

DELEGATION OF AUTHORITY PURSUANT TO SECTION 1035 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

Memorandum of President of the United States, June 29, 2015, 80 F.R. 37921, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate to the Secretary of Defense the authority to fulfill the certification requirement specified in section 1035 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) [probably means section 495 of this title, as added by section 1035 of Pub. L. 112-239].

Any reference in this memorandum to section 1035 of the National Defense Authorization Act for Fiscal Year 2013 shall be deemed to be a reference to any future provision that is the same or substantially the same provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 496. Consideration of expansion of nuclear forces of other countries

(a) REPORT AND CERTIFICATION.—Not later than 60 days before the President recommends any reductions to the nuclear forces of the United States—

(1) the President shall transmit to the appropriate congressional committees a report detailing, for each country with nuclear weapons, the high-, medium-, and low- confidence assessment of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) with respect to—

(A) the number of each type of nuclear weapons possessed by such country;

(B) the modernization plans for such weapons of such country;

(C) the production capacity of nuclear warheads and strategic delivery systems (as defined in section 495(e)(2) of this title) of such country;

(D) the nuclear doctrine of such country; and

(E) the impact of such recommended reductions on the deterrence and extended deterrence capabilities of the United States; and

(2) the Commander of the United States Strategic Command shall certify to the appropriate congressional committees whether such recommended reductions in the nuclear forces of the United States will—

(A) impair the ability of the United States to address—

(i) unplanned strategic or geopolitical events; or

(ii) technical challenge; or

(B) degrade the deterrence or assurance provided by the United States to friends and allies of the United States.

(b) FORM.—The reports required by subsection (a)(1) shall be submitted in unclassified form, but may include a classified annex.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional defense committees.

(2) The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Added Pub. L. 112-239, div. A, title X, §1036(a), Jan. 2, 2013, 126 Stat. 1924; amended Pub. L. 113-291, div. A, title X, §1071(c)(10), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-291 substituted “(50 U.S.C. 3003(4))” for “(50 U.S.C. 401a(4))” in introductory provisions.

§ 497. Notification required for reduction, consolidation, or withdrawal of nuclear forces based in Europe

(a) NOTIFICATION.—Upon any decision to reduce, consolidate, or withdraw the nuclear forces of the United States that are based in Europe, the President shall transmit to the appropriate congressional committees a notification containing—

(1) justification for such reduction, consolidation, or withdrawal; and

(2) an assessment of how member states of the North Atlantic Treaty Organization, in light of such reduction, consolidation, or withdrawal, assess the credibility of the deterrence capability of the United States in support of its commitments undertaken pursuant to article 5 of the North Atlantic Treaty, signed at Washington, District of Columbia, on April 4, 1949, and entered into force on August 24, 1949 (63 Stat. 2241; TIAS 1964).

(b) PRIOR NOTIFICATION REQUIRED.—

(1) IN GENERAL.—The President shall transmit the notification required by subsection (a) by not later than 60 days before the date on which the President commences a reduction, consolidation, or withdrawal of the nuclear forces of the United States that are based in Europe described in such notification.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply to a reduction, consolidation, or withdrawal of nuclear weapons of the United States that are based in Europe made to ensure the safety, security, reliability, and credibility of such weapons.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committees on Armed Services of the House of Representatives and the Senate; and

(2) the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Added Pub. L. 112-239, div. A, title X, §1037(b)(1), Jan. 2, 2013, 126 Stat. 1926.)

§ 497a. Notification required for reduction or consolidation of dual-capable aircraft based in Europe

(a) NOTIFICATION.—Not less than 90 days before the date on which the Secretary of Defense reduces or consolidates the dual-capable aircraft of the United States that are based in Europe, the Secretary shall submit to the congressional defense committees a notification of such

planned reduction or consolidation, including the following:

(1) The reasons for such planned reduction or consolidation.

(2) Any effects of such planned reduction or consolidation on the extended deterrence mission of the United States.

(3) The manner in which the military requirements of the North Atlantic Treaty Organization (NATO) will continue to be met in light of such planned reduction or consolidation.

(4) A statement by the Secretary on the response of NATO to such planned reduction or consolidation.

(5) Whether there is any change in the force posture of the Russian Federation as a result of such planned reduction or consolidation, including with respect to the nonstrategic nuclear weapons of Russia that are within range of the member states of NATO.

(b) **DUAL-CAPABLE AIRCRAFT DEFINED.**—In this section, the term “dual-capable aircraft” means aircraft that can perform both conventional and nuclear missions.

(Added Pub. L. 113–66, div. A, title X, §1051(b)(1), Dec. 26, 2013, 127 Stat. 858.)

§ 498. Unilateral change in nuclear weapons stockpile of the United States

(a) **IN GENERAL.**—Other than pursuant to a treaty, if the President has under consideration to unilaterally change the size of the total stockpile of nuclear weapons of the United States by more than 25 percent, prior to doing so the President shall initiate a Nuclear Posture Review.

(b) **TERMS OF REFERENCE.**—Prior to the initiation of a Nuclear Posture Review under this section, the President shall determine the terms of reference for the Nuclear Posture Review, which the President shall provide to the congressional defense committees.

(c) **NUCLEAR POSTURE REVIEW.**—Upon completion of a Nuclear Posture Review under this section, the President shall submit the Nuclear Posture Review to the congressional defense committees prior to implementing any change in the nuclear weapons stockpile by more than 25 percent.

(d) **CONSTRUCTION.**—This section shall not apply to changes to the nuclear weapons stockpile resulting from treaty obligations.

(e) **FORM.**—A Nuclear Posture Review under this section shall be submitted in unclassified form, but may include a classified annex.

(Added Pub. L. 112–239, div. A, title X, §1038(a), Jan. 2, 2013, 126 Stat. 1927; amended Pub. L. 113–66, div. A, title X, §1091(a)(6), Dec. 26, 2013, 127 Stat. 875.)

AMENDMENTS

2013—Pub. L. 113–66 inserted a period after the enumerator in section catchline.

§ 499. Annual assessment of cyber resiliency of nuclear command and control system

(a) **IN GENERAL.**—Not less frequently than annually, the Commander of the United States

Strategic Command and the Commander of the United States Cyber Command (in this section referred to collectively as the “Commanders”) shall jointly conduct an assessment of the cyber resiliency of the nuclear command and control system.

(b) **ELEMENTS.**—In conducting the assessment required by subsection (a), the Commanders shall—

(1) conduct an assessment of the sufficiency and resiliency of the nuclear command and control system to operate through a cyber attack from the Russian Federation, the People’s Republic of China, or any other country or entity the Commanders identify as a potential threat; and

(2) develop recommendations for mitigating any concerns of the Commanders resulting from the assessment.

(c) **REPORT REQUIRED.**—(1) The Commanders shall jointly submit to the Chairman of the Joint Chiefs of Staff, for submission to the Council on Oversight of the National Leadership Command, Control, and Communications System established under section 171a of this title, a report on the assessment required by subsection (a) that includes the following:

(A) The recommendations developed under subsection (b)(2).

(B) A statement of the degree of confidence of each of the Commanders in the mission assurance of the nuclear deterrent against a top tier cyber threat.

(C) A detailed description of the approach used to conduct the assessment required by subsection (a) and the technical basis of conclusions reached in conducting that assessment.

(D) Any other comments of the Commanders.

(2) The Council shall submit to the Secretary of Defense the report required by paragraph (1) and any comments of the Council on the report.

(3) The Secretary of Defense shall submit to the congressional defense committees the report required by paragraph (1), any comments of the Council on the report under paragraph (2), and any comments of the Secretary on the report.

(d) **QUARTERLY BRIEFINGS.**—Not less than once every quarter, the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff shall jointly provide to the Committees on Armed Services of the House of Representatives and the Senate a briefing on any known or suspected critical intelligence parameter breaches that were identified during the previous quarter, including an assessment of any known or suspected impacts of such breaches to the mission effectiveness of military capabilities as of the date of the briefing or thereafter.

(e) **TERMINATION.**—The requirements of this section shall terminate on December 31, 2027.

(Added Pub. L. 115–91, div. A, title XVI, §1651(a), Dec. 12, 2017, 131 Stat. 1756.)

§ 499a. Collection, storage, and sharing of data relating to nuclear security enterprise and nuclear forces

(a) **IN GENERAL.**—The Secretary of Defense, acting through the Director of Cost Assessment