

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.)

## CODIFICATION

Section was formerly classified to section 7273a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

## AMENDMENTS

2013—Subsec. (b)(2). Pub. L. 113-66 substituted “Congress” for “the Congress”.

2003—Pub. L. 108-136, §3141(j)(4)(D), made technical amendment to section catchline.

**§ 2762. Restriction on use of funds to pay penalties under Clean Air Act**

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540; 94 Stat. 3197) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if—

(1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance; or

(2) the President has specifically requested appropriations for compliance and Congress has failed to appropriate funds for such purpose.

(Pub. L. 107-314, div. D, title XLVII, §4722, formerly Pub. L. 96-540, title II, §211, Dec. 17, 1980, 94 Stat. 3203; renumbered Pub. L. 107-314, div. D, title XLVII, §4722, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(5), Nov. 24, 2003, 117 Stat. 1781; Pub. L. 113-66, div. C, title XXXI, §3146(h)(6), Dec. 26, 2013, 127 Stat. 1081; Pub. L. 113-291, div. C, title XXXI, §3142(r), Dec. 19, 2014, 128 Stat. 3901.)

## REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, referred to in text, is Pub. L. 96-540, Dec. 17, 1980, 94 Stat. 3197, which insofar as classified to the Code, enacted this section and section 2513 of this title.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

## CODIFICATION

Section was formerly classified to section 7273 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §211, Dec. 29, 1979, 93 Stat. 1264.

## AMENDMENTS

2014—Pub. L. 113-291 substituted “Department of Energy if—” for “Department of Energy if” before par. (1) designation and “; or” for “, or” at end of par. (1) and realigned margins of pars. (1) and (2).

2013—Pub. L. 113-66 inserted “; 94 Stat. 3197” after “Public Law 96-540” and substituted “Congress” for “the Congress”.

2003—Pub. L. 108-136, §3141(j)(5)(C), made technical amendment to section catchline and substituted “the Department of Energy National Security and Military

Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act” for “this or any other Act” in text.

## PART C—OTHER MATTERS

**§ 2771. Repealed. Pub. L. 112-239, div. C, title XXXI, § 3131(u)(1), Jan. 2, 2013, 126 Stat. 2184**

Section, Pub. L. 107-314, div. D, title XLVII, §4731, formerly Pub. L. 95-509, title II, §208, Oct. 24, 1978, 92 Stat. 1779; renumbered Pub. L. 107-314, div. D, title XLVII, §4731, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(7), Nov. 24, 2003, 117 Stat. 1782, provided that the Secretary was to submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorization of appropriations for common defense and security programs.

**§ 2772. Quarterly reports on financial balances for atomic energy defense activities**

**(a) Reports required**

Not later than 15 days after the end of each fiscal year quarter, the Secretary of Energy shall submit to the congressional defense committees a report on the financial balances for each atomic energy defense program at the budget control levels used in the report accompanying the most current Act appropriating funds for energy and water development.

**(b) Elements**

Each report under subsection (a) shall set forth, for each program covered by such report, the following as of the end of the fiscal year quarter covered by such report:

(1) The total amount authorized to be appropriated, including amounts authorized to be appropriated in the current fiscal year and amounts authorized to be appropriated for prior fiscal years.

(2) The amount unobligated.

(3) The amount unobligated but committed.

(4) The amount obligated but uncosted.

**(c) Presentation**

Each report under subsection (a) shall present information as follows:

(1) For each program, in summary form and by fiscal year.

(2) With financial balances in connection with funding under recurring DOE national security authorizations (as that term is defined in section 2741(1)) of this title presented separately from balances in connection with funding under any other provisions of law.

(Pub. L. 107-314, div. D, title XLVII, §4732, as added Pub. L. 112-239, div. C, title XXXI, §3143(a), Jan. 2, 2013, 126 Stat. 2196.)

**§ 2773. Independent acquisition project reviews of capital assets acquisition projects**

**(a) Reviews**

The appropriate head shall ensure that an independent entity conducts reviews of each capital assets acquisition project as the project moves toward the approval of each of critical decision 0, critical decision 1, and critical decision 2 in the acquisition process.

**(b) Pre-critical decision 1 reviews**

In addition to any other matters, with respect to each review of a capital assets acquisition