

Pub. L. 111-84, §3118(a), substituted “\$10,000,000” for “\$5,000,000”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. C, title XXXI, §3118(b), Oct. 28, 2009, 123 Stat. 2709, provided that the amendment made by section 3118(b) is effective Sept. 30, 2010.

**§ 2742. Reprogramming**

**(a) In general**

Except as provided in subsection (b) and in sections 2750 and 2751 of this title, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

- (1) in amounts that exceed, in a fiscal year—
  - (A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or
  - (B) \$5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or
- (2) which has not been presented to, or requested of, Congress.

**(b) Exception where notice-and-wait given**

An action described in subsection (a) may be taken if—

- (1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and
- (2) a period of 30 days has elapsed after the date on which such committees receive the report.

**(c) Report**

The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

**(d) Computation of days**

In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

**(e) Limitations**

**(1) Total amount obligated**

In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

**(2) Prohibited items**

Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

(Pub. L. 107-314, div. D, title XLVII, §4702, formerly div. C, title XXXVI, §3621, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, §4702, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(D)(i), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

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

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, §3141(j)(2)(D)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to sections 2750 and 2751 of this title.

**§ 2743. Minor construction projects**

**(a) Authority**

Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

**(b) Annual report**

The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

**(c) Cost variation reports to congressional committees**

If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

**(d) Minor construction project defined**

In this section, the term “minor construction project” means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

(Pub. L. 107-314, div. D, title XLVII, §4703, formerly div. C, title XXXVI, §3622, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, §4703, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

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

NOTIFICATION

Pub. L. 111-84, div. C, title XXXI, §3118(c), Oct. 28, 2009, 123 Stat. 2709, as amended by Pub. L. 111-383, div. C, title XXXI, §3121(b), Jan. 7, 2011, 124 Stat. 4514, provided that: “Notwithstanding section 4703 of such Act [probably means section 4703 of Pub. L. 111-84] (50 U.S.C. 2743), in carrying out construction projects, the Secretary of Energy may not start a general plant project with a total estimated cost of more than \$5,000,000 until—

- “(1) the Secretary notifies the congressional defense committees [Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] of such project and total estimated cost; and
- “(2) a period of 15 days has elapsed after the date on which such notification is received.”

**§ 2743a. General plant projects**

Plant or construction projects for which amounts are made available under this and sub-

sequent appropriation Acts with a current estimated cost of less than \$10,000,000 are considered for purposes of section 2743 of this title as a plant project for which the approved total estimated cost does not exceed the minor construction threshold and for purposes of section 2744 of this title as a construction project with a current estimated cost of less than a minor construction threshold.

(Pub. L. 112-74, div. B, title III, §306, Dec. 23, 2011, 125 Stat. 877.)

#### REFERENCES IN TEXT

This Act, referred to in text, is div. B of Pub. L. 112-74, Dec. 23, 2011, 125 Stat. 852, known as the Energy and Water Development and Related Agencies Appropriations Act, 2012. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Atomic Energy Defense Act which comprises this chapter.

#### SIMILAR PROVISIONS

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

Pub. L. 111-8, div. C, title III, §310, Mar. 11, 2009, 123 Stat. 627.

### § 2744. Limits on construction projects

#### (a) Construction cost ceiling

Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

- (1) the amount authorized for the project; or
- (2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

#### (b) Exception where notice-and-wait given

An action described in subsection (a) may be taken if—

- (1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and
- (2) a period of 30 days has elapsed after the date on which the report is received by the committees.

#### (c) Computation of days

In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

#### (d) Exception for minor projects

Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

(Pub. L. 107-314, div. D, title XLVII, §4704, formerly div. C, title XXXVI, §3623, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, §4704, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1781.)

#### CODIFICATION

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

### § 2745. Fund transfer authority

#### (a) Transfer to other Federal agencies

The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

#### (b) Transfer within Department of Energy

##### (1) Transfers permitted

Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

##### (2) Maximum amounts

Not more than 5 percent of any such authorization may be transferred to another authorization under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

#### (c) Limitations

The authority provided by this subsection to transfer authorizations—

- (1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and
- (2) may not be used to provide funds for an item for which Congress has specifically denied funds.

#### (d) Notice to Congress

The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

(Pub. L. 107-314, div. D, title XLVII, §4705, formerly div. C, title XXXVI, §3624, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, §4705, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1781.)

#### CODIFICATION

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