

fense committees and the Nuclear Weapons Council the following:

(A) An independent cost estimate of the following:

(i) Each nuclear weapon system undergoing life extension at the completion of phase 6.2A, relating to design definition and cost study.

(ii) Each nuclear weapon system undergoing life extension at the completion of phase 6.3, relating to development engineering.

(iii) Each nuclear weapon system undergoing life extension at the completion of phase 6.4, relating to production engineering, and before the initiation of phase 6.5, relating to first production.

(iv) Each new nuclear facility within the nuclear security enterprise that is estimated to cost more than \$500,000,000 before such facility achieves critical decision 1 and before such facility achieves critical decision 2 in the acquisition process.

(v) Each nuclear weapons system undergoing a major alteration project (as defined in section 2753(a)(2) of this title).

(B) An independent cost review of each nuclear weapon system undergoing life extension at the completion of phase 6.2, relating to study of feasibility and down-select.

(2) Each independent cost estimate and independent cost review under paragraph (1) shall include—

(A) whether the cost baseline or the budget estimate for the period covered by the future-years nuclear security program has changed, and the rationale for any such change; and

(B) any views of the Secretary or the Administrator regarding such estimate or review.

(3) The Administrator shall review and consider the results of any independent cost estimate or independent cost review of a nuclear weapon system or a nuclear facility, as the case may be, under this subsection before entering the next phase of the development process of such system or the acquisition process of such facility.

(4) Except as otherwise specified in paragraph (1), each independent cost estimate or independent cost review of a nuclear weapon system or a nuclear facility under this subsection shall be submitted not later than 30 days after the date on which—

(A) in the case of a nuclear weapons system, such system completes a phase specified in such paragraph; or

(B) in the case of a nuclear facility, such facility achieves critical decision 1 as specified in subparagraph (A)(iv) of such paragraph.

(5) Each independent cost estimate or independent cost review submitted under this subsection shall be submitted in unclassified form, but may include a classified annex if necessary.

**(c) Authority for further assessments**

Upon the request of the Administrator, the Secretary of Defense, acting through the Director of Cost Assessment and Program Evaluation and in consultation with the Administrator, may conduct an independent cost assessment of

any initiative or program of the Administration that is estimated to cost more than \$500,000,000.

(Pub. L. 107-314, div. D, title XLII, §4217, as added Pub. L. 112-239, div. C, title XXXI, §3162(a), Jan. 2, 2013, 126 Stat. 2204; amended Pub. L. 113-66, div. C, title XXXI, §§3112(b), 3146(a)(2)(C), Dec. 26, 2013, 127 Stat. 1053, 1072; Pub. L. 113-291, div. C, title XXXI, §3114(a), (b), Dec. 19, 2014, 128 Stat. 3887, 3888; Pub. L. 114-92, div. C, title XXXI, §3113(b)(1), (2)(A), Nov. 25, 2015, 129 Stat. 1192; Pub. L. 115-91, div. C, title XXXI, §§3113, 3133(d), Dec. 12, 2017, 131 Stat. 1884, 1896.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-91, §3133(d)(1), substituted “the first quarter of each fiscal year” for “each fiscal-year quarter” and “and each major” for “or a major” and inserted “during the preceding fiscal year” after “2753(a)(2) of this title”.

Subsec. (a)(2). Pub. L. 115-91, §3133(d)(2), substituted “a fiscal year” for “a fiscal-year quarter” and “each fiscal-year quarter in that fiscal year” for “such fiscal-year quarter”.

Subsec. (b). Pub. L. 115-91, §3113, amended subsec. (b) generally. Prior to amendment, subsec. (b) related to independent cost estimates and reviews, consisting of three pars.

2015—Pub. L. 114-92, §3113(b)(2)(A), substituted “certain programs and facilities” for “life extension programs and new nuclear facilities” in section catchline.

Subsec. (a)(1). Pub. L. 114-92, §3113(b)(1)(A), inserted “or a major alteration project (as defined in section 2753(a)(2) of this title)” after “life extension”.

Subsec. (b)(1)(A)(iv). Pub. L. 114-92, §3113(b)(1)(B), added cl. (iv).

2014—Pub. L. 113-291, §3114(b)(1), substituted “estimates and reviews of” for “estimates on” in section catchline.

Subsec. (b). Pub. L. 113-291, §3114(b)(2)(A), inserted “and reviews” after “estimates” in heading.

Subsec. (b)(1). Pub. L. 113-291, §3114(a)(3), struck out “an independent cost estimate of” after “Nuclear Weapons Council” in introductory provisions.

Pub. L. 113-291, §3114(a)(1), (4), (5), inserted subpar. (A) designation and introductory provisions, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (b)(1)(A)(iii). Pub. L. 113-291, §3114(a)(2), substituted “critical decision 1 and before such facility achieves critical decision 2” for “critical decision 2”.

Subsec. (b)(2), (3). Pub. L. 113-291, §3114(b)(2)(B), inserted “or review” after “estimate”.

2013—Subsec. (b)(1). Pub. L. 113-66, §3146(a)(2)(C), struck out “established under section 179 of title 10” after “Council” in introductory provisions.

Subsec. (b)(2). Pub. L. 113-66, §3112(b)(1), substituted “submitted under this subsection before October 1, 2015,” for “for purposes of this subsection”.

Subsec. (b)(3). Pub. L. 113-66, §3112(b)(2), added par. (3).

**§ 2538. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile**

**(a) Policy**

**(1) In general**

It is the policy of the United States—

(A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and

(B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

**(2) Nuclear weapons stockpile**

It is in the security interest of the United States to sustain the United States nuclear

weapons stockpile through a program of stockpile stewardship, carried out at the national security laboratories and nuclear weapons production facilities.

**(3) Sense of Congress**

It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

**(b), (c) Omitted**

**(d) Advice and opinions regarding nuclear weapons stockpile**

In addition to a director of a national security laboratory or a nuclear weapons production facility under section 2533 of this title, any member of the Nuclear Weapons Council or the Commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

**(e) Expression of individual views**

**(1) In general**

No individual, including a representative of the President, may take any action against, or otherwise constrain, a director of a national security laboratory or a nuclear weapons production facility, a member of the Nuclear Weapons Council, or the Commander of the United States Strategic Command from presenting the professional views of the director, member, or Commander, as the case may be, to the President, the National Security Council, or Congress regarding—

(A) the safety, security, reliability, or credibility of the nuclear weapons stockpile and nuclear forces; or

(B) the status of, and plans for, the capabilities and infrastructure that support and sustain the nuclear weapons stockpile and nuclear forces.

**(2) Construction**

Nothing in paragraph (1)(B) may be construed to affect the interagency budget process.

**(f) Representative of the President defined**

In this section, the term “representative of the President” means the following:

(1) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(2) Any member or official of the National Security Council.

(3) Any member or official of the Joint Chiefs of Staff.

(4) Any official of the Office of Management and Budget.

(Pub. L. 107-314, div. D, title XLII, §4218, formerly Pub. L. 105-85, div. A, title XIII, §1305, Nov. 18, 1997, 111 Stat. 1952, renumbered Pub. L. 107-314, div. D, title XLII, §4218, and amended Pub. L. 112-239, div. C, title XXXI, §3164(a), (b), Jan. 2, 2013, 126 Stat. 2206; Pub. L. 113-66, div. C, title XXXI, §3146(a)(2)(D), (c)(10), Dec. 26, 2013, 127 Stat. 1072, 1075; Pub. L. 113-291, div. C, title XXXI, §3142(e), Dec. 19, 2014, 128 Stat. 3900.)

REFERENCES IN TEXT

Section 2533 of this title, referred to in subsec. (d), was in the original “section 4213”, meaning section 4213 of Pub. L. 107-314, which is classified principally to section 2533 of this title.

CODIFICATION

Section is comprised of section 4218 of Pub. L. 107-314. Subsecs. (b) and (c) of section 4218 of Pub. L. 107-314 amended section 2533 of this title.

Section was formerly classified to section 7274p of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 112-239.

AMENDMENTS

2014—Subsec. (d). Pub. L. 113-291, §3142(e)(1), substituted “Commander” for “commander”.

Subsec. (e)(1). Pub. L. 113-291, §3142(e)(2), substituted “a representative” for “representatives” in introductory provisions.

2013—Subsec. (a). Pub. L. 113-66, §3146(c)(10)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), which related to congressional findings concerning safety and reliability of the nuclear weapons stockpile.

Subsec. (a)(9). Pub. L. 112-239, §3164(b)(1), (3), substituted “national security laboratories” for “nuclear weapons laboratories” and “nuclear weapons production facilities” for “nuclear weapons production plants”.

Subsec. (a)(11). Pub. L. 112-239, §3164(b)(1), substituted “national security laboratories” for “nuclear weapons laboratories”.

Subsec. (b). Pub. L. 113-66, §3146(c)(10)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(2). Pub. L. 112-239, §3164(b)(1), (3), substituted “national security laboratories” for “nuclear weapons laboratories” and “nuclear weapons production facilities” for “nuclear weapons production plants”.

Subsec. (c). Pub. L. 113-66, §3146(c)(10)(B), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 113-66, §3146(c)(10)(B), (C), redesignated subsec. (e) as (d) and substituted “under section 2533 of this title” for “(under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 42 U.S.C. 7274o))”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 113-66, §3146(c)(10)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 113-66, §3146(a)(2)(D)(i), struck out “Joint” before “Nuclear Weapons Council”.

Pub. L. 112-239, §3164(b)(2), (4), substituted “national security laboratory” for “nuclear weapons laboratory” and “nuclear weapons production facility” for “nuclear weapons production plant”.

Subsec. (f). Pub. L. 113-66, §3146(c)(10)(B), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 112-239, §3164(a)(4), amended subsec. (f) generally. Prior to amendment, text read as follows: “A representative of the President may not take any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.”

Subsec. (f)(1). Pub. L. 113-66, §3146(a)(2)(D)(ii), struck out “established under section 179 of title 10” after “Nuclear Weapons Council” in introductory provisions.

Subsec. (g). Pub. L. 113-66, §3146(c)(10)(B), redesignated subsec. (g) as (f).

Pub. L. 112-239, §3164(b)(5), amended subsec. (g) generally. Prior to amendment, subsec. (g) set out definitions.

#### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production plants defined in this section, transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of this title.

### § 2538a. Plutonium pit production capacity

#### (a) Requirement

Consistent with the requirements of the Secretary of Defense, the Secretary of Energy shall ensure that the nuclear security enterprise—

- (1) during 2021, begins production of qualification plutonium pits;
- (2) during 2024, produces not less than 10 war reserve plutonium pits;
- (3) during 2025, produces not less than 20 war reserve plutonium pits;
- (4) during 2026, produces not less than 30 war reserve plutonium pits; and
- (5) during a pilot period of not less than 90 days during 2027 (subject to subsection (b)), demonstrates the capability to produce war reserve plutonium pits at a rate sufficient to produce 80 pits per year.

#### (b) Authorization of two-year delay of demonstration requirement

The Secretary of Energy and the Secretary of Defense may jointly delay, for not more than two years, the requirement under subsection

(a)(5) if—

- (1) the Secretary of Defense and the Secretary of Energy jointly submit to the congressional defense committees a report describing—
  - (A) the justification for the proposed delay;
  - (B) the effects of the proposed delay on stockpile stewardship and modernization, life extension programs, future stockpile strategy, and dismantlement efforts; and
  - (C) whether the proposed delay is consistent with national policy regarding creation of a responsive nuclear infrastructure; and

(2) the Commander of the United States Strategic Command submits to the congressional defense committees a report containing the assessment of the Commander with respect to the potential risks to national security of the proposed delay in meeting—

- (A) the nuclear deterrence requirements of the United States Strategic Command; and
- (B) national requirements related to creation of a responsive nuclear infrastructure.

#### (c) Annual certification

Not later than March 1, 2015, and each year thereafter through 2027 (or, if the authority under subsection (b) is exercised, 2029), the Secretary of Energy shall certify to the congressional defense committees and the Secretary of Defense that the programs and budget of the Secretary of Energy will enable the nuclear security enterprise to meet the requirements under subsection (a).

#### (d) Plan

If the Secretary of Energy does not make a certification under subsection (c) by March 1 of any year in which a certification is required under that subsection, by not later than May 1 of such year, the Chairman of the Nuclear Weapons Council shall submit to the congressional defense committees a plan to enable the nuclear security enterprise to meet the requirements under subsection (a). Such plan shall include identification of the resources of the Department of Energy that the Chairman determines should be redirected to support the plan to meet such requirements.

(Pub. L. 107-314, div. D, title XLII, §4219, as added Pub. L. 113-291, div. C, title XXXI, §3112(b)(1), Dec. 19, 2014, 128 Stat. 3886.)

### § 2538b. Stockpile responsiveness program

#### (a) Statement of policy

It is the policy of the United States to identify, sustain, enhance, integrate, and continually exercise all capabilities required to conceptualize, study, design, develop, engineer, certify, produce, and deploy nuclear weapons to ensure the nuclear deterrent of the United States remains safe, secure, reliable, credible, and responsive.

#### (b) Program required

The Secretary of Energy, acting through the Administrator and in consultation with the Secretary of Defense, shall carry out a stockpile responsiveness program, along with the stockpile stewardship program under section 2521 of this title and the stockpile management program under section 2524 of this title, to identify, sustain, enhance, integrate, and continually exercise all capabilities required to conceptualize, study, design, develop, engineer, certify, produce, and deploy nuclear weapons.

#### (c) Objectives

The program under subsection (b) shall have the following objectives:

- (1) Identify, sustain, enhance, integrate, and continually exercise all of the capabilities, infrastructure, tools, and technologies across the science, engineering, design, certification,