

§ 493. Reports to Congress on the modification of the force structure for the strategic nuclear weapons delivery systems of the United States

Whenever after December 31, 2011, the President proposes a modification of the force structure for the strategic nuclear weapons delivery systems of the United States, the President shall submit to Congress a report on the modification. The report shall include a description of the manner in which such modification will maintain for the United States a range of strategic nuclear weapons delivery systems appropriate for the current and anticipated threats faced by the United States when compared with the current force structure of strategic nuclear weapons delivery systems.

(Added and amended Pub. L. 112-239, div. A, title X, §1031(b)(3)(B), (C)(ii), Jan. 2, 2013, 126 Stat. 1918, 1919; Pub. L. 113-66, div. A, title X, §1091(b)(5), Dec. 26, 2013, 127 Stat. 876.)

CODIFICATION

The text of this section is based on Pub. L. 112-81, div. A, title X, §1077, Dec. 31, 2011, 125 Stat. 1596. Section 1077 of Pub. L. 112-81, formerly classified to section 2514 of Title 50, War and National Defense, was transferred to this section by Pub. L. 112-239, §1031(b)(3)(B)(i)-(iii).

AMENDMENTS

2013—Pub. L. 112-239, §1031(b)(3)(C)(ii), made technical amendments to conform section enumerator and catchline to the style of this title. See Codification note above.

Pub. L. 112-239, §1031(b)(3)(B)(iv), as amended by Pub. L. 113-66, §1091(b)(5), substituted “December 31, 2011,” for “the date of the enactment of this Act”.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(5) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112-239 as enacted.

§ 494. Nuclear force reductions

(a) IMPLEMENTATION OF NEW START TREATY.—

(1) SENSE OF CONGRESS.—It is the Sense of Congress that—

(A) the United States is committed to maintaining a safe, secure, reliable, and credible nuclear deterrent;

(B) the United States should undertake and support an enduring stockpile stewardship program and maintain and modernize nuclear weapons production capabilities and capacities to ensure the safety, security, reliability, and credibility of the United States nuclear deterrent and to meet requirements for hedging against possible international developments or technical problems;

(C) the United States should maintain nuclear weapons laboratories and plants and preserve the intellectual infrastructure, including competencies and skill sets; and

(D) the United States should provide the necessary resources to achieve these goals, using as a starting point the levels set forth in the President’s 10-year plan provided to Congress pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2549).

(2) INSUFFICIENT FUNDING.—

(A) REPORT.—During each year in which the New START Treaty is in force, if the President determines that an appropriations Act is enacted that fails to meet the resource levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2549) or if at any time determines that more resources are required to carry out such plan than were estimated, the President shall transmit to the appropriate congressional committees, within 60 days of making such a determination, a report detailing—

(i) a plan to address the resource shortfall;

(ii) if more resources are required to carry out the plan than were estimated—

(I) the proposed level of funding required; and

(II) an identification of the stockpile work, campaign, facility, site, asset, program, operation, activity, construction, or project for which additional funds are required;

(iii) any effects caused by the shortfall on the safety, security, reliability, or credibility of the nuclear forces of the United States;

(iv) whether and why, in light of the shortfall, remaining a party to the New START Treaty is still in the national interest of the United States; and

(v) a detailed explanation of why the modernization timelines established in the 2010 Nuclear Posture Review are no longer applicable.

(B) PRIOR NOTIFICATION.—If the President transmits a report under subparagraph (A), the President shall notify the appropriate congressional committees of any determination by the President to reduce the number of deployed nuclear warheads of the United States by not later than 60 days before taking any action to carry out such reduction.

(C) EXCEPTION.—The limitation in subparagraph (B) shall not apply to—

(i) reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to surveillance, assessment, certification, testing, and maintenance of nuclear warheads and strategic delivery systems; or

(ii) nuclear warheads that are retired or awaiting dismantlement on the date of the report under subparagraph (A).

(D) DEFINITIONS.—In this paragraph:

(i) The term “appropriate congressional committees” means—

(I) the congressional defense committees; and

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

(ii) The term “New START Treaty” means the Treaty between the United

States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.

(b) ANNUAL REPORT ON THE NUCLEAR WEAPONS STOCKPILE OF THE UNITED STATES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

- (A) sustained investments in the nuclear weapons stockpile and the nuclear security complex are needed to ensure a safe, secure, reliable, and credible nuclear deterrent; and
- (B) such investments could enable additional future reductions in the hedge stockpile.

(2) REPORT REQUIRED.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the nuclear weapons stockpile of the United States that includes the following:

(A) An accounting of the weapons in the stockpile as of the end of the fiscal year preceding the submission of the report that includes all weapons in the active and inactive stockpiles, both deployed and non-deployed, and all categories and readiness states of such weapons.

(B) The planned force levels for each category of nuclear weapon over the course of the future-years defense program submitted to Congress under section 221 of this title for the fiscal year following the fiscal year in which the report is submitted.

(c) NET ASSESSMENT OF NUCLEAR FORCE LEVELS REQUIRED WITH RESPECT TO CERTAIN PROPOSALS TO REDUCE THE NUCLEAR WEAPONS STOCKPILE OF THE UNITED STATES.—

(1) IN GENERAL.—If, during any year beginning after December 31, 2011, the President makes a proposal described in paragraph (2)—

(A) the Commander of United States Strategic Command shall conduct a net assessment of the current and proposed nuclear forces of the United States and of other countries that possess nuclear weapons to determine whether the nuclear forces of the United States are anticipated to be capable of meeting the objectives of the United States with respect to nuclear deterrence, extended deterrence, assurance of allies, and defense;

(B) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives the assessment described in subparagraph (A), unchanged, together with the explanatory views of the Secretary, as the Secretary deems appropriate; and

(C) the Administrator of the National Nuclear Security Administration shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the current capacities of the United States nuclear weapons infrastructure to respond to a strategic development or technical problem in the United States nuclear weapons stockpile.

(2) PROPOSAL DESCRIBED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a proposal described in this paragraph is a proposal to reduce the number of nuclear weapons in the active or inactive stockpiles of the United States to a level that is lower than the level on December 31, 2011.

(B) EXCEPTIONS.—A proposal described in this paragraph does not include—

- (i) reductions that are a direct result of activities associated with routine stockpile stewardship, including stockpile surveillance, logistics, or maintenance; or
- (ii) nuclear weapons retired or awaiting dismantlement on December 31, 2011.

(3) TERMINATION.—The requirement in paragraph (1) shall terminate on December 31, 2017.

(d) PREVENTION OF ASYMMETRY IN REDUCTIONS.—

(1) CERTIFICATION.—During any year in which the President recommends to reduce the number of nuclear weapons in the active and inactive stockpiles of the United States by a number that is greater than a de minimis reduction, the President shall certify in writing to the congressional defense committees whether such reductions will cause the number of nuclear weapons in such stockpiles to be fewer than the high-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 the number of nuclear weapons in the active and inactive stockpiles of the Russian Federation.

(2) NOTIFICATION.—If the President certifies under paragraph (1) that the recommended number of nuclear weapons in the active and inactive stockpiles of the United States is fewer than the high-confidence assessment of the intelligence community with respect to the number of nuclear weapons in the active and inactive stockpiles of the Russian Federation, the President shall transmit to the congressional defense committees a report by the Commander of the United States Strategic Command, without change, detailing whether the recommended reduction would create a strategic imbalance or degrade deterrence and extended deterrence between the total number of nuclear weapons of the United States and the total number of nuclear weapons of the Russian Federation. The President shall transmit such report by not later than 60 days before the date on which the President carries out any such recommended reductions.

(3) EXCEPTION.—The notification in paragraph (2) shall not apply to—

(A) reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to surveillance, assessment, certification, testing, and maintenance of nuclear warheads and strategic delivery systems; or

(B) nuclear warheads that are retired or awaiting dismantlement on the date of the certification under paragraph (1).

(4) ADDITIONAL VIEWS.—On the date on which the President transmits to the congressional defense committees a report by the Com-

mander of the United States Strategic Command under paragraph (2), the President may transmit to such committees a report by the President with respect to whether the recommended reductions covered by the report of the Commander will impact the deterrence or extended deterrence capabilities of the United States.

(Added and amended Pub. L. 112-239, div. A, title X, §§ 1033(b)(1), (2)(B), 1034, Jan. 2, 2013, 126 Stat. 1920-1922; Pub. L. 113-66, div. A, title X, § 1091(a)(7), Dec. 26, 2013, 127 Stat. 875; Pub. L. 113-291, div. A, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 115-91, div. A, title X, § 1081(a)(19), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 115-232, div. A, title X, § 1081(a)(5), Aug. 13, 2018, 132 Stat. 1983.)

REFERENCES IN TEXT

Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (a)(1)(D), (2)(A), is section 1251 of Pub. L. 111-84, which is set out as a note under section 2523 of Title 50, War and National Defense.

CODIFICATION

The text of this section is based on Pub. L. 112-81, div. A, title X, § 1045, Dec. 31, 2011, 125 Stat. 1577; Pub. L. 112-239, div. A, title X, § 1076(a)(19), Jan. 2, 2013, 126 Stat. 1949. Section 1045 of Pub. L. 112-81, formerly classified to section 2523b of Title 50, War and National Defense, was transferred to this section by Pub. L. 112-239, § 1033(b)(1)(A)-(C).

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115-232 substituted “March 1 of each year” for “March 1, 2012, and annually thereafter” in introductory provisions.

2017—Subsec. (b)(2)(B). Pub. L. 115-91 substituted “of this title” for “of title 10”.

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

2013—Pub. L. 112-239, § 1033(b)(2)(B), made technical amendments to conform section enumerator and catchline to the style of this title. See Codification note above.

Subsec. (a)(2). Pub. L. 112-239, § 1033(b)(1)(D), amended par. (2) generally. Prior to amendment, par. (2) related to a Presidential report to Congress regarding resource shortfalls.

Subsec. (c)(1), (2)(A), (B)(ii). Pub. L. 113-66 substituted “December 31, 2011” for “the date of the enactment of this Act”.

Subsec. (d). Pub. L. 112-239, § 1034, added subsec. (d).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title X, § 1033(b)(4), Jan. 2, 2013, 126 Stat. 1922, provided that: “The amendment made by paragraph (1)(D) [amending this section] shall take effect on October 1, 2012.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (b) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

REPORT ON IMPLEMENTATION OF THE NEW START TREATY

Pub. L. 114-92, div. A, title XII, § 1247, Nov. 25, 2015, 129 Stat. 1066, provided that:

“(a) REPORT.—

“(1) IN GENERAL.—During each year described in paragraph (2), the President shall transmit to the appropriate congressional committees a report explaining the reasons that the continued implementation of

the New START Treaty is in the national security interests of the United States.

“(2) YEAR DESCRIBED.—A year described in this paragraph is a year in which the President implements the New START Treaty and determines that any of the following circumstances apply:

“(A) The Russian Federation illegally occupies Ukrainian territory.

“(B) The Russian Federation is not respecting the sovereignty of all Ukrainian territory.

“(C) The Russian Federation is not in full compliance with the INF treaty.

“(D) The Russian Federation is not in compliance with the CFE Treaty and has not lifted its suspension of Russian observance of its treaty obligations.

“(E) The Russian Federation is not reducing its deployed strategic delivery vehicles.

“(b) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

“(2) CFE TREATY.—The term ‘CFE Treaty’ means the Treaty on Conventional Armed Forces in Europe, signed at Paris November 19, 1990, and entered into force July 17, 1992.

“(3) INF TREATY.—The term ‘INF Treaty’ means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, commonly referred to as the Intermediate-Range Nuclear Forces (INF) Treaty, signed at Washington December 8, 1987, and entered into force June 1, 1988.

“(4) NEW START TREATY.—The term ‘New START Treaty’ means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.”

[For delegation of functions vested in President by section 1247 of Pub. L. 114-92, set out above, see Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, set out below.]

RETENTION OF MISSILE SILOS

Pub. L. 113-291, div. A, title XVI, § 1644, Dec. 19, 2014, 128 Stat. 3651, provided that:

“(a) REQUIREMENT.—During the period in which the New START Treaty (as defined in section 494(a)(2)(D) of title 10, United States Code) is in effect, the Secretary of Defense shall preserve each intercontinental ballistic missile silo that contains a deployed missile as of the date of the enactment of this Act [Dec. 19, 2014] in, at minimum, a warm status that enables such silo to—

“(1) remain a fully functioning element of the interconnected and redundant command and control system of the missile field; and

“(2) be made fully operational with a deployed missile.

“(b) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to prohibit the Secretary of Defense from temporarily placing an intercontinental ballistic missile silo offline to perform maintenance activities.”

IMPLEMENTATION OF NEW START TREATY

Pub. L. 113-66, div. A, title X, § 1056(a)(2), (3), (f), Dec. 26, 2013, 127 Stat. 862-864, provided that:

“(a) IMPLEMENTATION.—

“(2) CONSOLIDATED BUDGET DISPLAY.—The Secretary [of Defense] shall include with the defense budget materials for each fiscal year specified in paragraph (3) a consolidated budget justification display that individually covers each program and activity associated with the implementation of the New START Treaty

for the period covered by the future-years defense program submitted under section 221 of title 10, United States Code, at or about the time as such defense budget materials are submitted.

“(3) FISCAL YEAR SPECIFIED.—A fiscal year specified in this paragraph is each fiscal year that occurs during the period beginning with fiscal year 2015 and ending on the date on which the New START Treaty is no longer in force.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘defense budget materials’ has the meaning given that term in section 231(f) of title 10, United States Code.

“(2) The term ‘New START Treaty’ means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.”

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees has the meaning given that term in section 101(a)(16) of this title, see section 3 of Pub. L. 112–81, Dec. 31, 2011, 125 Stat. 1316. See also note under section 101 of this title.

DELEGATION OF REPORTING FUNCTIONS SPECIFIED IN SECTION 1045 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012, AND CONDITION 9 OF THE RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE RUSSIAN FEDERATION ON THE MEASURES FOR THE FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE “NEW START TREATY”)

Memorandum of President of the United States, Mar. 16, 2012, 77 F.R. 16649, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Secretary of Energy

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 of the United States Code, I hereby delegate to the Secretaries of Defense and Energy the reporting functions conferred upon the President by section 1045 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) [see Codification note above], and by section (a)(9)(B) of the Resolution of Advice and Consent to Ratification of the New START Treaty. Subsection (a)(9)(B)(iv) of the Resolution shall be fulfilled in coordination with the Secretary of State.

The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DELEGATION OF AUTHORITY UNDER SECTION 1247 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, provided:

Memorandum for the Secretary of State

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 the functions and authorities vested in the President by section 1247 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) (the “Act”) to the Secretary of State.

Any reference in this memorandum to the Act shall be deemed to be a reference to any future act that is the same or substantially the same as such provision.

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

BARACK OBAMA.

§ 495. Strategic delivery systems

(a) ANNUAL CERTIFICATION.—The President shall annually certify in writing to the congress-

sional defense committees whether plans to modernize or replace strategic delivery systems are fully funded at levels equal to or more than the levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549), including plans regarding—

- (1) a heavy bomber and air-launched cruise missile;
- (2) an intercontinental ballistic missile;
- (3) a submarine-launched ballistic missile;
- (4) a ballistic missile submarine; and
- (5) maintaining the nuclear command and control system (as first reported under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576)).

(b) ADDITIONAL REPORT MATTERS FOLLOWING CERTAIN CERTIFICATIONS.—If in any year before fiscal year 2020 the President certifies under subsection (a) that plans to modernize or replace strategic delivery systems are not fully funded, the President shall include in the next annual report transmitted to Congress under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 the following:

(1) A determination of whether or not the lack of full funding will result in a loss of military capability when compared with the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010.

(2) If the determination under paragraph (1) is that the lack of full funding will result in a loss of military capability—

(A) a plan to preserve or retain the military capability that would otherwise be lost; or

(B) a report setting forth—

- (i) an assessment of the impact of the lack of full funding on the strategic delivery systems specified in subsection (a); and
- (ii) a description of the funding required to restore or maintain the capability.

(3) A certification by the President of whether or not the President is committed to accomplishing the modernization and replacement of strategic delivery systems and will meet the obligations concerning nuclear modernization as set forth in declaration 12 of the Resolution of Advice and Consent to Ratification of the New START Treaty.

(c) PRIOR NOTIFICATION.—Not later than 60 days before the date on which the President carries out any reduction to the number of strategic delivery systems, the President shall—

(1) make the certification under subsection (a) for the fiscal year for which the reductions are proposed to be carried out;

(2) transmit the additional report matters under subsection (b) for such fiscal year, if such additional report matters are so required; and

(3) certify to the congressional defense committees whether the Russian Federation is in compliance with its strategic arms control obligations with the United States and is not engaged in activity in violation of, or inconsistent with, such obligations.