

§ 2286d. Board recommendations**(a) Submission of recommendations**

(1) Subject to subsections (h) and (i), not later than 30 days before the date on which the Board transmits a recommendation to the Secretary of Energy under section 2286a of this title, the Board shall transmit to the Secretary in writing a draft of such recommendation and any related findings, supporting data, and analyses to ensure the Secretary is adequately informed of a formal recommendation and to provide the Secretary an opportunity to provide input to the Board before such recommendation is finalized.

(2) The Secretary may provide to the Board comments on a draft recommendation transmitted by the Board under paragraph (1) by not later than 30 days after the date on which the Secretary receives the draft recommendation. The Board may grant, upon request by the Secretary, additional time for the Secretary to transmit comments to the Board.

(3) After the period of time in which the Secretary may provide comments under paragraph (2) elapses, the Board may transmit a final recommendation to the Secretary.

(b) Public availability and comment

Subject to subsections (h) and (i), after the Secretary of Energy receives a recommendation from the Board under subsection (a)(3), the Board shall promptly make available to the public such recommendation and any related correspondence from the Secretary by—

(1) providing such recommendation and correspondence to the public in the regional public reading rooms of the Department of Energy; and

(2) publishing in the Federal Register—

(A) such recommendation and correspondence; and

(B) a request for the submission to the Board of public comments on such recommendation that provides interested persons with 30 days after the date of the publication in which to submit comments, data, views, or arguments to the Board concerning the recommendation.

(c) Response by Secretary

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title, a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (b), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (i), shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of

Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(d) Provision of information to Secretary

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (b) or (c).

(e) Final decision

If the Secretary of Energy, in a response under subsection (c)(1), rejects (in whole or part) any recommendation made by the Board under section 2286a of this title, the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (i), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a written report containing that decision and reasoning.

(f) Implementation plan

The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

(g) Implementation

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (f), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall

submit a report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate setting forth the reasons for the delay and when implementation will be completed.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 2121 of this title, the Secretary shall submit to the President and to such committees a report containing the recommendation and the Secretary's determination.

(h) Imminent or severe threat

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 2286a of this title relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (e).

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate. The President shall promptly notify such committees of his decision and the reasons for that decision.

(i) Limitation

Notwithstanding any other provision of this section, the requirements to make information available to the public under this section—

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 2167 and 2168 of this title to prohibit dissemination of certain information.

(Aug. 1, 1946, ch. 724, title I, §315, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2080; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 112-239, div. C, title XXXII, §3202(c), Jan. 2, 2013, 126 Stat. 2218.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239, §3202(c)(1)(B), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 112-239, §3202(c)(1)(A), (C), redesignated subsec. (a) as (b) and amended it generally. Prior to amendment, text read as follows: "Subject to subsections (g) and (h) of this section and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title, the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations." Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 112-239, §3202(c)(1)(A), (2)(A), redesignated subsec. (b) as (c) and substituted "subsection (b)" for "subsection (a)" in par. (1) and "subsection (i)" for "subsection (h)" in par. (2). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 112-239, §3202(c)(1)(A), (2)(B), redesignated subsec. (c) as (d) and substituted "subsection (b) or (c)" for "subsection (a) or (b)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 112-239, §3202(c)(1)(A), (2)(C), (F), redesignated subsec. (d) as (e) and substituted "subsection (c)(1)" for "subsection (b)(1)", "subsection (i)" for "subsection (h)", and "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 112-239, §3202(c)(1)(A), (2)(F), redesignated subsec. (e) as (f) and substituted "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 112-239, §3202(c)(2)(D)(i), (F), substituted "subsection (f)" for "subsection (e)" and "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives".

Subsec. (g)(2). Pub. L. 112-239, §3202(c)(2)(D)(ii), substituted "and to such committees" for "to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives".

Subsec. (h). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 112-239, §3202(c)(2)(E)(i), substituted "through (e)" for "through (d)".

Subsec. (h)(3). Pub. L. 112-239, §3202(c)(2)(E)(ii), (F), substituted "Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate" for "Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives" and struck out "and the Speaker" after "notify such committees".

Subsec. (i). Pub. L. 112-239, §3202(c)(1)(A), redesignated subsec. (h) as (i).

§ 2286e. Reports**(a) Board report**

(1) The Board shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of—

(A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

(b) DOE report

The Secretary of Energy shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning the activities of the Department of Energy under this subchapter during the year preceding the year in which the report is submitted.

(Aug. 1, 1946, ch. 724, title I, §316, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2082; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 112-239, div. C, title XXXII, §3202(d), Jan. 2, 2013, 126 Stat. 2220.)

AMENDMENTS

2013—Subsecs. (a)(1), (b). Pub. L. 112-239 substituted “Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate” for “Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives”.

CERTIFICATION OF BUDGET SUFFICIENCY

Pub. L. 115-91, div. C, title XXXII, §3201(b), Dec. 12, 2017, 131 Stat. 1908, provided that: “Not later than 10 days after the date on which the budget of the President for fiscal year 2019 or any fiscal year thereafter is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Defense Nuclear Facilities Safety Board shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a letter certifying that the requested budget is sufficient to carry out the mission of the De-

fense Nuclear Facilities Safety Board during the fiscal year covered by the budget request.”

REPORTING REQUIREMENTS

Pub. L. 100-456, div. A, title XIV, §1441(c), (d), Sept. 29, 1988, 102 Stat. 2084, provided that:

“(c) REQUIREMENTS FOR FIRST ANNUAL REPORT.—(1) Before submission of the first annual report by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)), the Board shall conduct a study on whether nuclear facilities of the Department of Energy that are excluded from the definition of ‘Department of Energy defense nuclear facility’ in section 318(1)(C) of such Act [section 2286g(1)(C) of this title] (hereafter in this subsection referred to as ‘non-defense nuclear facilities’) should be subject to independent external oversight. The Board shall include in such first annual report the results of such study and the recommendation of the Board on whether non-defense nuclear facilities should be subject to independent external oversight.

“(2) If the Board recommends in the report that non-defense nuclear facilities should be subject to such oversight, the report shall include a discussion of alternative mechanisms for implementing such oversight, including mechanisms such as a separate executive agency and oversight as a part of the Board's responsibilities. The discussion of alternative mechanisms of oversight also shall include considerations of budgetary costs, protection of the security of sensitive nuclear weapons information, and the similarities and differences in the design, construction, operation, and decommissioning of defense and non-defense nuclear facilities of the Department of Energy.

“(d) REQUIREMENTS FOR FIFTH ANNUAL REPORT.—The fifth annual report submitted by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 [subsec. (a) of this section] (as added by subsection (a)) shall include—

“(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

“(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and

“(3) recommendations for appropriate transition requirements in the event that modifications are recommended.”

§ 2286f. Judicial review

Chapter 7 of title 5 shall apply to the activities of the Board under this subchapter.

(Aug. 1, 1946, ch. 724, title I, §317, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2083; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

§ 2286g. “Department of Energy defense nuclear facility” defined

As used in this subchapter, the term “Department of Energy defense nuclear facility” means any of the following:

(1) A production facility or utilization facility (as defined in section 2014 of this title) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1,