

“(D) The Russian Federation is not in compliance with the CFE Treaty and has not lifted its suspension of Russian observance of its treaty obligations.

“(E) The Russian Federation is not reducing its deployed strategic delivery vehicles.

“(b) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

“(2) CFE TREATY.—The term ‘CFE Treaty’ means the Treaty on Conventional Armed Forces in Europe, signed at Paris November 19, 1990, and entered into force July 17, 1992.

“(3) INF TREATY.—The term ‘INF Treaty’ means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, commonly referred to as the Intermediate-Range Nuclear Forces (INF) Treaty, signed at Washington December 8, 1987, and entered into force June 1, 1988.

“(4) NEW START TREATY.—The term ‘New START Treaty’ means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.”

[For delegation of functions vested in President by section 1247 of Pub. L. 114-92, set out above, see Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, set out below.]

RETENTION OF MISSILE SILOS

Pub. L. 113-291, div. A, title XVI, §1644, Dec. 19, 2014, 128 Stat. 3651, provided that:

“(a) REQUIREMENT.—During the period in which the New START Treaty (as defined in section 494(a)(2)(D) of title 10, United States Code) is in effect, the Secretary of Defense shall preserve each intercontinental ballistic missile silo that contains a deployed missile as of the date of the enactment of this Act [Dec. 19, 2014] in, at minimum, a warm status that enables such silo to—

“(1) remain a fully functioning element of the interconnected and redundant command and control system of the missile field; and

“(2) be made fully operational with a deployed missile.

“(b) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to prohibit the Secretary of Defense from temporarily placing an intercontinental ballistic missile silo offline to perform maintenance activities.”

IMPLEMENTATION OF NEW START TREATY

Pub. L. 113-66, div. A, title X, §1056(a)(2), (3), (f), Dec. 26, 2013, 127 Stat. 862-864, provided that:

“(a) IMPLEMENTATION.—

“(2) CONSOLIDATED BUDGET DISPLAY.—The Secretary [of Defense] shall include with the defense budget materials for each fiscal year specified in paragraph (3) a consolidated budget justification display that individually covers each program and activity associated with the implementation of the New START Treaty for the period covered by the future-years defense program submitted under section 221 of title 10, United States Code, at or about the time as such defense budget materials are submitted.

“(3) FISCAL YEAR SPECIFIED.—A fiscal year specified in this paragraph is each fiscal year that occurs during the period beginning with fiscal year 2015 and ending on the date on which the New START Treaty is no longer in force.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘defense budget materials’ has the meaning given that term in section 231(f) of title 10, United States Code.

“(2) The term ‘New START Treaty’ means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.”

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees has the meaning given that term in section 101(a)(16) of this title, see section 3 of Pub. L. 112-81, Dec. 31, 2011, 125 Stat. 1316. See also note under section 101 of this title.

Executive Documents

DELEGATION OF REPORTING FUNCTIONS SPECIFIED IN SECTION 1045 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012, AND CONDITION 9 OF THE RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE RUSSIAN FEDERATION ON THE MEASURES FOR THE FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE “NEW START TREATY”)

Memorandum of President of the United States, Mar. 16, 2012, 77 F.R. 16649, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretaries of Defense and Energy the reporting functions conferred upon the President by section 1045 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) [see Codification note above], and by section (a)(9)(B) of the Resolution of Advice and Consent to Ratification of the New START Treaty. Subsection (a)(9)(B)(iv) of the Resolution shall be fulfilled in coordination with the Secretary of State.

The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DELEGATION OF AUTHORITY UNDER SECTION 1247 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate the functions and authorities vested in the President by section 1247 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92) (the “Act”) to the Secretary of State.

Any reference in this memorandum to the Act shall be deemed to be a reference to any future act that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 495. Strategic delivery systems

(a) ANNUAL CERTIFICATION.—The President shall annually certify in writing to the congressional defense committees whether plans to modernize or replace strategic delivery systems are fully funded at levels equal to or more than the levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2549), including plans regarding—

- (1) a heavy bomber and air-launched cruise missile;
- (2) an intercontinental ballistic missile;
- (3) a submarine-launched ballistic missile;
- (4) a ballistic missile submarine; and
- (5) maintaining the nuclear command and control system (as first reported under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1576)).

(b) **ADDITIONAL REPORT MATTERS FOLLOWING CERTAIN CERTIFICATIONS.**—If in any year before fiscal year 2020 the President certifies under subsection (a) that plans to modernize or replace strategic delivery systems are not fully funded, the President shall include in the next annual report transmitted to Congress under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 the following:

(1) A determination of whether or not the lack of full funding will result in a loss of military capability when compared with the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010.

(2) If the determination under paragraph (1) is that the lack of full funding will result in a loss of military capability—

(A) a plan to preserve or retain the military capability that would otherwise be lost; or

(B) a report setting forth—

(i) an assessment of the impact of the lack of full funding on the strategic delivery systems specified in subsection (a); and

(ii) a description of the funding required to restore or maintain the capability.

(3) A certification by the President of whether or not the President is committed to accomplishing the modernization and replacement of strategic delivery systems and will meet the obligations concerning nuclear modernization as set forth in declaration 12 of the Resolution of Advice and Consent to Ratification of the New START Treaty.

(c) **PRIOR NOTIFICATION.**—Not later than 60 days before the date on which the President carries out any reduction to the number of strategic delivery systems, the President shall—

(1) make the certification under subsection (a) for the fiscal year for which the reductions are proposed to be carried out;

(2) transmit the additional report matters under subsection (b) for such fiscal year, if such additional report matters are so required; and

(3) certify to the congressional defense committees whether the Russian Federation is in compliance with its strategic arms control obligations with the United States and is not engaged in activity in violation of, or inconsistent with, such obligations.

(d) **TREATMENT OF CERTAIN REDUCTIONS.**—Any certification under subsection (a) shall not take into account the following:

(1) Reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to sur-

veillance, assessment, certification, testing, and maintenance of nuclear warheads and delivery systems.

(2) Strategic delivery systems that are retired or awaiting dismantlement on the date of the certification under subsection (a).

(e) **DEFINITIONS.**—In this section:

(1) The term “New START Treaty” means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.

(2) The term “strategic delivery system” means a delivery system for nuclear weapons.

(Added Pub. L. 112-239, div. A, title X, §1035(a), Jan. 2, 2013, 126 Stat. 1923; amended Pub. L. 112-240, title VIII, §801(a), Jan. 2, 2013, 126 Stat. 2369; Pub. L. 115-232, div. A, title X, §1081(a)(6), Aug. 13, 2018, 132 Stat. 1983.)

Editorial Notes

REFERENCES IN TEXT

Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsecs. (a) and (b)(1), is section 1251 of Pub. L. 111-84, which is set out as a note under section 2523 of Title 50, War and National Defense.

Section 1043 of the National Defense Authorization Act for Fiscal Year 2012, referred to in subsecs. (a)(5) and (b), is section 1043 of title X of div. A of Pub. L. 112-81, Dec. 31, 2011, 125 Stat. 1576, which is not classified to the Code.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 substituted “The” for “Beginning in fiscal year 2013, the” in introductory provisions.

2013—Subsec. (c)(3). Pub. L. 112-240 substituted “whether the Russian Federation” for “that the Russian Federation” and inserted “strategic” before “arms control obligations”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title VIII, §801(b), Jan. 2, 2013, 126 Stat. 2369, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2013 [Pub. L. 112-239].”

RETENTION OF CAPABILITY TO REDEPLOY MULTIPLE INDEPENDENTLY TARGETABLE REENTRY VEHICLES

Pub. L. 113-66, div. A, title X, §1057, Dec. 26, 2013, 127 Stat. 864, provided that:

“(a) **DEPLOYMENT CAPABILITY.**—The Secretary of the Air Force shall ensure that the Air Force is capable of—

“(1) deploying multiple independently targetable reentry vehicles to Minuteman III intercontinental ballistic missiles; and

“(2) commencing such deployment not later than 180 days after the date on which the President determines such deployment necessary.

“(b) **WARHEAD CAPABILITY.**—The Nuclear Weapons Council established by section 179 of title 10, United States Code, shall ensure that—

“(1) the nuclear weapons stockpile contains a sufficient number of nuclear warheads that are capable of being deployed as multiple independently targetable reentry vehicles with respect to Minuteman III intercontinental ballistic missiles; and

“(2) such deployment is capable of being commenced not later than 180 days after the date on which the President determines such deployment necessary.”

SENSES OF CONGRESS ON ENSURING THE MODERNIZATION OF THE NUCLEAR FORCES OF THE UNITED STATES

Pub. L. 113-66, div. A, title X, §1062(a), Dec. 26, 2013, 127 Stat. 866, provided that: “It is the policy of the United States to—

“(1) modernize or replace the triad of strategic nuclear delivery systems;

“(2) proceed with a robust stockpile stewardship program;

“(3) maintain and modernize the nuclear weapons production capabilities that will ensure the safety, security, reliability, and performance of the nuclear forces of the United States at the levels required by the New START Treaty; and

“(4) underpin deterrence by meeting the requirements for hedging against possible international developments or technical problems, in accordance with the policies of the United States.”

Executive Documents

DELEGATION OF AUTHORITY PURSUANT TO SECTION 1035 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

Memorandum of President of the United States, June 29, 2015, 80 F.R. 37921, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate to the Secretary of Defense the authority to fulfill the certification requirement specified in section 1035 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) [probably means section 495 of this title, as added by section 1035 of Pub. L. 112-239].

Any reference in this memorandum to section 1035 of the National Defense Authorization Act for Fiscal Year 2013 shall be deemed to be a reference to any future provision that is the same or substantially the same provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 496. Consideration of expansion of nuclear forces of other countries

(a) REPORT AND CERTIFICATION.—Not later than 60 days before the President recommends any reductions to the nuclear forces of the United States—

(1) the President shall transmit to the appropriate congressional committees a report detailing, for each country with nuclear weapons, the high-, medium-, and low- confidence assessment of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) with respect to—

(A) the number of each type of nuclear weapons possessed by such country;

(B) the modernization plans for such weapons of such country;

(C) the production capacity of nuclear warheads and strategic delivery systems (as defined in section 495(e)(2) of this title) of such country;

(D) the nuclear doctrine of such country; and

(E) the impact of such recommended reductions on the deterrence and extended de-

terrence capabilities of the United States; and

(2) the Commander of the United States Strategic Command shall certify to the appropriate congressional committees whether such recommended reductions in the nuclear forces of the United States will—

(A) impair the ability of the United States to address—

(i) unplanned strategic or geopolitical events; or

(ii) technical challenge; or

(B) degrade the deterrence or assurance provided by the United States to friends and allies of the United States.

(b) FORM.—The reports required by subsection (a)(1) shall be submitted in unclassified form, but may include a classified annex.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional defense committees.

(2) The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Added Pub. L. 112-239, div. A, title X, §1036(a), Jan. 2, 2013, 126 Stat. 1924; amended Pub. L. 113-291, div. A, title X, §1071(c)(10), Dec. 19, 2014, 128 Stat. 3509.)

Editorial Notes

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-291 substituted “(50 U.S.C. 3003(4))” for “(50 U.S.C. 401a(4))” in introductory provisions.

§ 497. Notification required for reduction, consolidation, or withdrawal of nuclear forces based in Europe

(a) NOTIFICATION.—Upon any decision to reduce, consolidate, or withdraw the nuclear forces of the United States that are based in Europe, the President shall transmit to the appropriate congressional committees a notification containing—

(1) justification for such reduction, consolidation, or withdrawal; and

(2) an assessment of how member states of the North Atlantic Treaty Organization, in light of such reduction, consolidation, or withdrawal, assess the credibility of the deterrence capability of the United States in support of its commitments undertaken pursuant to article 5 of the North Atlantic Treaty, signed at Washington, District of Columbia, on April 4, 1949, and entered into force on August 24, 1949 (63 Stat. 2241; TIAS 1964).

(b) PRIOR NOTIFICATION REQUIRED.—

(1) IN GENERAL.—The President shall transmit the notification required by subsection (a) by not later than 120 days before the date on which the President commences a reduction, consolidation, or withdrawal of the nuclear forces of the United States that are based in Europe described in such notification.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply to a reduction, consolidation, or withdrawal of nuclear weapons of the