

## 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.

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## 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

project under subsection (a) that has not reached critical decision 1 approval in the acquisition process, such review shall include—

- (1) a review using best practices of the analysis of alternatives for the project; and
- (2) identification of any deficiencies in such analysis of alternatives for the appropriate head to address.

**(c) Independent entities**

The appropriate head shall ensure that each review of a capital assets acquisition project under subsection (a) is conducted by an independent entity with the appropriate expertise with respect to the project and the stage in the acquisition process of the project.

**(d) Definitions**

In this section:

(1) The term “acquisition process” means the acquisition process for a project, as defined in Department of Energy Order 413.3B (relating to project management and project management for the acquisition of capital assets), or a successor order.

(2) The term “appropriate head” means—

(A) the Administrator, with respect to capital assets acquisition projects of the Administration; and

(B) the Assistant Secretary of Energy for Environmental Management, with respect to capital assets acquisition projects of the Office of Environmental Management.

(3) The term “capital assets acquisition project” means a project—

(A) the total project cost of which is more than \$500,000,000; and

(B) that is covered by Department of Energy Order 413.3, or a successor order, for the acquisition of capital assets for atomic energy defense activities.

(Pub. L. 107-314, div. D, title XLVII, §4733, as added Pub. L. 114-328, div. C, title XXXI, §3111(a), Dec. 23, 2016, 130 Stat. 2755.)

SUBCHAPTER VIII—ADMINISTRATIVE MATTERS

PART A—CONTRACTS

**§ 2781. Costs not allowed under covered contracts**

**(a) In general**

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

**(b) Regulations; costs of information provided to Congress or State legislatures and related costs**

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.

(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:

(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.

(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

**(c) “Covered contract” defined**

In this section, “covered contract” means a contract for an amount more than \$100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

**(d) Effective date**

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(Pub. L. 107-314, div. D, title XLVIII, §4801, formerly Pub. L. 99-145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title I, §3131(a), Dec. 4, 1987, 101 Stat. 1238; renumbered Pub. L. 107-314, div. D, title XLVIII, §4801, and amended Pub. L. 108-136, div. C, title XXXI, §3141(k)(2), Nov. 24, 2003, 117 Stat. 1783; Pub. L. 113-66, div. C, title XXXI, §3146(i)(1), Dec. 26, 2013, 127 Stat. 1081.)