone B” means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director.

(9) The term “program manager” means—

(A) the head of the element of the intelligence community that is responsible for the budget, cost, schedule, and performance of a major system; or

(B) in the case of a major system within the Office of the Director of National Intelligence, the deputy who is responsible for the budget, cost, schedule, and performance of the major system.

(10) The term “significant cost growth threshold” means the percentage increase in the total acquisition cost for a major system of at least 15 percent over the total acquisition cost for such system as shown in the current Baseline Estimate for such system.

(11) The term “total acquisition cost” means the amount equal to the total cost for development and procurement of, and system-specific construction for, a major system.

(b) Major system cost reports

(1) The program manager for a major system shall, on a quarterly basis, submit to the Direc-

tor a major system cost report as described in paragraph (2).

(2) A major system cost report shall include the following information (as of the last day of the quarter for which the report is made):

(A) The total acquisition cost for the major system.

(B) Any cost variance or schedule variance in a major contract for the major system since the contract was entered into.

(C) Any changes from a major system schedule milestones or performances that are known, expected, or anticipated by the program manager.

(D) Any significant changes in the total acquisition cost for development and procurement of any software component of the major system, schedule milestones for such software component of the major system, or expected performance of such software component of the major system that are known, expected, or anticipated by the program manager.

(3) Each major system cost report required by paragraph (1) shall be submitted not more than 30 days after the end of the reporting quarter.

(c) Reports for breach of significant or critical cost growth thresholds

If the program manager of a major system for which a report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe 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 and if a report indicating an increase of such percentage or more has not previously been submitted to the Director, then the program manager shall immediately submit to the Director a major system cost report containing the information, determined as of the date of the report, required under subsection (b).

(d) Notification to Congress of cost growth

(1) Whenever a major system cost report is submitted to the Director, the Director shall determine whether the current acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold.

(2) If the Director determines that the current total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Director shall submit to Congress a Major System Congressional Report pursuant to subsection (e).

(e) Requirement for Major System Congressional Report

(1) Whenever the Director determines under subsection (d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the significant cost growth threshold for the major system, a Major System Congressional Report shall be submitted to Congress not later than 45 days after the date on which the Director receives the major system cost report for such major system.

(2) If the total acquisition cost of a major system (as determined by the Director under sub-

section (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Director shall take actions consistent with the requirements of section 3102 of this title.

(f) Major System Congressional Report elements

(1) Except as provided in paragraph (2), each Major System Congressional Report shall include the following:

(A) The name of the major system.

(B) The date of the preparation of the report.

(C) The program phase of the major system as of the date of the preparation of the report.

(D) The estimate of the total acquisition cost for the major system expressed in constant base-year dollars and in current dollars.

(E) The current Baseline Estimate for the major system in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in total acquisition cost for the major system.

(G) The completion status of the major system—

(i) expressed as the percentage that the number of years for which funds have been appropriated for the major system is of the number of years for which it is planned that funds will be appropriated for the major system; and

(ii) expressed as the percentage that the amount of funds that have been appropriated for the major system is of the total amount of funds which it is planned will be appropriated for the major system.

(H) The fiscal year in which the major system was first authorized and in which funds for such system were first appropriated by Congress.

(I) The current change and the total change, in dollars and expressed as a percentage, in the total acquisition cost for the major system, stated both in constant base-year dollars and in current dollars.

(J) The quantity of end items to be acquired under the major system and the current change and total change, if any, in that quantity.

(K) The identities of the officers responsible for management and cost control of the major system.

(L) The action taken and proposed to be taken to control future cost growth of the major system.

(M) Any changes made in the performance or schedule milestones of the major system and the extent to which such changes have contributed to the increase in total acquisition cost for the major system.

(N) The following contract performance assessment information with respect to each major contract under the major system:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the major system, contributing to the changes identified and a discussion of the effect these occurrences will have on the future costs and schedule of the major system.

(O) In any case in which one or more problems with a software component of the major system significantly contributed to the increase in costs of the major system, the action taken and proposed to be taken to solve such problems.

(2) A Major System Congressional Report prepared for a major system for which the increase in the total acquisition cost is due to termination or cancellation of the entire major system shall include only—

(A) the information described in subparagraphs (A) through (F) of paragraph (1); and

(B) the total percentage change in total acquisition cost for such system.

(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 sys-

tem 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.)

Editorial Notes

CODIFICATION

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

Statutory Notes and Related Subsidiaries

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 [former] chapter 144 of title 10, United States Code [see chapters 321, 324, and 325, subchapter I of chapter 322, and sections 3042, 4232, 4273, 4293, 4321, 4323, and 4328 of title 10][.] 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 para-

graph (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