

## 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-

suant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

**(c) Procedure**

A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

**(d) Actions covered**

The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

**(e) "Contractor" defined**

For purposes of this section, the term "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

(Pub. L. 107-314, div. D, title XLVIII, § 4803, formerly Pub. L. 101-510, div. C, title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4803, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(4), Nov. 24, 2003, 117 Stat. 1783; Pub. L. 113-66, div. C, title XXXI, § 3146(i)(2), Dec. 26, 2013, 127 Stat. 1081.)

CODIFICATION

Section was formerly classified to section 2212 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 "or by chapter 309 or 311 of title 46" for "by the Act of March 9, 1920 (46 U.S.C. App. 741-752), or by the Act of March 3, 1925 (46 U.S.C. App. 781-790)".

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

Subsec. (d). Pub. L. 108-136, § 3141(k)(4)(D)(ii), substituted "November 5, 1990," for "the date of the enactment of this Act" in two places in the original, which for purposes of codification had been changed to "November 5, 1990," thus requiring no change in text.

**§ 2784. Notice-and-wait requirement applicable to certain third-party financing arrangements**

**(a) Notice-and-wait requirement**

The Secretary of Energy may not enter into an arrangement described in subsection (b) until 30 days after the date on which the Secretary notifies the congressional defense committees in writing of the proposed arrangement.

**(b) Covered arrangements**

**(1) In general**

Except as provided in paragraph (2), an arrangement referred to in subsection (a) is any alternative financing arrangement, third-party financing arrangement, public-private partnership, privatization arrangement, private capital arrangement, or other financing arrangement that—

(A) is entered into in connection with a project conducted using funds authorized to be appropriated to the Department of Energy to carry out programs necessary for national security; and

(B) involves a contractor or Federal agency obtaining and charging to the Department of Energy as an allowable cost under a contract the use of office space, facilities, or other real property assets with a value of at least \$5,000,000.

**(2) Exception**

An arrangement referred to in subsection (a) does not include an arrangement that—

(A) involves the Department of Energy or a contractor acquiring or entering into a capital lease for office space, facilities, or other real property assets; or

(B) is entered into in connection with a capital improvement project undertaken as part of an energy savings performance contract under section 8287 of title 42.

(Pub. L. 107-314, div. D, title XLVIII, § 4804, as added Pub. L. 109-364, div. C, title XXXI, § 3118, Oct. 17, 2006, 120 Stat. 2509.)

**§ 2785. Publication of contractor performance evaluations leading to award fees**

**(a) In general**

The Administrator shall take appropriate actions to make available to the public, to the maximum extent practicable, contractor performance evaluations conducted by the Administration of management and operating contractors of the nuclear security enterprise that results in the award of an award fee to the contractor concerned.

**(b) Format**

Performance evaluations shall be made public under this section in a common format that fa-