

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.

**§ 2746. Conceptual and construction design****(a) Conceptual design****(1) Requirement**

Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

**(2) Requests for conceptual design funds**

If the estimated cost of completing a conceptual design for a construction project exceeds \$3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

**(3) Exceptions**

The requirement in paragraph (1) does not apply to a request for funds—

(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

(B) for emergency planning, design, and construction activities under section 2747 of this title.

**(b) Construction design****(1) Authority**

Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed \$600,000.

**(2) Limitation on availability of funds for certain projects**

If the total estimated cost for construction design in connection with any construction project exceeds \$600,000, funds for that design must be specifically authorized by law.

(Pub. L. 107–314, div. D, title XLVII, §4706, formerly div. C, title XXXVI, §3625, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, §4706, and amended Pub. L. 108–136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(ii), Nov. 24, 2003, 117 Stat. 1781.)

## CODIFICATION

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

## AMENDMENTS

2003—Subsec. (a)(3)(B). Pub. L. 108–136, §3141(j)(2)(D)(ii), made technical amendment to reference in original act which appears in text as reference to section 2747 of this title.

**§ 2747. Authority for emergency planning, design, and construction activities****(a) Authority**

The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for

advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

**(b) Limitation**

The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

**(c) Specific authority**

The requirement of section 2746(b)(2) of this title does not apply to emergency planning, design, and construction activities conducted under this section.

(Pub. L. 107–314, div. D, title XLVII, §4707, formerly div. C, title XXXVI, §3626, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, §4707, and amended Pub. L. 108–136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(iii), Nov. 24, 2003, 117 Stat. 1781.)

## CODIFICATION

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

## AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136, §3141(j)(2)(D)(iii), made technical amendment to reference in original act which appears in text as reference to section 2746(b)(2) of this title.

**§ 2748. Scope of authority to carry out plant projects**

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

(Pub. L. 107–314, div. D, title XLVII, §4708, formerly div. C, title XXXVI, §3627, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, §4708, 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 7386g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

**§ 2749. Availability of funds****(a) In general**

Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.