

(b) Phase 6.2 activities defined

In this section, the term “phase 6.2 activities” means, with respect to a lifetime extension program, the phase 6.2 feasibility study and option down-select.

(Pub. L. 107-314, div. D, title XLII, §4216, as added Pub. L. 112-239, div. C, title XXXI, §3141(a), Jan. 2, 2013, 126 Stat. 2193.)

§ 2537. Selected Acquisition Reports and independent cost estimates on life extension programs and new nuclear facilities**(a) Selected Acquisition Reports**

(1) At the end of each fiscal-year quarter, the Secretary of Energy, acting through the Administrator, shall submit to the congressional defense committees a report on each nuclear weapon system undergoing life extension. The reports shall be known as Selected Acquisition Reports for the weapon system concerned.

(2) The information contained in the Selected Acquisition Report for a fiscal-year quarter for a nuclear weapon system shall be the information contained in the Selected Acquisition Report for such fiscal-year quarter for a major defense acquisition program under section 2432 of title 10, expressed in terms of the nuclear weapon system.

(b) Independent cost estimates

(1) The Secretary, acting through the Administrator, shall submit to the congressional defense committees and the Nuclear Weapons Council established under section 179 of title 10 an independent cost estimate of the following:

(A) Each nuclear weapon system undergoing life extension at the completion of phase 6.2A, relating to design definition and cost study.

(B) Each nuclear weapon system undergoing life extension before initiation of phase 6.5, relating to first production.

(C) Each new nuclear facility within the nuclear security enterprise that is estimated to cost more than \$500,000,000 before such facility achieves critical decision 2 in the acquisition process.

(2) A cost estimate for purposes of this subsection may not be prepared by the Department of Energy or the Administration.

(c) Authority for further assessments

Upon the request of the Administrator, the Secretary of Defense, acting through the Director of Cost Assessment and Program Evaluation and in consultation with the Administrator, may conduct an independent cost assessment of any initiative or program of the Administration that is estimated to cost more than \$500,000,000.

(Pub. L. 107-314, div. D, title XLII, §4217, as added Pub. L. 112-239, div. C, title XXXI, §3162(a), Jan. 2, 2013, 126 Stat. 2204.)

§ 2538. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile**(a) Findings**

Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its

allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; 42 U.S.C. 2121 note)¹ from conducting underground nuclear tests “unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”.

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 42 U.S.C. 2121 note)¹ requires the Secretary of Energy to “establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.”.

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994¹ (Public Law 103-160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth “any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy”.

(6) President Clinton declared in July 1993 that “to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons”. This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 42 U.S.C. 2121 note)¹ also requires that the Secretary of Energy establish a “stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons”.

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear

¹ See References in Text note below.

testing, in the future they will provide, under the Department of Energy's stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 42 U.S.C. 7274o) requires that the directors of the national security laboratories and the nuclear weapons production facilities submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional defense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed "the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban".

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being "advised by the Nuclear Weapons Council, the Directors of DOE's national security laboratories, and the Commander of United States Strategic Command", to provide the President with the information regarding the certification referred to in paragraph (10).

(12) The Joint Nuclear Weapons Council established by section 179 of title 10 is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including "considering safety, security, and control issues for existing weapons". The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) Policy

(1) In general

It is the policy of the United States—

(A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and

(B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) Nuclear weapons stockpile

It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the national security laboratories and nuclear weapons production facilities.

(3) Sense of Congress

It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c), (d) Omitted

(e) Advice and opinions regarding nuclear weapons stockpile

In addition to a director of a national security laboratory or a nuclear weapons production facility (under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 42 U.S.C. 7274o)),¹ any member of the Joint Nuclear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) Expression of individual views

(1) In general

No individual, including representatives of the President, may take any action against, or otherwise constrain, a director of a national security laboratory or a nuclear weapons production facility, a member of the Nuclear Weapons Council established under section 179 of title 10, or the Commander of the United States Strategic Command from presenting the professional views of the director, member, or Commander, as the case may be, to the President, the National Security Council, or Congress regarding—

(A) the safety, security, reliability, or credibility of the nuclear weapons stockpile and nuclear forces; or

(B) the status of, and plans for, the capabilities and infrastructure that support and sustain the nuclear weapons stockpile and nuclear forces.

(2) Construction

Nothing in paragraph (1)(B) may be construed to affect the interagency budget process.

(g) Representative of the President defined

In this section, the term "representative of the President" means the following:

(1) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(2) Any member or official of the National Security Council.

(3) Any member or official of the Joint Chiefs of Staff.

(4) Any official of the Office of Management and Budget.

(Pub. L. 107-314, div. D, title XLII, § 4218, formerly Pub. L. 105-85, div. A, title XIII, § 1305, Nov. 18, 1997, 111 Stat. 1952, renumbered Pub. L. 107-314, div. D, title XLII, § 4218, and amended Pub. L. 112-239, div. C, title XXXI, § 3164(a), (b), Jan. 2, 2013, 126 Stat. 2206.)

REFERENCES IN TEXT

Section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377), referred to in subsec. (a)(3), which is set out as a note under section 2121 of Title 42, The Public Health and Welfare, was amended by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, and no longer contains the words “unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”. Those words were transferred to section 2530 of this title.

Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), referred to in subsec. (a)(4), was set out as a note under section 2121 of Title 42, The Public Health and Welfare, and was renumbered section 4207 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, which is classified to section 2527 of this title.

Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160), referred to in subsec. (a)(5) and (7), was amended by Pub. L. 105-85, div. C, title XXXI, § 3152(e)(1), Nov. 18, 1997, 111 Stat. 2042, to strike out subsec. (d) and subsequently renumbered section 4201 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(2), Nov. 24, 2003, 117 Stat. 1758, which is classified to section 2521 of this title.

Section 3159 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsecs. (a)(9) and (e), was classified to section 7274o of Title 42, The Public Health and Welfare, and was renumbered section 4213 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, which is classified to section 2533 of this title.

CODIFICATION

Section is comprised of section 4218 of Pub. L. 107-314. Subsecs. (c) and (d) of section 4218 of Pub. L. 107-314 amended section 2533 of this title.

Section was formerly classified to section 7274p of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 112-239.

AMENDMENTS

2013—Subsec. (a)(9). Pub. L. 112-239, § 3164(b)(1), (3), substituted “national security laboratories” for “nuclear weapons laboratories” and “nuclear weapons production facilities” for “nuclear weapons production plants”.

Subsec. (a)(11). Pub. L. 112-239, § 3164(b)(1), substituted “national security laboratories” for “nuclear weapons laboratories”.

Subsec. (b)(2). Pub. L. 112-239, § 3164(b)(1), (3), substituted “national security laboratories” for “nuclear weapons laboratories” and “nuclear weapons production facilities” for “nuclear weapons production plants”.

Subsec. (e). Pub. L. 112-239, § 3164(b)(2), (4), substituted “national security laboratory” for “nuclear weapons laboratory” and “nuclear weapons production facility” for “nuclear weapons production plant”.

Subsec. (f). Pub. L. 112-239, § 3164(a)(4), amended subsec. (f) generally. Prior to amendment, text read as follows: “A representative of the President may not take

any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.”

Subsec. (g). Pub. L. 112-239, § 3164(b)(5), amended subsec. (g) generally. Prior to amendment, subsec. (g) set out definitions.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production plants defined in this section, transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of this title.

PART B—TRITIUM

§ 2541. Tritium production program

(a) Establishment of program

The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons.

(b) Location of tritium production facility

The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.

(Pub. L. 107-314, div. D, title XLII, § 4231, formerly Pub. L. 104-106, div. C, title XXXI, § 3133, Feb. 10, 1996, 110 Stat. 618; renumbered Pub. L. 107-314, div. D, title XLII, § 4231, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(16), Nov. 24, 2003, 117 Stat. 1761; Pub. L. 112-239, div. C, title XXXI, § 3131(h), Jan. 2, 2013, 126 Stat. 2182.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2013—Pub. L. 112-239 amended section generally. Prior to amendment, section related to tritium production program.

2003—Subsec. (a)(1). Pub. L. 108-136, § 3141(e)(16)(D)(i), substituted “February 10, 1996” for “the date of the enactment of this Act”.

Subsec. (b). Pub. L. 108-136, § 3141(e)(16)(D)(ii), inserted “of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106)” after “section 3101”.

Subsecs. (d)(2)(B), (e). Pub. L. 108-136, § 3141(e)(16)(D)(i), substituted “February 10, 1996” for “the date of the enactment of this Act”.