

this section and sections 2286a, 2286b, 2286d, 2286e, and 2286h-1 of this title] or in the amendments made by this section shall be construed to cause a reduction in nuclear safety standards.”

REPORT ON EXTERNAL REGULATION OF DEFENSE
NUCLEAR FACILITIES

Pub. L. 105-85, div. C, title XXXII, §3202, Nov. 18, 1997, 111 Stat. 2054, provided that:

“(a) REPORTING REQUIREMENT.—The Defense Nuclear Facilities Safety Board (in this section referred to as the ‘Board’) shall prepare a report and make recommendations on its role in the Department of Energy’s decision to establish external regulation of defense nuclear facilities. The report shall include the following:

“(1) An assessment of the value of and the need for the Board to continue to perform the functions specified under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

“(2) An assessment of the relationship between the functions of the Board and a proposal by the Department of Energy to place Department of Energy defense nuclear facilities under the jurisdiction of external regulatory agencies.

“(3) An assessment of the functions of the Board and whether there is a need to modify or amend such functions.

“(4) An assessment of the relative advantages and disadvantages to the Department and the public of continuing the functions of the Board with respect to Department of Energy defense nuclear facilities and replacing the activities of the Board with external regulation of such facilities.

“(5) A list of all existing or planned Department of Energy defense nuclear facilities that are similar to facilities under the regulatory jurisdiction of the Nuclear Regulatory Commission.

“(6) A list of all Department of Energy defense nuclear facilities that are in compliance with all applicable Department of Energy orders, regulations, and requirements relating to the design, construction, operation, and decommissioning of defense nuclear facilities.

“(7) A list of all Department of Energy defense nuclear facilities that have implemented, pursuant to an implementation plan, recommendations made by the Board and accepted by the Secretary of Energy.

“(8) A list of Department of Energy defense nuclear facilities that have a function related to Department weapons activities.

“(9)(A) A list of each existing defense nuclear facility that the Board determines—

“(i) should continue to stay within the jurisdiction of the Board for a period of time or indefinitely; and

“(ii) should come under the jurisdiction of an outside regulatory authority.

“(B) An explanation of the determinations made under subparagraph (A).

“(10) For any existing facilities that should, in the opinion of the Board, come under the jurisdiction of an outside regulatory authority, the date when this move would occur and the period of time necessary for the transition.

“(11) A list of any proposed Department of Energy defense nuclear facilities that should come under the Board’s jurisdiction.

“(12) An assessment of regulatory and other issues associated with the design, construction, operation, and decommissioning of facilities that are not owned by the Department of Energy but which would provide services to the Department of Energy.

“(13) An assessment of the role of the Board, if any, in privatization projects undertaken by the Department.

“(14) An assessment of the role of the Board, if any, in any tritium production facilities.

“(15) An assessment of the comparative advantages and disadvantages to the Department of Energy in the event some or all Department of Energy defense

nuclear facilities were no longer included in the functions of the Board and were regulated by the Nuclear Regulatory Commission.

“(16) A comparison of the cost, as identified by the Nuclear Regulatory Commission, that would be incurred at a gaseous diffusion plant to comply with regulations issued by the Nuclear Regulatory Commission, with the cost that would be incurred by a gaseous diffusion plant if such a plant was considered to be a Department of Energy defense nuclear facility as defined by chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

“(b) COMMENTS ON REPORT.—Before submission of the report to Congress under subsection (c), the Board shall transmit the report to the Secretary of Energy and the Nuclear Regulatory Commission. The Secretary and the Commission shall provide their comments on the report to both the Board and to Congress.

“(c) SUBMISSION TO CONGRESS.—Not later than six months after the date of the enactment of this Act [Nov. 18, 1997], the Board shall provide to Congress an interim report on the status of the implementation of this section. Not later than one year after the date of the enactment of this Act, and not earlier than 30 days after receipt of comments from the Secretary of Energy and the Nuclear Regulatory Commission under subsection (b), the Board shall submit to Congress the report required under subsection (a).

“(d) DEFINITION.—In this section, the term ‘Department of Energy defense nuclear facility’ has the meaning provided by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).”

§ 2286a. Mission and functions of Board

(a) Mission

The mission of the Board shall be to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities.

(b) Functions

The Board shall perform the following functions:

(1) Review and evaluation of standards

The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

(2) Investigations

(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be—

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

(3) Analysis of design and operational data

The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) Review of facility design and construction

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider, and specifically assess risk (whenever sufficient data exists), the technical and economic feasibility of implementing the recommended measures.

(c) Excluded functions

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

(Aug. 1, 1946, ch. 724, title I, §312, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2077; amended Pub. L. 102-190, div. C, title XXXII, §3202(b)(2), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 112-239, div. C, title XXXII, §3202(b)(1), Jan. 2, 2013, 126 Stat. 2218.)

AMENDMENTS

2013—Pub. L. 112-239, §3202(b)(1)(A), substituted “Mission and functions” for “Functions” in section catchline.

Subsec. (a). Pub. L. 112-239, §3202(b)(1)(C), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 112-239, §3202(b)(1)(B), (D)(i), redesignated subsec. (a) as (b) and substituted “Functions” for “In general” in heading. Former subsec. (b) redesignated (c).

Subsec. (b)(5). Pub. L. 112-239, §3202(b)(1)(D)(ii), inserted “, and specifically assess risk (whenever sufficient data exists),” after “shall consider”.

Subsec. (c). Pub. L. 112-239, §3202(b)(1)(B), redesignated subsec. (b) as (c).

1991—Pub. L. 102-190 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2286b. Powers of Board

(a) Hearings

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.