

tivities” and “defense environmental cleanup funds” for “defense environmental management funds”.

Subsec. (e)(2). Pub. L. 113-66, §3146(h)(2)(C)(ii), substituted “‘defense environmental cleanup funds’” for “‘defense environmental management funds’” and “‘defense environmental cleanup activities’” for “‘environmental restoration and waste management activities’”.

2003—Subsec. (c). Pub. L. 108-136, §3141(j)(2)(D)(iv), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2751. Transfer of weapons activities funds

(a) Transfer authority for weapons activities funds

The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) Limitations

(1) Number of transfers

Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) Amounts transferred

The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) Determination required

A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

- (A) is necessary to address a risk to health, safety, or the environment; or
- (B) will result in cost savings and efficiencies.

(4) Limitation

A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) Impermissible uses

Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) Exemption from reprogramming requirements

The requirements of section 2742 of this title shall not apply to transfers of funds pursuant to subsection (a).

(d) Notification

The Secretary, acting through the Administrator, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) Definitions

In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national

security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.

(2) The term “weapons activities funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

(Pub. L. 107-314, div. D, title XLVII, §4711, formerly div. C, title XXXVI, §3630, Dec. 2, 2002, 116 Stat. 2761; renumbered div. D, title XLVII, §4711, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), (D)(v), Nov. 24, 2003, 117 Stat. 1781; Pub. L. 113-66, div. C, title XXXI, §3146(h)(3), Dec. 26, 2013, 127 Stat. 1081.)

CODIFICATION

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

AMENDMENTS

2013—Subsec. (d). Pub. L. 113-66 struck out “for Nuclear Security” after “Administrator”.

2003—Subsec. (c). Pub. L. 108-136, §3141(j)(2)(D)(v), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2752. Funds available for all national security programs of the Department of Energy

Subject to the provisions of appropriation Acts and section 2742 of this title, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

(Pub. L. 107-314, div. D, title XLVII, §4712, formerly div. C, title XXXVI, §3631, Dec. 2, 2002, 116 Stat. 2762; renumbered div. D, title XLVII, §4712, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), (D)(vi), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

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

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(2)(D)(vi), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2753. Notification of cost overruns for certain Department of Energy projects

(a) Establishment of cost and schedule baselines

(1) Stockpile life extension projects

(A) In general

The Administrator shall establish a cost and schedule baseline for each nuclear stockpile life extension project of the Administration. In addition to the requirement under subparagraph (B), the cost and schedule baseline of a nuclear stockpile life extension project established under this subparagraph shall be the cost and schedule as de-

scribed in the first Selected Acquisition Report submitted under section 2537(a) of this title for the project.

(B) Per unit cost

The cost baseline developed under subparagraph (A) shall include, with respect to each life extension project, an estimated cost for each warhead in the project.

(C) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

(2) Major alteration projects

(A) In general

The Administrator shall establish a cost and schedule baseline for each major alteration project.

(B) Per unit cost

The cost baseline developed under subparagraph (A) shall include, with respect to each major alteration project, an estimated cost for each warhead in the project.

(C) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

(D) Major alteration project defined

In this paragraph, the term “major alteration project” means a nuclear weapon system alteration project of the Administration the cost of which exceeds \$750,000,000.

(3) Defense-funded construction projects

(A) In general

The Secretary of Energy shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each construction project that is—

- (i) in excess of \$50,000,000; and
- (ii) carried out by the Department using funds authorized to be appropriated for a fiscal year pursuant to a DOE national security authorization.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(4) Defense environmental cleanup projects

(A) In general

The Secretary shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each defense environmental cleanup project that is—

- (i) in excess of \$50,000,000; and

(ii) carried out by the Department pursuant to such protocols.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(b) Notification of costs exceeding baseline

The Administrator or the Secretary, as applicable, shall notify the congressional defense committees not later than 30 days after determining that—

(1) the total cost for a project referred to in paragraph (1), (2), (3), or (4) of subsection (a) will exceed an amount that is equal to 125 percent of the cost baseline established under subsection (a) for that project; and

(2) in the case of a stockpile life extension project referred to in subsection (a)(1) or a major alteration project referred to in subsection (a)(2), the cost for any warhead in the project will exceed an amount that is equal to 150 percent of the cost baseline established under subsection (a)(1)(B) or (a)(2)(B), as applicable, for each warhead in that project.

(c) Notification of determination with respect to termination or continuation of projects and root cause analyses

Not later than 90 days after submitting a notification under subsection (b) with respect to a project, the Administrator or the Secretary, as applicable, shall—

(1) notify the congressional defense committees with respect to whether the project will be terminated or continued;

(2) if the project will be continued, certify to the congressional defense committees that—

(A) a revised cost and schedule baseline has been established for the project and, in the case of a stockpile life extension project referred to in subparagraph (A) or (B) of subsection (a)(1) or a major alteration project referred to in subsection (a)(2), a revised estimate of the cost for each warhead in the project has been made;

(B) the continuation of the project is necessary to the mission of the Department of Energy and there is no alternative to the project that would meet the requirements of that mission; and

(C) a management structure is in place adequate to manage and control the cost and schedule of the project; and

(3) submit to the congressional defense committees an assessment of the root cause or causes of the growth in the total cost of the project, including the contribution of any shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(A) unrealistic performance expectations;

(B) unrealistic baseline estimates for cost or schedule;

(C) immature technologies or excessive manufacturing or integration risk;

(D) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

- (E) changes in procurement quantities;
- (F) inadequate program funding or funding instability;
- (G) poor performance by personnel of the Federal Government or contractor personnel responsible for program management; or
- (H) any other matters.

(d) Applicability of requirements to revised cost and schedule baselines

A revised cost and schedule baseline established under subsection (c) shall—

- (1) be submitted to the congressional defense committees with the certification submitted under subsection (c)(2); and
- (2) be subject to the notification requirements of subsections (b) and (c) in the same manner and to the same extent as a cost and schedule baseline established under subsection (a).

(Pub. L. 107–314, div. D, title XLVII, §4713, as added Pub. L. 111–383, div. C, title XXXI, §3114(a), Jan. 7, 2011, 124 Stat. 4510; amended Pub. L. 112–239, div. C, title XXXI, §3131(t), Jan. 2, 2013, 126 Stat. 2184; Pub. L. 113–66, div. C, title XXXI, §3146(h)(4), Dec. 26, 2013, 127 Stat. 1081; Pub. L. 113–291, div. C, title XXXI, §3115, Dec. 19, 2014, 128 Stat. 3888; Pub. L. 114–92, div. C, title XXXI, §§3113(a), 3114, Nov. 25, 2015, 129 Stat. 1191, 1193.)

AMENDMENTS

2015—Subsec. (a)(2) to (4). Pub. L. 114–92, §3113(a)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b)(1). Pub. L. 114–92, §3113(a)(2)(A)(i), substituted “(3), or (4)” for “or (3)”.

Subsec. (b)(2). Pub. L. 114–92, §3113(a)(2)(A)(ii)(II), which directed the insertion of “or (a)(2)(B), as applicable,” was executed by making the insertion after “subsection (a)(1)(B)” to reflect the probable intent of Congress.

Pub. L. 114–92, §3113(a)(2)(A)(ii)(I), inserted “or a major alteration project referred to in subsection (a)(2)” after “subsection (a)(1)”.

Subsec. (c). Pub. L. 114–92, §3114(1), inserted “and root cause analyses” after “projects” in heading.

Subsec. (c)(2)(A). Pub. L. 114–92, §3113(a)(2)(B), inserted “or a major alteration project referred to in subsection (a)(2)” after “subsection (a)(1)”.

Subsec. (c)(3). Pub. L. 114–92, §3114(2)–(4), added par. (3).

2014—Subsec. (a)(1)(A). Pub. L. 113–291, §3115(1), inserted at end “In addition to the requirement under subparagraph (B), the cost and schedule baseline of a nuclear stockpile life extension project established under this subparagraph shall be the cost and schedule as described in the first Selected Acquisition Report submitted under section 2537(a) of this title for the project.”

Subsec. (b)(2). Pub. L. 113–291, §3115(2), substituted “150” for “200”.

2013—Subsec. (a)(1)(A). Pub. L. 112–239 struck out “for Nuclear Security” after “Administrator” and struck out “National Nuclear Security” after “life extension project of the”.

Subsec. (a)(3). Pub. L. 113–66, §3146(h)(4)(A), substituted “cleanup” for “management” in heading.

Subsec. (a)(3)(A). Pub. L. 113–66, §3146(h)(4)(B), substituted “environmental cleanup” for “environmental management” in introductory provisions.

§ 2754. Life-cycle cost estimates of certain atomic energy defense capital assets

(a) In general

The Secretary of Energy shall ensure that an independent life-cycle cost estimate under De-

partment of Energy Order 413.3 (relating to program management and project management for the acquisition of capital assets) of each capital asset described in subsection (b) is conducted before the asset achieves critical decision 2 in the acquisition process.

(b) Capital assets described

A capital asset described in this subsection is an atomic energy defense capital asset—

- (1) the total project cost of which exceeds \$100,000,000; and
- (2) the purpose of which is to perform a limited-life, single-purpose mission.

(c) Independent defined

For purposes of subsection (a), the term “independent”, with respect to a life-cycle cost estimate of a capital asset, means that the life-cycle cost estimate is prepared by an organization independent of the project sponsor, using the same detailed technical and procurement information as the sponsor, to determine if the life-cycle cost estimate of the sponsor is accurate and reasonable.

(Pub. L. 107–314, div. D, title XLVII, §4714, as added Pub. L. 113–291, div. C, title XXXI, §3113(a), Dec. 19, 2014, 128 Stat. 3887.)

USE OF BEST PRACTICES FOR CAPITAL ASSET PROJECTS AND NUCLEAR WEAPON LIFE EXTENSION PROGRAMS

Pub. L. 114–92, div. C, title XXXI, §3117, Nov. 25, 2015, 129 Stat. 1195, provided that:

“(a) ANALYSES OF ALTERNATIVES.—Not later than 30 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Energy, in coordination with the Administrator for Nuclear Security, shall ensure that analyses of alternatives are conducted (including through contractors, as appropriate) in accordance with best practices for capital asset projects and life extension programs of the National Nuclear Security Administration and capital asset projects relating to defense environmental management.

“(b) COST ESTIMATES.—Not later than 30 days after the date of the enactment of this Act, the Secretary, in coordination with the Administrator, shall develop cost estimates in accordance with cost estimating best practices for capital asset projects and life extension programs of the National Nuclear Security Administration and capital asset projects relating to defense environmental management.

“(c) REVISIONS TO DEPARTMENTAL PROJECT MANAGEMENT ORDER AND NUCLEAR WEAPON LIFE EXTENSION REQUIREMENTS.—As soon as practicable after the date of the enactment of this Act [Nov. 25, 2015], but not later than two years after such date of enactment, the Secretary shall revise—

- (1) the capital asset project management order of the Department of Energy to require the use of best practices for preparing cost estimates and for conducting analyses of alternatives for National Nuclear Security Administration and defense environmental management capital asset projects; and

- (2) the nuclear weapon life extension program procedures of the Department to require the use of [sic] best practices for preparing cost estimates and conducting analyses of alternatives for National Nuclear Security Administration life extension programs.”

§ 2755. Matters relating to critical decisions

(a) Post-critical decision 2 changes

After the date on which a plant project specifically authorized by law and carried out under Department of Energy Order 413.3B (relating to