

- (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

program management and project management for the acquisition of capital assets), or a successor order, achieves critical decision 2, the Administrator may not change the requirements for such project if such change increases the cost of such project by more than the lesser of \$5,000,000 or 15 percent, unless—

(1) the Administrator submits to the congressional defense committees—

(A) a certification that the Administrator, without delegation, authorizes such proposed change; and

(B) a cost-benefit and risk analysis of such proposed change, including with respect to—

(i) the effects of such proposed change on the project cost and schedule; and

(ii) any mission risks and operational risks from making such change or not making such change; and

(2) a period of 15 days elapses following the date of such submission.

(b) Review and approval

The Administrator shall ensure that critical decision packages are timely reviewed and either approved or disapproved.

(Pub. L. 107–314, div. D, title XLVII, §4715, as added Pub. L. 115–91, div. C, title XXXI, §3111(d)(1), Dec. 12, 2017, 131 Stat. 1882.)

§ 2756. Unfunded priorities of the National Nuclear Security Administration

(a) Annual report

Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105(a) of title 31, the Administrator shall submit to the Secretary of Energy and the congressional defense committees a report on the unfunded priorities of the Administration.

(b) Elements

(1) In general

Each report required by subsection (a) shall specify, for each unfunded priority covered by the report, the following:

(A) A summary description of that priority, including the objectives to be achieved if that priority is funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

(C) Account information with respect to that priority.

(2) Prioritization of priorities

Each report required by subsection (a) shall present the unfunded priorities covered by the report in order of urgency of priority.

(c) Limitation

If the Administrator fails to submit to the congressional defense committees a report required by subsection (a) for any of fiscal years 2020 through 2024 that includes the matters specified in subsection (b)(1) for at least one unfunded priority by the deadline specified in subsection (a), not more than 65 percent of the funds authorized to be appropriated or otherwise

made available for the fiscal year in which such failure occurs for travel and transportation of persons under the Federal salaries and expenses account of the Administration may be obligated or expended until the date on which the Administrator submits such report.

(d) Unfunded priority defined

In this section, the term “unfunded priority”, in the case of a fiscal year, means a program, activity, or mission requirement that—

(1) is not funded in the budget of the President for that fiscal year as submitted to Congress pursuant to section 1105(a) of title 31;

(2) is necessary to fulfill a requirement associated with the mission of the Administration; and

(3) would have been recommended for funding through the budget referred to in paragraph (1) by the Administrator—

(A) if additional resources were available for the budget to fund the program, activity, or mission requirement; or

(B) in the case of a program, activity, or mission requirement that emerged after the budget was formulated, if the program, activity, or mission requirement had emerged before the budget was formulated.

(Pub. L. 107–314, div. D, title XLVII, §4716, as added Pub. L. 115–91, div. C, title XXXI, §3132(a), Dec. 12, 2017, 131 Stat. 1895; Pub. L. 115–232, div. C, title XXXI, §3124, Aug. 13, 2018, 132 Stat. 2297.)

AMENDMENTS

2018—Subsecs. (c), (d). Pub. L. 115–232 added subsec. (c) and redesignated former subsec. (c) as (d).

PART B—PENALTIES

§ 2761. Restriction on use of funds to pay penalties under environmental laws

(a) Restriction

Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) Exception

Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

(Pub. L. 107–314, div. D, title XLVII, §4721, formerly Pub. L. 99–661, div. C, title I, §3132, Nov. 14, 1986, 100 Stat. 4063; renumbered Pub. L. 107–314, div. D, title XLVII, §4721, and amended Pub. L. 108–136, div. C, title XXXI, §3141(j)(4), Nov. 24, 2003, 117 Stat. 1781; Pub. L. 113–66, div. C, title XXXI, §3146(h)(5), Dec. 26, 2013, 127 Stat. 1081.)