

(or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 2121 of this title, the Secretary shall submit to the President and to such committees a report containing the recommendation and the Secretary's determination.

**(h) Imminent or severe threat**

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 2286a of this title relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (e).

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate. The President shall promptly notify such committees of his decision and the reasons for that decision.

**(i) Limitation**

Notwithstanding any other provision of this section, the requirements to make information available to the public under this section—

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 2167 and 2168 of this title to prohibit dissemination of certain information.

(Aug. 1, 1946, ch. 724, title I, §315, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2080; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 112-239, div. C, title XXXII, §3202(c), Jan. 2, 2013, 126 Stat. 2218.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239, §3202(c)(1)(B), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 112-239, §3202(c)(1)(A), (C), redesignated subsec. (a) as (b) and amended it generally. Prior to amendment, text read as follows: "Subject to subsections (g) and (h) of this section and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title, the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such

recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations." Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 112-239, §3202(c)(1)(A), (2)(A), redesignated subsec. (b) as (c) and substituted "subsection (b)" for "subsection (a)" in par. (1) and "subsection (i)" for "subsection (h)" in par. (2). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 112-239, §3202(c)(1)(A), (2)(B), redesignated subsec. (c) as (d) and substituted "subsection (b) or (c)" for "subsection (a) or (b)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 112-239, §3202(c)(1)(A), (2)(C), (F), redesignated subsec. (d) as (e) and substituted "subsection (c)(1)" for "subsection (b)(1)", "subsection (i)" for "subsection (h)", and "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 112-239, §3202(c)(1)(A), (2)(F), redesignated subsec. (e) as (f) and substituted "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 112-239, §3202(c)(2)(D)(i), (F), substituted "subsection (f)" for "subsection (e)" and "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives".

Subsec. (g)(2). Pub. L. 112-239, §3202(c)(2)(D)(ii), substituted "and to such committees" for " , to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives".

Subsec. (h). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 112-239, §3202(c)(2)(E)(i), substituted "through (e)" for "through (d)".

Subsec. (h)(3). Pub. L. 112-239, §3202(c)(2)(E)(ii), (F), substituted "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives" and struck out "and the Speaker" after "notify such committees".

Subsec. (i). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (h) as (i).

**§ 2286e. Reports**

**(a) Board report**

(1) The Board shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursu-

ant to section 1105(a) of title 31, a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of—

(A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

**(b) DOE report**

The Secretary of Energy shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning the activities of the Department of Energy under this subchapter during the year preceding the year in which the report is submitted.

(Aug. 1, 1946, ch. 724, title I, §316, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2082; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 112-239, div. C, title XXXII, §3202(d), Jan. 2, 2013, 126 Stat. 2220.)

AMENDMENTS

2013—Subsecs. (a)(1), (b). Pub. L. 112-239 substituted “Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate” for “Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives”.

CERTIFICATION OF BUDGET SUFFICIENCY

Pub. L. 115-91, div. C, title XXXII, §3201(b), Dec. 12, 2017, 131 Stat. 1908, provided that: “Not later than 10 days after the date on which the budget of the President for fiscal year 2019 or any fiscal year thereafter is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Defense Nuclear Facilities Safety Board shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a letter certifying that the requested budget is sufficient to carry out the mission of the Defense Nuclear Facilities Safety Board during the fiscal year covered by the budget request.”

REPORTING REQUIREMENTS

Pub. L. 100-456, div. A, title XIV, §1441(c), (d), Sept. 29, 1988, 102 Stat. 2084, provided that:

“(c) REQUIREMENTS FOR FIRST ANNUAL REPORT.—(1) Before submission of the first annual report by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)), the Board

shall conduct a study on whether nuclear facilities of the Department of Energy that are excluded from the definition of ‘Department of Energy defense nuclear facility’ in section 318(1)(C) of such Act [section 2286g(1)(C) of this title] (hereafter in this subsection referred to as ‘non-defense nuclear facilities’) should be subject to independent external oversight. The Board shall include in such first annual report the results of such study and the recommendation of the Board on whether non-defense nuclear facilities should be subject to independent external oversight.

“(2) If the Board recommends in the report that non-defense nuclear facilities should be subject to such oversight, the report shall include a discussion of alternative mechanisms for implementing such oversight, including mechanisms such as a separate executive agency and oversight as a part of the Board's responsibilities. The discussion of alternative mechanisms of oversight also shall include considerations of budgetary costs, protection of the security of sensitive nuclear weapons information, and the similarities and differences in the design, construction, operation, and decommissioning of defense and non-defense nuclear facilities of the Department of Energy.

“(d) REQUIREMENTS FOR FIFTH ANNUAL REPORT.—The fifth annual report submitted by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)) shall include—

“(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

“(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and

“(3) recommendations for appropriate transition requirements in the event that modifications are recommended.”

**§ 2286f. Judicial review**

Chapter 7 of title 5 shall apply to the activities of the Board under this subchapter.

(Aug. 1, 1946, ch. 724, title I, §317, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2083; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

**§ 2286g. “Department of Energy defense nuclear facility” defined**

As used in this subchapter, the term “Department of Energy defense nuclear facility” means any of the following:

(1) A production facility or utilization facility (as defined in section 2014 of this title) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of