

§ 2566. Disposition of weapons-usable plutonium at Savannah River Site

(a) Plan for construction and operation of MOX facility

(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2012, and thereafter, the MOX production objective, and to produce 1 metric ton of mixed-oxide fuel by December 31, 2012; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed-oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1).

(B) Each report under subparagraph (A) for years before 2010 shall include—

(i) an assessment of compliance with the schedules included with the plan under paragraph (2); and

(ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2012.

(C) Each report under subparagraph (A) for years after 2014 shall—

(i) address whether the MOX production objective has been met; and

(ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) Each report under subparagraph (A) for years after 2019 shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

(i) Compliance with such objective.

(ii) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) Corrective actions

(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (g) by 12 months or more, the Secretary shall submit to Congress, not later than August 15 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established mile-

stones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2012, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2012 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2012.

(5) If, after January 1, 2014, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to consideration or selection of such option.

(C) Upon submittal of a report under subparagraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) Contingent requirement for removal of plutonium and materials from Savannah River Site

If the MOX production objective is not achieved as of January 1, 2014, the Secretary shall, consistent with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2016, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2022, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2022, but not processed by the MOX facility.

(d) Economic and impact assistance

(1) If the MOX production objective is not achieved as of January 1, 2016, the Secretary shall, subject to the availability of appropriations, pay to the State of South Carolina each

year beginning on or after that date through 2021 for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the later of—

(A) the date on which the MOX production objective is achieved in such year; or

(B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If, as of January 1, 2022, the MOX facility has not processed mixed-oxide fuel from defense plutonium and defense plutonium materials in the amount of not less than—

(i) one metric ton, in each of any two consecutive calendar years; and

(ii) three metric tons total,

the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the removal by the Secretary from the State of South Carolina of an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2022, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) If the State of South Carolina obtains an injunction that prohibits the Department of Energy from taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) Failure to complete planned disposition program

If on July 1 each year beginning in 2025 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for—

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or

(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) Removal of mixed-oxide fuel upon completion of operations of MOX facility

If, one year after the date on which operation of the MOX facility permanently ceases, any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or

(2) a plan for removing such fuel from the State of South Carolina.

(g) Baseline

Not later than December 31, 2006, the Secretary shall submit to Congress a report on the construction and operation of the MOX facility that includes a schedule for revising the requirements of this section during fiscal year 2007 to conform with the schedule established by the Secretary for the MOX facility, which shall be based on estimated funding levels for the fiscal year.

(h) Definitions

In this section:

(1) MOX production objective

The term “MOX production objective” means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX facility

The term “MOX facility” means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) Defense plutonium; defense plutonium materials

The terms “defense plutonium” and “defense plutonium materials” mean weapons-usable plutonium.

(Pub. L. 107-314, div. D, title XLIII, §4306, formerly div. C, title XXXI, §3182, Dec. 2, 2002, 116 Stat. 2747; renumbered div. D, title XLIII, §4306, by Pub. L. 108-136, div. C, title XXXI, §3141(f)(7)(A), Nov. 24, 2003, 117 Stat. 1763; amended Pub. L. 109-103, title III, §313, Nov. 19, 2005, 119 Stat. 2280; Pub. L. 112-239, div. C, title XXXI, §3116, Jan. 2, 2013, 126 Stat. 2172; Pub. L. 113-291, div. C, title XXXI, §3142(f), Dec. 19, 2014, 128 Stat. 3900.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b)(6)(B), (C) and (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 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 4321 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (b)(6)(C). Pub. L. 113-291, §3142(f)(1), substituted “subparagraph (A)” for “paragraph (A)”.

Subsec. (c)(2). Pub. L. 113-291, §3142(f)(2), substituted “2002,” for “2002”.

Subsec. (d)(3). Pub. L. 113-291, §3142(f)(3), which directed amendment of par. (3) by inserting “of Energy” after “Department”, was executed by making the insertion after “Department” the first place appearing to reflect the probable intent of Congress.

2013—Subsec. (a)(3)(C). Pub. L. 112-239, §3116(1)(A), substituted “2014” for “2012” in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 112-239, §3116(1)(B), substituted “2019” for “2017” in introductory provisions.

Subsec. (b)(1). Pub. L. 112-239, §3116(2)(A), struck out “by January 1, 2012” before period at end.

Subsec. (b)(5). Pub. L. 112-239, §3116(2)(B), substituted “2014” for “2012”.

Subsec. (c). Pub. L. 112-239, §3116(3)(A), substituted “2014” for “2012” in introductory provisions.

Subsec. (c)(1). Pub. L. 112-239, §3116(3)(B), substituted “2016” for “2014”.

Subsec. (c)(2). Pub. L. 112-239, §3116(3)(C), substituted “2022” for “2020” in two places.

Subsec. (d)(1). Pub. L. 112-239, §3116(4)(A), substituted “2016” for “2014” and “2021” for “2019” in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 112-239, §3116(4)(B), substituted “2022” for “2020” in two places.

Subsec. (e). Pub. L. 112-239, §3116(5), substituted “2025” for “2023” in introductory provisions.

2005—Subsec. (a)(2)(A). Pub. L. 109-103, §313(1)(A), substituted “2012” for “2009” in two places.

Subsec. (a)(3)(B)(ii). Pub. L. 109-103, §313(1)(B)(i), substituted “2012” for “2009”.

Subsec. (a)(3)(C). Pub. L. 109-103, §313(1)(B)(ii), substituted “2012” for “2009” in introductory provisions.

Subsec. (b)(1). Pub. L. 109-103, §313(2)(A), substituted “(g)” for “(a)(2)” and “2012” for “2009”.

Subsec. (b)(4). Pub. L. 109-103, §313(2)(B), substituted “2012” for “2009” wherever appearing.

Subsec. (b)(5). Pub. L. 109-103, §313(2)(C), substituted “2012” for “2009”.

Subsec. (c). Pub. L. 109-103, §313(3)(A), substituted “2012” for “2009” in introductory provisions.

Subsec. (c)(1). Pub. L. 109-103, §313(3)(B), substituted “2014” for “2011”.

Subsec. (c)(2). Pub. L. 109-103, §313(3)(C), substituted “2020” for “2017” in two places.

Subsec. (d)(1). Pub. L. 109-103, §313(4)(A), substituted “2014” for “2011”, “subject to the availability of appropriations” for “from funds available to the Secretary”, and “2019” for “2016”.

Subsec. (d)(2)(A). Pub. L. 109-103, §313(4)(B), substituted “2020” for “2017” in introductory and concluding provisions.

Subsec. (e). Pub. L. 109-103, §313(5), substituted “2023” for “2020” in introductory provisions.

Subsecs. (g), (h). Pub. L. 109-103, §313(6), (7), added subsec. (g) and redesignated former subsec. (g) as (h).

§ 2567. Disposition of surplus defense plutonium at Savannah River Site, Aiken, South Carolina

(a) Consultation required

The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) Notice required

For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) Plan for disposition

The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

(1) A review of each option considered for such disposal.

(2) An identification of the preferred option for such disposal.

(3) With respect to the facilities for such disposal that are required by the Department of Energy’s Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—

(A) a statement of the cost of construction and operation of such facilities;

(B) a schedule for the expeditious construction of such facilities, including milestones; and

(C) a firm schedule for funding the cost of such facilities.

(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) Plan for alternative disposition

If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

(e) Submission of plans

Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) Limitation on plutonium shipments

If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) Rule of construction

Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) Annual report on funding for fissile materials disposition activities

The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.