

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.)

## CODIFICATION

Section was formerly classified to section 7256a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

## AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 113-66 substituted “section 1707 of title 41” for “section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b)”.

2003—Pub. L. 108-136, §3141(k)(2)(D)(i), made technical amendment to section catchline.

Subsec. (b)(1). Pub. L. 108-136, §3141(k)(2)(D)(ii), substituted “November 8, 1985,” for “the date of the enactment of this Act,” in the original, which for purposes of codification had been changed to “November 8, 1985,” thus requiring no change in text.

1987—Subsec. (b). Pub. L. 100-180 designated existing provisions as par. (1) and added par. (2).

## REGULATIONS

Pub. L. 100-180, div. C, title I, §3131(b), Dec. 4, 1987, 101 Stat. 1239, provided that: “Regulations to implement paragraph (2) of section 1534(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (as added by subsection (a)) [50 U.S.C. 2781(b)(2)] shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987]. Such regulations shall apply as if included in the original regulations prescribed under such section.”

### § 2782. Prohibition and report on bonuses to contractors operating defense nuclear facilities

#### (a) Prohibition

The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor’s compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor’s qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.

#### (b) Regulations

The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.

(Pub. L. 107-314, div. D, title XLVIII, §4802, formerly Pub. L. 101-189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682; renumbered Pub. L. 107-314, div. D, title XLVIII, §4802, and amended Pub. L. 108-136, div. C, title XXXI, §3141(k)(3), Nov. 24, 2003, 117 Stat. 1783; Pub. L. 112-239, div. C, title XXXI, §3131(v), Jan. 2, 2013, 126 Stat. 2184; Pub. L. 113-66, div. C, title XXXI, §3146(a)(2)(J), Dec. 26, 2013, 127 Stat. 1073.)

## CODIFICATION

Section was formerly classified to section 7256b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

## AMENDMENTS

2013—Subsecs. (b), (c). Pub. L. 113-66 redesignated subsec. (c) as (b) and struck out former subsec. (b) which defined “Department of Energy defense nuclear facility”.

Pub. L. 112-239 redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to a report on Rocky Flats bonuses.

Subsec. (d). Pub. L. 112-239, §3131(v)(3), redesignated subsec. (d) as (c).

2003—Pub. L. 108-136, §3141(k)(3)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108-136, §3141(k)(3)(D)(ii), substituted “November 29, 1989” for “the date of the enactment of this Act” in the original, which for purposes of codification had been changed to “November 29, 1989” thus requiring no change in text.

Subsec. (b). Pub. L. 108-136, §3141(k)(3)(D)(iii), substituted “May 29, 1990,” for “6 months after November 29, 1989,”.

Subsec. (d). Pub. L. 108-136, §3141(k)(3)(D)(iv), substituted “March 1, 1990” for “90 days after November 29, 1989”.

### § 2782a. Assessments of emergency preparedness of defense nuclear facilities

The Secretary of Energy shall include, in each award-fee evaluation conducted under section 16.401 of title 48, Code of Federal Regulations, of a management and operating contract for a Department of Energy defense nuclear facility in 2016 or any even-numbered year thereafter, an assessment of the adequacy of the emergency preparedness of that facility, including an assessment of the seniority level of management and operating contractor employees that participate in emergency preparedness exercises at that facility.

(Pub. L. 107-314, div. D, title XLVIII, §4802A, as added Pub. L. 114-92, div. C, title XXXI, §3134(a), Nov. 25, 2015, 129 Stat. 1207.)

### § 2783. Contractor liability for injury or loss of property arising out of atomic weapons testing programs

#### (a) Short title

This section may be cited as the “Atomic Testing Liability Act”.

#### (b) Federal remedies applicable; exclusiveness of remedies

##### (1) Remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by chapter 309 or 311 of title 46, as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

##### (2) Exclusivity

The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pur-