

struction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

(7) any radioactive material or other property subject to regulation by the Commission that, before the date of the offense, the Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;¹

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(b) Unauthorized use or tampering with facilities, etc.

Any person who knowingly causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(Aug. 1, 1946, ch. 724, title I, §236, as added Pub. L. 96-295, title II, §204(a), June 30, 1980, 94 Stat. 787; amended Pub. L. 97-415, §16, Jan. 4, 1983, 96 Stat. 2076; Pub. L. 101-575, §5(d), Nov. 15, 1990, 104 Stat. 2835; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 107-56, title VIII, §§810(f), 811(h), Oct. 26, 2001, 115 Stat. 380, 381; Pub. L. 109-58, title VI, §655, Aug. 8, 2005, 119 Stat. 813.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1) to (3), (5), was in the original "this Act", meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-58, §655(b), substituted "knowingly" for "intentionally and willfully" in introductory provisions.

Pub. L. 109-58, §655(a), substituted "treatment, storage, or disposal facility" for "storage facility" in par. (2), "a utilization facility licensed under this chapter" for "such a utilization facility" in par. (3), and "uranium conversion, or nuclear fuel fabrication facility licensed or certified" for "facility licensed" in par. (4) and added pars. (5) to (7).

Subsec. (b). Pub. L. 109-58, §655(b), substituted "knowingly" for "intentionally and willfully".

2001—Subsec. (a). Pub. L. 107-56, §§810(f)(1), (2), 811(h)(1)(A), (C), in introductory provisions, struck out "or who intentionally and willfully attempts to destroy or cause physical damage to" before "—", and in concluding provisions, inserted "or attempts or conspires to do such an act," before "shall be fined" and

substituted "20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life." for "ten years, or both."

Subsec. (a)(4). Pub. L. 107-56, §811(h)(1)(B), substituted comma for period at end.

Subsec. (b). Pub. L. 107-56, §§810(f)(1), (3), 811(h)(2), struck out "or attempts to cause" before "an interruption of normal operation", inserted "or attempts or conspires to do such an act," before "shall be fined", and substituted "20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life." for "ten years, or both."

1990—Subsec. (a)(4). Pub. L. 101-575, which directed amendment of this section by adding par. (4) after par. (3), was executed by adding par. (4) after par. (3) of subsec. (a) of this section to reflect the probable intent of Congress.

1983—Pub. L. 97-415 designated existing provisions as subsec. (a) and added subsec. (b).

SUBCHAPTER XVII-A—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

§ 2286. Establishment

(a) Establishment

There is hereby established an independent establishment in the executive branch, to be known as the "Defense Nuclear Facilities Safety Board" (hereafter in this subchapter referred to as the "Board").

(b) Membership

(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

(4) The President shall enter into an arrangement with the National Academy of Sciences under which the National Academy shall maintain a list of individuals who meet the qualifications described in paragraph (1) to assist the President in selecting individuals to nominate for positions as members of the Board.

(c) Chairman, Vice Chairman, and members

(1) The President shall designate a Chairman and Vice Chairman of the Board from among members of the Board.

(2) In accordance with paragraphs (5) and (6), the Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to—

(A) the appointment and supervision of employees of the Board;

(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

(3)(A) The Chairman may delegate any of the functions under this paragraph to any other

¹ So in original. The semicolon probably should be a comma.

member or to any appropriate officer of the Board.

(B) In carrying out subparagraph (A), the Chairman shall delegate to the Executive Director of Operations established under section 2286b(b)(3) of this title the following functions:

(i) Administrative functions of the Board.

(ii) Appointment and supervision of employees of the Board not specified under paragraph (6).

(iii) Distribution of business among the employees and administrative units and offices of the Board.

(iv) Preparation of—

(I) proposals for the reorganization of the administrative units or offices of the Board;

(II) the budget estimate for the Board; and

(III) the proposed distribution of funds according to purposes approved by the Board.

(4) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

(5) Each member of the Board, including the Chairman and Vice Chairman, shall—

(A) have equal responsibility and authority in establishing decisions and determining actions of the Board;

(B) have full access to all information relating to the performance of the Board's functions, powers, and mission; and

(C) have one vote.

(6)(A) The Chairman, subject to the approval of the Board, shall appoint the senior employees described in subparagraph (C). Any member of the Board may propose to the Chairman an individual to be so appointed.

(B) The Chairman, subject to the approval of the Board, may remove a senior employee described in subparagraph (C). Any member of the Board may propose to the Chairman an individual to be so removed.

(C) The senior employees described in this subparagraph are the following senior employees of the Board:

(i) The Executive Director of Operations established under section 2286b(b)(3) of this title.

(ii) The general counsel.

(d) Terms

(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. A member may be reappointed for a second term only if the member was confirmed by the Senate more than two years into the member's first term. A member may not be reappointed for a third term.

(2) Of the members first appointed—

(A) one shall be appointed for a term of one year;

(B) one shall be appointed for a term of two years;

(C) one shall be appointed for a term of three years;

(D) one shall be appointed for a term of four years; and

(E) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3)(A) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(B) A member may not serve after the expiration of the member's term, unless the departure of the member would result in the loss of a quorum for the Board. If more than one member is serving after the expiration of the member's term and a new member is appointed to the Board so that one of the members serving after the expiration of the member's term is no longer necessary to maintain a quorum, the member whose term expired first may no longer serve on the Board.

(4)(A) Not later than 180 days after the expiration of the term of a member of the Board, the President shall—

(i) submit to the Senate the nomination of an individual to fill the vacancy; or

(ii) submit to the Committee on Armed Services of the Senate a report that includes—

(I) a description of the reasons the President did not submit such a nomination; and

(II) a plan for submitting such a nomination during the 90-day period following the submission of the report.

(B) If the President does not submit to the Senate the nomination of an individual to fill a vacancy during the 90-day period described in subclause (II) of subparagraph (A)(ii), the President shall submit to the Committee on Armed Services a report described in that subparagraph not less frequently than every 90 days until the President submits such a nomination.

(e) Quorum

Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(Aug. 1, 1946, ch. 724, title I, § 311, as added Pub. L. 100-456, div. A, title XIV, § 1441(a)(1), Sept. 29, 1988, 102 Stat. 2076; 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(a), Jan. 2, 2013, 126 Stat. 2217; Pub. L. 114-92, div. C, title XXXII, § 3202(a), (b)(1), Nov. 25, 2015, 129 Stat. 1217; Pub. L. 116-92, div. C, title XXXII, § 3202(a)(1)(B)-(3), § 3203(a), (b)(1), (c), Dec. 20, 2019, 133 Stat. 1964, 1966.)

AMENDMENTS

2019—Subsec. (b)(4). Pub. L. 116-92, § 3203(a), added par. (4).

Subsec. (c)(2). Pub. L. 116-92, § 3202(a)(2)(A), substituted “paragraphs (5) and (6)” for “paragraphs (5), (6), and (7)”.

Subsec. (c)(3). Pub. L. 116-92, § 3202(a)(1)(B), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(6). Pub. L. 116-92, § 3202(a)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

“(6)(A) The Chairman, subject to the approval of the Board, shall appoint the senior employees described in subparagraph (C).

“(B) The Chairman, subject to the approval of the Board, may remove a senior employee described in subparagraph (C).

“(C) The senior employees described in this subparagraph are the following senior employees of the Board:

“(i) The senior employee responsible for budgetary and general administration matters.

“(ii) The general counsel.

“(iii) The senior employee responsible for technical matters.”

Pub. L. 116-92, § 3202(a)(2)(B), (C), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: “In carrying out paragraph (5)(B), the Chairman may not withhold from any member of the Board any information that is made available to the Chairman regarding the Board’s functions, powers, and mission (including with respect to the management and evaluation of employees of the Board).”

Subsec. (c)(7). Pub. L. 116-92, § 3202(a)(2)(C), redesignated par. (7) as (6).

Subsec. (d)(1). Pub. L. 116-92, § 3203(b)(1)(A), substituted “A member may be reappointed for a second term only if the member was confirmed by the Senate more than two years into the member’s first term. A member may not be reappointed for a third term.” for “Members of the Board may be reappointed.”

Subsec. (d)(3). Pub. L. 116-92, § 3203(b)(1)(B), designated existing provisions as subpar. (A), struck out at end “A member may serve after the expiration of that member’s term until a successor has taken office.”, and added subpar. (B).

Subsec. (d)(4). Pub. L. 116-92, § 3203(c), added par. (4). 2015—Subsec. (c)(2). Pub. L. 114-92, § 3202(a)(1), substituted “paragraphs (5), (6), and (7)” for “paragraph (5)” in introductory provisions.

Subsec. (c)(6). Pub. L. 114-92, § 3202(a)(2), added par. (6).

Subsec. (c)(7). Pub. L. 114-92, § 3202(b)(1), added par. (7).

2013—Subsec. (b)(4). Pub. L. 112-239, § 3202(a)(1), struck out par. (4) which read as follows: “Not later than 180 days after September 29, 1988, the President shall submit to the Senate nominations for appointment to the Board. In the event that the President is unable to submit the nominations within such 180-day period, the President shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a report describing the reasons for such inability and a plan for submitting the nominations within the next 90 days. If the President is unable to submit the nominations within that 90-day period, the President shall again submit to such committees and the Speaker such a report and plan. The President shall continue to submit to such committees and the Speaker such a report and plan every 90 days until the nominations are submitted.”

Subsec. (c). Pub. L. 112-239, § 3202(a)(2)(A), substituted “, Vice Chairman, and members” for “and Vice Chairman” in heading.

Subsec. (c)(2). Pub. L. 112-239, § 3202(a)(2)(B), substituted “In accordance with paragraph (5), the Chairman” for “The Chairman”.

Subsec. (c)(5). Pub. L. 112-239, § 3202(a)(2)(C), added par. (5).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-92, div. C, title XXXII, § 3203(b)(2), Dec. 20, 2019, 133 Stat. 1966, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the date that is one year after the date of the enactment of this Act [Dec. 20, 2019].”

CONSTRUCTION OF SECTION 3202 OF PUB. L. 112-239; SAFETY STANDARDS

Pub. L. 112-239, div. C, title XXXII, § 3202(h), Jan. 2, 2013, 126 Stat. 2220, provided that: “Nothing in this section [enacting section 2286k of this title and amending this section and sections 2286a, 2286b, 2286d, 2286e, and 2286h-1 of this title] or in the amendments made by this section shall be construed to cause a reduction in nuclear safety standards.”

REPORT ON EXTERNAL REGULATION OF DEFENSE NUCLEAR FACILITIES

Pub. L. 105-85, div. C, title XXXII, § 3202, Nov. 18, 1997, 111 Stat. 2054, provided that:

“(a) REPORTING REQUIREMENT.—The Defense Nuclear Facilities Safety Board (in this section referred to as the ‘Board’) shall prepare a report and make recommendations on its role in the Department of Energy’s decision to establish external regulation of defense nuclear facilities. The report shall include the following:

“(1) An assessment of the value of and the need for the Board to continue to perform the functions specified under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

“(2) An assessment of the relationship between the functions of the Board and a proposal by the Department of Energy to place Department of Energy defense nuclear facilities under the jurisdiction of external regulatory agencies.

“(3) An assessment of the functions of the Board and whether there is a need to modify or amend such functions.

“(4) An assessment of the relative advantages and disadvantages to the Department and the public of continuing the functions of the Board with respect to Department of Energy defense nuclear facilities and replacing the activities of the Board with external regulation of such facilities.

“(5) A list of all existing or planned Department of Energy defense nuclear facilities that are similar to facilities under the regulatory jurisdiction of the Nuclear Regulatory Commission.

“(6) A list of all Department of Energy defense nuclear facilities that are in compliance with all applicable Department of Energy orders, regulations, and requirements relating to the design, construction, operation, and decommissioning of defense nuclear facilities.

“(7) A list of all Department of Energy defense nuclear facilities that have implemented, pursuant to an implementation plan, recommendations made by the Board and accepted by the Secretary of Energy.

“(8) A list of Department of Energy defense nuclear facilities that have a function related to Department weapons activities.

“(9)(A) A list of each existing defense nuclear facility that the Board determines—

“(i) should continue to stay within the jurisdiction of the Board for a period of time or indefinitely; and

“(ii) should come under the jurisdiction of an outside regulatory authority.

“(B) An explanation of the determinations made under subparagraph (A).

“(10) For any existing facilities that should, in the opinion of the Board, come under the jurisdiction of an outside regulatory authority, the date when this move would occur and the period of time necessary for the transition.

“(11) A list of any proposed Department of Energy defense nuclear facilities that should come under the Board’s jurisdiction.

“(12) An assessment of regulatory and other issues associated with the design, construction, operation, and decommissioning of facilities that are not owned by the Department of Energy but which would provide services to the Department of Energy.

“(13) An assessment of the role of the Board, if any, in privatization projects undertaken by the Department.

“(14) An assessment of the role of the Board, if any, in any tritium production facilities.

“(15) An assessment of the comparative advantages and disadvantages to the Department of Energy in the event some or all Department of Energy defense nuclear facilities were no longer included in the functions of the Board and were regulated by the Nuclear Regulatory Commission.

“(16) A comparison of the cost, as identified by the Nuclear Regulatory Commission, that would be incurred at a gaseous diffusion plant to comply with regulations issued by the Nuclear Regulatory Commission, with the cost that would be incurred by a

gaseous diffusion plant if such a plant was considered to be a Department of Energy defense nuclear facility as defined by chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

“(b) COMMENTS ON REPORT.—Before submission of the report to Congress under subsection (c), the Board shall transmit the report to the Secretary of Energy and the Nuclear Regulatory Commission. The Secretary and the Commission shall provide their comments on the report to both the Board and to Congress.

“(c) SUBMISSION TO CONGRESS.—Not later than six months after the date of the enactment of this Act [Nov. 18, 1997], the Board shall provide to Congress an interim report on the status of the implementation of this section. Not later than one year after the date of the enactment of this Act, and not earlier than 30 days after receipt of comments from the Secretary of Energy and the Nuclear Regulatory Commission under subsection (b), the Board shall submit to Congress the report required under subsection (a).

“(d) DEFINITION.—In this section, the term ‘Department of Energy defense nuclear facility’ has the meaning provided by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).”

§ 2286a. Mission and functions of Board

(a) Mission

The mission of the Board shall be to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities, including with respect to the health and safety of employees and contractors at such facilities.

(b) Functions

The Board shall perform the following functions:

(1) Review and evaluation of standards

The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

(2) Investigations

(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be—

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

(3) Analysis of design and operational data

The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) Review of facility design and construction

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider, and specifically assess risk (whenever sufficient data exists), the technical and economic feasibility of implementing the recommended measures.

(c) Excluded functions

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

(Aug. 1, 1946, ch. 724, title I, §312, as added Pub. L. 100-456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2077; amended Pub. L. 102-190, div. C, title XXXII, §3202(b)(2), Dec. 5, 1991, 105 Stat. 1582; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L.