

able for use, when necessary, in connection with all national security programs of the Department of Energy.

(Pub. L. 107-314, div. D, title XLVII, §4712, formerly div. C, title XXXVI, §3631, Dec. 2, 2002, 116 Stat. 2762; renumbered div. D, title XLVII, §4712, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(vi), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(2)(D)(vi), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2753. Notification of cost overruns for certain Department of Energy projects

(a) Establishment of cost and schedule baselines

(1) Stockpile life extension projects

(A) In general

The Administrator for Nuclear Security shall establish a cost and schedule baseline for each nuclear stockpile life extension project of the National Nuclear Security Administration.

(B) Per unit cost

The cost baseline developed under subparagraph (A) shall include, with respect to each life extension project, an estimated cost for each warhead in the project.

(C) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

(2) Defense-funded construction projects

(A) In general

The Secretary of Energy shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each construction project that is—

- (i) in excess of \$50,000,000; and
- (ii) carried out by the Department using funds authorized to be appropriated for a fiscal year pursuant to a DOE national security authorization.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(3) Defense environmental management projects

(A) In general

The Secretary shall establish a cost and schedule baseline under the project manage-

ment protocols of the Department of Energy for each defense environmental management project that is—

- (i) in excess of \$50,000,000; and
- (ii) carried out by the Department pursuant to such protocols.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(b) Notification of costs exceeding baseline

The Administrator or the Secretary, as applicable, shall notify the congressional defense committees not later than 30 days after determining that—

(1) the total cost for a project referred to in paragraph (1), (2), or (3) of subsection (a) will exceed an amount that is equal to 125 percent of the cost baseline established under subsection (a) for that project; and

(2) in the case of a stockpile life extension project referred to in subsection (a)(1), the cost for any warhead in the project will exceed an amount that is equal to 200 percent of the cost baseline established under subsection (a)(1)(B) for each warhead in that project.

(c) Notification of determination with respect to termination or continuation of projects

Not later than 90 days after submitting a notification under subsection (b) with respect to a project, the Administrator or the Secretary, as applicable, shall—

(1) notify the congressional defense committees with respect to whether the project will be terminated or continued; and

(2) if the project will be continued, certify to the congressional defense committees that—

(A) a revised cost and schedule baseline has been established for the project and, in the case of a stockpile life extension project referred to in subparagraph (A) or (B) of subsection (a)(1), a revised estimate of the cost for each warhead in the project has been made;

(B) the continuation of the project is necessary to the mission of the Department of Energy and there is no alternative to the project that would meet the requirements of that mission; and

(C) a management structure is in place adequate to manage and control the cost and schedule of the project.

(d) Applicability of requirements to revised cost and schedule baselines

A revised cost and schedule baseline established under subsection (c) shall—

(1) be submitted to the congressional defense committees with the certification submitted under subsection (c)(2); and

(2) be subject to the notification requirements of subsections (b) and (c) in the same manner and to the same extent as a cost and schedule baseline established under subsection (a).

(Pub. L. 107-314, div. D, title XLVII, §4713, as added Pub. L. 111-383, div. C, title XXXI, §3114(a), Jan. 7, 2011, 124 Stat. 4510.)

PART B—PENALTIES

§ 2761. Restriction on use of funds to pay penalties under environmental laws**(a) Restriction**

Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) Exception

Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

(Pub. L. 107-314, div. D, title XLVII, §4721, formerly Pub. L. 99-661, div. C, title I, §3132, Nov. 14, 1986, 100 Stat. 4063; renumbered Pub. L. 107-314, div. D, title XLVII, §4721, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(4), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7273a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(4)(D), made technical amendment to section catchline.

§ 2762. Restriction on use of funds to pay penalties under Clean Air Act

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

(Pub. L. 107-314, div. D, title XLVII, §4722, formerly Pub. L. 96-540, title II, §211, Dec. 17, 1980, 94 Stat. 3203; renumbered Pub. L. 107-314, div. D, title XLVII, §4722, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(5), Nov. 24, 2003, 117 Stat. 1781.)

REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, referred to in text, is Pub. L. 96-540, Dec.

17, 1980, 94 Stat. 3197, which insofar as classified to the Code, enacted this section and section 2513 of this title.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 7273 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §211, Dec. 29, 1979, 93 Stat. 1264.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(5)(C), made technical amendment to section catchline and substituted “the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act” for “this or any other Act” in text.

PART C—OTHER MATTERS

§ 2771. Single request for authorization of appropriations for common defense and security programs

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

(Pub. L. 107-314, div. D, title XLVII, §4731, formerly Pub. L. 95-509, title II, §208, Oct. 24, 1978, 92 Stat. 1779; renumbered Pub. L. 107-314, div. D, title XLVII, §4731, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(7), Nov. 24, 2003, 117 Stat. 1782.)

CODIFICATION

Section was formerly classified to section 7271 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(7)(C), inserted section catchline and struck out former catchline.

SUBCHAPTER VIII—ADMINISTRATIVE MATTERS

PART A—CONTRACTS

§ 2781. Costs not allowed under covered contracts**(a) In general**

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals,