

**50 USC Ch. 41: NATIONAL NUCLEAR SECURITY ADMINISTRATION**

**From Title 50—WAR AND NATIONAL DEFENSE**

**CHAPTER 41—NATIONAL NUCLEAR SECURITY ADMINISTRATION**

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### SUBCHAPTER I—ESTABLISHMENT AND ORGANIZATION

## **§2401. Establishment and mission**

### **(a) Establishment**

There is established within the Department of Energy a separately organized agency to be known as the National Nuclear Security Administration (in this chapter referred to as the “Administration”).

### **(b) Mission**

The mission of the Administration shall be the following:

- (1) To enhance United States national security through the military application of nuclear energy.
- (2) To maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.
- (3) To provide the United States Navy with safe, militarily effective nuclear propulsion plants and to ensure the safe and reliable operation of those plants.
- (4) To promote international nuclear safety and nonproliferation.
- (5) To reduce global danger from weapons of mass destruction.
- (6) To support United States leadership in science and technology.

### **(c) Operations and activities to be carried out consistently with certain principles**

In carrying out the mission of the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of—

- (1) protecting the environment;
- (2) safeguarding the safety and health of the public and of the workforce of the Administration; and
- (3) ensuring the security of the nuclear weapons, nuclear material, and classified information in the custody of the Administration.

(Pub. L. 106–65, div. C, title XXXII, §3211, Oct. 5, 1999, 113 Stat. 957; Pub. L. 113–66, div. C, title XXXI, §3111, Dec. 26, 2013, 127 Stat. 1049.)

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out below and Tables.

### **AMENDMENTS**

**2013**—Subsec. (c). Pub. L. 113–66 amended subsec. (c) generally. Prior to amendment, text read as follows: “In carrying out the mission of the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.”

### **EFFECTIVE DATE**

Pub. L. 106–65, div. C, title XXXII, §3299, Oct. 5, 1999, 113 Stat. 971, provided that:

“(a) **IN GENERAL.**—Except as provided in subsection (b), the provisions of this title [see Short Title note below] shall take effect on March 1, 2000.

“(b) **EXCEPTIONS.**—(1) Sections 3202, 3204, 3251, 3295, and 3297 [enacting section 2451 and former section 2483 of this title and sections 7144a to 7144c of Title 42, The Public Health and Welfare, amending section 7132 of Title 42, and enacting provisions set out as a note below] shall take effect on the date of the enactment of this Act [Oct. 5, 1999].

“(2) Sections 3234 and 3235 [enacting sections 2424 and 2425 of this title] shall take effect on the date of the enactment of this Act. During the period beginning on the date of the enactment of this Act and ending on the effective date of this title, the Secretary of Energy shall carry out those sections and any reference in those sections to the Administrator and the Administration shall be treated as references to the Secretary and the Department of Energy, respectively.”

### **SHORT TITLE**

Pub. L. 106–65, div. C, title XXXII, §3201, Oct. 5, 1999, 113 Stat. 953, provided that: “This title [enacting this chapter and sections 7144 to 7144c of Title 42, The Public Health and Welfare, amending sections 5314, 5315, 5595, and 8905a of Title 5, Government Organization and Employees, and sections 7132, 7133, and 7158 of Title 42, repealing sections 2122a, 7143, and 7271b of Title 42, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 435 of this title] may be cited as the ‘National Nuclear Security Administration Act’.”

### **PREPARATION OF INFRASTRUCTURE PLAN FOR THE NUCLEAR WEAPONS COMPLEX**

Pub. L. 107–107, div. B, title XXX, §3008, Dec. 28, 2001, 115 Stat. 1352, provided that:

“(a) **INFRASTRUCTURE PLAN FOR NUCLEAR WEAPONS COMPLEX.**—

“(1) **PREPARATION AND SUBMISSION.**—Not later than the date on which the budget for the Department of Energy for fiscal year 2004 is submitted to Congress, the Secretary of Energy shall submit to Congress an infrastructure plan for the nuclear weapons complex adequate to support the nuclear weapons stockpile, the naval reactors program, and nonproliferation and national security activities.

“(2) **SPECIAL CONSIDERATIONS.**—In preparing the infrastructure plan, the Secretary shall take into consideration the following:

“(A) The Department of Defense Nuclear Posture Review required pursuant to section 1041 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year

2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–262 [former 10 U.S.C. 118 note]).

“(B) Any efficiencies and security benefits of consolidation of facilities of the nuclear weapons complex.

“(C) The necessity to have a residual production capability.

“(b) RECOMMENDATIONS REGARDING REALIGNMENTS AND CLOSURES.—On the basis of the infrastructure plan prepared under subsection (a), the Secretary shall make such recommendations regarding the need to close or realign facilities of the nuclear weapons complex as the Secretary considers appropriate, including the Secretary's recommendations on whether to establish a process by which a round of closures and realignments would be carried out and any additional legislative authority necessary to implement the recommendations. The Secretary shall submit the recommendations as part of the infrastructure plan under subsection (a).

“(c) DEFINITIONS.—In this section:

“(1) The terms ‘Secretary’ and ‘Secretary of Energy’ mean the Secretary of Energy, acting after consideration of the recommendations of the Administrator for Nuclear Security.

“(2) The term ‘nuclear weapons complex’ means the national security laboratories and nuclear weapons production facilities (as such terms are defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)) and the facilities of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order (as such term is defined in section 3216 of such Act (50 U.S.C. 2406)).”

### **STUDY AND REPORT RELATED TO IMPROVING MISSION EFFECTIVENESS, PARTNERSHIPS, AND TECHNOLOGY TRANSFER AT NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES**

Pub. L. 106–398, §1 [div. C, title XXXI, §3163], Oct. 30, 2000, 114 Stat. 1654, 1654A–473, provided that:

“(a) STUDY AND REPORT REQUIRED.—The Secretary of Energy shall direct the Secretary of Energy Advisory Board to study and to submit to the Secretary not later than one year after the date of the enactment of this Act [Oct. 30, 2000] a report regarding the following topics:

“(1) The advantages and disadvantages of providing the Administrator for Nuclear Security with authority, notwithstanding the limitations otherwise imposed by the Federal Acquisition Regulation, to enter into transactions with public agencies, private organizations, or individuals on terms the Administrator considers appropriate to the furtherance of basic, applied, and advanced research functions. The Advisory Board shall consider, in its assessment of this authority, the management history of the Department of Energy and the effect of this authority on the National Nuclear Security Administration's use of contractors to operate the national security laboratories.

“(2) The advantages and disadvantages of establishing and implementing policies and procedures to facilitate the transfer of scientific, technical, and professional personnel among national security laboratories and nuclear weapons production facilities.

“(3) The advantages and disadvantages of making changes in—

“(A) the indemnification requirements for patents or other intellectual property licensed from a national security laboratory or nuclear weapons production facility;

“(B) the royalty and fee schedules and types of compensation that may be used for patents or other intellectual property licensed to a small business concern from a national security laboratory or nuclear weapons production facility;

“(C) the licensing procedures and requirements for patents and other intellectual property;

“(D) the rights given to a small business concern that has licensed a patent or other intellectual property from a national security laboratory or nuclear weapons production facility to bring suit against third parties infringing such intellectual property;

“(E) the advance funding requirements for a small business concern funding a project at a national security laboratory or nuclear weapons production facility through a funds-in agreement;

“(F) the intellectual property rights allocated to a business when it is funding a project at a national security laboratory or nuclear weapons production facility through a

funds-in agreement; and

“(G) policies on royalty payments to inventors employed by a contractor operating a national security laboratory or nuclear weapons production facility, including those for inventions made under a funds-in agreement.

“(b) DEFINITION OF FUNDS-IN AGREEMENT.—For the purposes of this section, the term ‘funds-in agreement’ means a contract between the Department and a non-Federal organization under which that organization pays the Department to provide a service or material not otherwise available in the domestic private sector.

“(c) SUBMISSION TO CONGRESS.—Not later than one month after receiving the report under subsection (a), the Secretary shall submit to Congress that report, along with the Secretary's recommendations for action and proposals for legislation to implement the recommendations.”

### **DEFINITIONS FOR PURPOSES OF PUB. L. 106–398**

Pub. L. 106–398, §1 [div. C, title XXXI, §3165], Oct. 30, 2000, 114 Stat. 1654, 1654A–475, provided that: “For purposes of this subtitle [subtitle E (§§3161–3165) of title XXXI of div. C of H.R. 5408, as enacted by section 1 of Pub. L. 106–398, enacting provisions set out as notes under this section and section 2402 of this title], the terms ‘national security laboratory’ and ‘nuclear weapons production facility’ have the meanings given such terms in section 3281 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 968; 50 U.S.C. 2471).”

### **REPORT CONTAINING IMPLEMENTATION PLAN OF SECRETARY OF ENERGY**

Pub. L. 106–65, div. C, title XXXII, §3297, Oct. 5, 1999, 113 Stat. 971, which provided that not later than January 1, 2000, the Secretary of Energy was to submit to the Armed Services committees a report containing the Secretary's plan for the implementation of the provisions of this title, was repealed by Pub. L. 112–239, div. C, title XXXI, §3132(c)(1)(D), Jan. 2, 2013, 126 Stat. 2187.

### **CLASSIFICATION IN UNITED STATES CODE**

Pub. L. 106–65, div. C, title XXXII, §3298, Oct. 5, 1999, 113 Stat. 971, provided that: “Subtitles A through F of this title [§§3211–3281, enacting this chapter and amending sections 5595 and 8905a of Title 5, Government Organization and Employees] (other than provisions of those subtitles amending existing provisions of law) shall be classified to the United States Code as a new chapter of title 50, United States Code.”

## **§2402. Administrator for Nuclear Security**

### **(a) In general**

(1) There is at the head of the Administration an Administrator for Nuclear Security (in this chapter referred to as the “Administrator”).

(2) Pursuant to subsection (c) of section 7132 of title 42, the Under Secretary for Nuclear Security of the Department of Energy serves as the Administrator.

### **(b) Functions**

The Administrator has authority over, and is responsible for, all programs and activities of the Administration (except for the functions of the Deputy Administrator for Naval Reactors specified in the Executive order referred to in section 2406(b) of this title), including the following:

- (1) Strategic management.
- (2) Policy development and guidance.
- (3) Budget formulation, guidance, and execution, and other financial matters.
- (4) Resource requirements determination and allocation.
- (5) Program management and direction.
- (6) Safeguards and security.
- (7) Emergency management.
- (8) Integrated safety management.
- (9) Environment, safety, and health operations.
- (10) Administration of contracts, including the management and operations of the nuclear weapons production facilities and the national security laboratories.
- (11) Intelligence.

- (12) Counterintelligence.
- (13) Personnel, including the selection, appointment, distribution, supervision, establishing of compensation, and separation of personnel in accordance with subchapter III of this chapter.
- (14) Procurement of services of experts and consultants in accordance with section 3109 of title 5.
- (15) Legal matters.
- (16) Legislative affairs.
- (17) Public affairs.
- (18) Eliminating inventories of surplus fissile materials usable for nuclear weapons.
- (19) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

**(c) Procurement authority**

The Administrator is the senior procurement executive for the Administration for the purposes of section 1702(c) of title 41.

**(d) Policy authority**

The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.

**(e) Membership on Nuclear Weapons Council**

The Administrator serves as a member of the Nuclear Weapons Council under section 179 of title 10.

**(f) Reorganization authority**

Except as provided by subsections (b) and (c) of section 2481 of this title:

- (1) The Administrator may establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the Administration, or transfer any function of the Administration.
- (2) Such authority does not apply to the abolition of organizational units or components established by law or the transfer of functions vested by law in any organizational unit or component.

(Pub. L. 106–65, div. C, title XXXII, §3212, Oct. 5, 1999, 113 Stat. 957; Pub. L. 106–398, §1 [div. C, title XXXI, §§3152(b), 3159(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–464, 1654A–469; Pub. L. 107–107, div. A, title X, §1048(i)(12), Dec. 28, 2001, 115 Stat. 1230; Pub. L. 108–375, div. A, title IX, §902(e), Oct. 28, 2004, 118 Stat. 2025; Pub. L. 110–417, div. C, title XXXI, §3111, Oct. 14, 2008, 122 Stat. 4753; Pub. L. 112–239, div. C, title XXXI, §3132(d)(1), Jan. 2, 2013, 126 Stat. 2187; Pub. L. 113–66, div. C, title XXXI, §3145(a), Dec. 26, 2013, 127 Stat. 1071.)

## **AMENDMENTS**

**2013**—Subsec. (a)(2). Pub. L. 112–239 made technical amendment to reference in original act which appears in text as reference to section 7132 of title 42.

Subsec. (c). Pub. L. 113–66 substituted “section 1702(c) of title 41” for “section 414(3) of title 41”.

**2008**—Subsec. (b)(18), (19). Pub. L. 110–417 added par. (18) and redesignated former par. (18) as (19).

**2004**—Subsec. (e). Pub. L. 108–375 struck out “Joint” before “Nuclear” in heading and text.

**2001**—Subsecs. (e), (f). Pub. L. 107–107 redesignated subsec. (e), relating to reorganization authority, as (f).

**2000**—Subsec. (e). Pub. L. 106–398, §1 [div. C, title XXXI, §3159(a)], added subsec. (e) relating to reorganization authority.

Pub. L. 106–398, §1 [div. C, title XXXI, §3152(b)], added subsec. (e) relating to membership on Joint Nuclear Weapons Council.

## **TECHNOLOGY INFRASTRUCTURE PILOT PROGRAM**

Pub. L. 106–398, §1 [div. C, title XXXI, §3161], Oct. 30, 2000, 114 Stat. 1654, 1654A–470, provided that:

“(a) **ESTABLISHMENT.**—The Administrator for Nuclear Security shall establish a Technology Infrastructure Pilot Program in accordance with this section.

“(b) **PURPOSE.**—The purpose of the program shall be to explore new methods of collaboration and improvements in the management and effectiveness of collaborative programs carried out by the national security laboratories and nuclear weapons production facilities in partnership with private industry and institutions of higher education and to improve the ability of those laboratories and facilities to support missions of the Administration.

“(c) **FUNDING.**—(1) Except as provided in paragraph (2), funding shall be available for the pilot program only to the extent of specific authorizations and appropriations enacted after the date of the enactment of this Act [Oct. 30, 2000].

“(2) From amounts available in fiscal years 2001 and 2002 for technology partnership programs of the Administration, the Administrator may allocate to carry out the pilot program not more than \$5,000,000.

“(d) PROJECT REQUIREMENTS.—A project may not be approved for the pilot program unless the project meets the following requirements:

“(1) The participants in the project include—

“(A) a national security laboratory or nuclear weapons production facility; and

“(B) one or more of the following:

“(i) A business.

“(ii) An institution of higher education.

“(iii) A nonprofit institution.

“(iv) An agency of a State, local, or tribal government.

“(2)(A) Not less than 50 percent of the costs of the project are to be provided by non-Federal sources.

“(B)(i) The calculation of the amount of the costs of the project provided by non-Federal sources shall include cash, personnel, services, equipment, and other resources expended on the project.

“(ii) No funds or other resources expended before the start of the project or outside the project’s scope of work may be credited toward the costs provided by non-Federal sources to the project.

“(3) The project (other than in the case of a project under which the participating laboratory or facility receives funding under this section) shall be competitively selected by that laboratory or facility using procedures determined to be appropriate by the Administrator.

“(4) No Federal funds shall be made available under this section for—

“(A) construction; or

“(B) any project for more than five years.

“(e) SELECTION CRITERIA.—(1) The projects selected for the pilot program shall—

“(A) stimulate the development of technology expertise and capabilities in private industry and institutions of higher education that can support the nuclear weapons and nuclear nonproliferation missions of the national security laboratories and nuclear weapons production facilities on a continuing basis;

“(B) improve the ability of those laboratories and facilities [to] benefit from commercial research, technology, products, processes, and services that can support the nuclear weapons and nuclear nonproliferation missions of those laboratories and facilities on a continuing basis; and

“(C) encourage the exchange of scientific and technological expertise between those laboratories and facilities and—

“(i) institutions of higher education;

“(ii) technology-related business concerns;

“(iii) nonprofit institutions; and

“(iv) agencies of State, tribal, or local governments;

that can support the missions of those laboratories and facilities.

“(2) The Administrator may authorize the provision of Federal funds for a project under this section only if the director of the laboratory or facility managing the project determines that the project is likely to improve the ability of that laboratory or facility to achieve technical success in meeting nuclear weapons and nuclear nonproliferation missions of the Administration.

“(3) The Administrator shall require the director of the laboratory or facility to consider the following criteria in selecting a project to receive Federal funds:

“(A) The potential of the project to succeed, based on its technical merit, team members, management approach, resources, and project plan.

“(B) The potential of the project to promote the development of a commercially sustainable technology, determined by considering whether the project will derive sufficient demand for its products or services from the private sector to support the nuclear weapons and nuclear nonproliferation missions of the participating laboratory or facility on a continuing basis.

“(C) The potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating laboratory or facility to achieve its

nuclear weapons and nuclear nonproliferation missions.

“(D) The commitment shown by non-Federal organizations to the project, based primarily on the nature and amount of the financial and other resources they will risk on the project.

“(E) The extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the nuclear weapons and nuclear nonproliferation missions of the participating laboratory or facility on a continuing basis and that will make substantive contributions to achieving the goals of the project.

“(F) The extent of participation in the project by agencies of State, tribal, or local governments that will make substantive contributions to achieving the goals of the project.

“(G) The extent to which the project focuses on promoting the development of technology-related business concerns that are small business concerns or involves small business concerns substantively in the project.

“(f) IMPLEMENTATION PLAN.—No funds may be allocated for the pilot program until 30 days after the date on which the Administrator submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the implementation of the pilot program. The plan shall, at a minimum—

“(1) identify the national security laboratories and nuclear weapons production facilities that have been designated by the Administrator to participate in the pilot program; and

“(2) with respect to each laboratory or facility identified under paragraph (1)—

“(A) identify the businesses, institutions of higher education, nonprofit institutions, and agencies of State, local, or tribal government that are expected to participate in the pilot program at that laboratory or facility;

“(B) identify the technology areas to be addressed by the pilot program at that laboratory or facility and the manner in which the pilot program will support high-priority missions of that laboratory or facility on a continuing basis; and

“(C) describe the management controls that have been put into place to ensure that the pilot program as conducted at that laboratory or facility is conducted in a cost-effective manner consistent with the objectives of the pilot program.

“(g) REPORT ON IMPLEMENTATION.—(1) Not later than February 1, 2002, the Administrator shall submit to the congressional defense committees a report on the implementation and management of the pilot program. The report shall take into consideration the results of the pilot program to date and the views of the directors of the participating laboratories and facilities. The report shall include any recommendations the Administrator may have concerning the future of the pilot program.

“(2) Not later than 30 days after the date on which the Administrator submits the report required by paragraph (1), the Comptroller General shall submit to the congressional defense committees a report containing the Comptroller General's assessment of that report.”

[For definitions of “national security laboratory” and “nuclear weapons production facility” as used in section 1 [div. C, title XXXI, §3161] of Pub. L. 106–398, set out above, see section 1 [div. C, title XXXI, §3165] of Pub. L. 106–398, set out as a note under section 2401 of this title.]

## **§2403. Principal Deputy Administrator for Nuclear Security**

### **(a) In general**

(1) There is in the Administration a Principal Deputy Administrator, who is appointed by the President, by and with the advice and consent of the Senate.

(2) The Principal Deputy Administrator shall be appointed from among persons who have extensive background in organizational management and are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the Administration in a manner that advances and protects the national security of the United States.

### **(b) Duties**

Subject to the authority, direction, and control of the Administrator, the Principal Deputy Administrator shall perform such duties and exercise such powers as the Administrator may prescribe, including the coordination of activities among the elements of the Administration. The Principal Deputy Administrator shall act for, and exercise the powers of, the Administrator when the Administrator is disabled or the



position of Administrator is vacant.

(Pub. L. 106–65, div. C, title XXXII, §3213, as added Pub. L. 107–107, div. C, title XXXI, §3141(a)(2), Dec. 28, 2001, 115 Stat. 1370.)

### **PRIOR PROVISIONS**

A prior section 2403, Pub. L. 106–65, div. C, title XXXII, §3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106–398, §1 [div. C, title XXXI, §3157], Oct. 30, 2000, 114 Stat. 1654, 1654A–468, which related to status of Administration and contractor personnel within Department of Energy, was renumbered section 3220 of Pub. L. 106–65, by Pub. L. 107–107, div. C, title XXXI, §3141(a)(1), Dec. 28, 2001, 115 Stat. 1369, and transferred to section 2410 of this title.

## **§2404. Deputy Administrator for Defense Programs**

### **(a) In general**

There is in the Administration a Deputy Administrator for Defense Programs, who is appointed by the President, by and with the advice and consent of the Senate.

### **(b) Duties**

Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Programs shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

- (1) Maintaining and enhancing the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.
- (2) Directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories.
- (3) Directing, managing, and overseeing assets to respond to incidents involving nuclear weapons and materials.

(Pub. L. 106–65, div. C, title XXXII, §3214, Oct. 5, 1999, 113 Stat. 959; Pub. L. 107–107, div. C, title XXXI, §3142, Dec. 28, 2001, 115 Stat. 1370.)

### **AMENDMENTS**

**2001**—Subsec. (c). Pub. L. 107–107 struck out heading and text of subsec. (c). Text read as follows: “The head of each national security laboratory and nuclear weapons production facility shall, consistent with applicable contractual obligations, report to the Deputy Administrator for Defense Programs.”

## **§2405. Deputy Administrator for Defense Nuclear Nonproliferation**

### **(a) In general**

There is in the Administration a Deputy Administrator for Defense Nuclear Nonproliferation, who is appointed by the President, by and with the advice and consent of the Senate.

### **(b) Duties**

Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Nuclear Nonproliferation shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

- (1) Preventing the spread of materials, technology, and expertise relating to weapons of mass destruction.
- (2) Detecting the proliferation of weapons of mass destruction worldwide.
- (3) Eliminating inventories of surplus fissile materials usable for nuclear weapons.
- (4) Providing for international nuclear safety.

(Pub. L. 106–65, div. C, title XXXII, §3215, Oct. 5, 1999, 113 Stat. 959.)

## **§2406. Deputy Administrator for Naval Reactors**

### **(a) In general**

(1) There is in the Administration a Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order shall serve

as the Deputy Administrator for Naval Reactors.

(2) Within the Department of Energy, the Deputy Administrator shall report to the Secretary of Energy through the Administrator and shall have direct access to the Secretary and other senior officials in the Department.

**(b) Duties**

The Deputy Administrator shall be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under the Naval Nuclear Propulsion Executive Order.

**(c) Effect on Executive Order**

Except as otherwise specified in this section and notwithstanding any other provision of this chapter, the provisions of the Naval Nuclear Propulsion Executive Order remain in full force and effect until changed by law.

**(d) Naval Nuclear Propulsion Executive Order**

As used in this section, the Naval Nuclear Propulsion Executive Order is Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note)<sup>1</sup> (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 42 U.S.C. 7158 note)).<sup>1</sup> (Pub. L. 106–65, div. C, title XXXII, §3216, Oct. 5, 1999, 113 Stat. 959.)

**REFERENCES IN TEXT**

Executive Order No. 12344, referred to in subsec. (d), is set out as a note under section 2511 of this title.

Section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525), referred to in subsec. (d), was formerly set out as a note under section 7158 of Title 42, The Public Health and Welfare, and was renumbered section 4101 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(d)(2), Nov. 24, 2003, 117 Stat. 1757. Section 4101 of Pub. L. 107–314 is classified to section 2511 of this title.

<sup>1</sup> See References in Text note below.

**§2407. General Counsel**

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.

(Pub. L. 106–65, div. C, title XXXII, §3217, Oct. 5, 1999, 113 Stat. 960.)

**§2408. Staff of Administration**

**(a) In general**

The Administrator shall maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties and responsibilities of the Administrator.

**(b) Responsibilities**

The staff of the Administration shall perform, in accordance with applicable law, such of the functions of the Administrator as the Administrator shall prescribe. The Administrator shall assign to the staff responsibility for the following functions:

- (1) Personnel.
- (2) Legislative affairs.
- (3) Public affairs.
- (4) Liaison with the Department of Energy's Office of Intelligence and Counterintelligence.
- (5) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

(Pub. L. 106–65, div. C, title XXXII, §3218, Oct. 5, 1999, 113 Stat. 960; Pub. L. 109–364, div. C, title XXXI, §3117(e), Oct. 17, 2006, 120 Stat. 2508.)

**AMENDMENTS**

**2006**—Subsec. (b)(4), (5). Pub. L. 109–364 added par. (4) and redesignated former par. (4) as (5).

## **§2409. Scope of authority of Secretary of Energy to modify organization of Administration**

Notwithstanding the authority granted by section 7253 of title 42 or any other provision of law, the Secretary of Energy may not establish, abolish, alter, consolidate, or discontinue any organizational unit or component, or transfer any function, of the Administration, except as authorized by subsection (b) or (c) of section 2481 of this title.

(Pub. L. 106–65, div. C, title XXXII, §3219, as added Pub. L. 106–377, §1(a)(2) [title III, §314(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–81.)

## **§2410. Status of Administration and contractor personnel within Department of Energy**

### **(a) Status of Administration personnel**

Each officer or employee of the Administration—

(1) shall be responsible to and subject to the authority, direction, and control of—

- (A) the Secretary acting through the Administrator and consistent with section 7132(c)(3) of title 42;
- (B) the Administrator; or
- (C) the Administrator's designee within the Administration; and

(2) shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.

### **(b) Status of contractor personnel**

Each officer or employee of a contractor of the Administration shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the Administration, except for the Secretary of Energy consistent with section 7132(c)(3) of title 42.

### **(c) Construction of section**

Subsections (a) and (b) of this section may not be interpreted to in any way preclude or interfere with the communication of technical findings derived from, and in accord with, duly authorized activities between (1) the head, or any contractor employee, of a national security laboratory or of a nuclear weapons production facility, and (2) the Department of Energy, the President, or Congress.

### **(d) Prohibition on dual office holding**

Except in accordance with sections 2402(a)(2) and 2406(a)(1) of this title:

- (1) An individual may not concurrently hold or carry out the responsibilities of—
  - (A) a position within the Administration; and
  - (B) a position within the Department of Energy not within the Administration.

(2) No funds appropriated or otherwise made available for any fiscal year may be used to pay, to an individual who concurrently holds or carries out the responsibilities of a position specified in paragraph (1)(A) and a position specified in paragraph (1)(B), the basic pay, salary, or other compensation relating to any such position.

### **(e) Status of intelligence and counterintelligence personnel**

Notwithstanding the restrictions of subsections (a) and (b), each officer or employee of the Administration, or of a contractor of the Administration, who is carrying out activities related to intelligence or counterintelligence shall, in carrying out those activities, be subject to the authority, direction, and control of the Secretary of Energy or the Secretary's delegate.

(Pub. L. 106–65, div. C, title XXXII, §3220, formerly §3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106–398, §1 [div. C, title XXXI, §3157], Oct. 30, 2000, 114 Stat. 1654, 1654A–468; renumbered §3220, Pub. L. 107–107, div. C, title XXXI, §3141(a)(1), Dec. 28, 2001, 115 Stat. 1370; Pub. L. 109–364, div. C, title XXXI, §3117(a)(2)(B), (d), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111–84, div. C, title XXXI, §3121, Oct. 28, 2009, 123 Stat. 2710; Pub. L. 113–66, div. C, title XXXI, §3145(b), Dec. 26, 2013, 127 Stat. 1071.)

## **CODIFICATION**

Section was formerly classified to section 2403 of this title.

## **AMENDMENTS**

**2013**—Subsecs. (a)(1)(A), (b). Pub. L. 113–66 made technical amendment to reference in original act which appears in text as reference to section 7132(c)(3) of title 42.

**2009**—Subsec. (e). Pub. L. 111–84 amended Pub. L. 109–364, §3117(a). See 2006 Amendment note below.

**2006**—Subsec. (e). Pub. L. 109–364, §3117(a), which, in par. (2), directed repeal of subsec. (e) effective Sept. 30, 2010, was amended generally by Pub. L. 111–84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109–364, §3117(d), added subsec. (e).

**2000**—Subsec. (a). Pub. L. 106–398, §1 [div. C, title XXXI, §3157(1)], struck out “Administration, in carrying out any function of the” after “employee of the” in introductory provisions.

Subsec. (b). Pub. L. 106–398, §1 [div. C, title XXXI, §3157(2)], struck out “, in carrying out any function of the Administration,” after “contractor of the Administration”.

Subsec. (d). Pub. L. 106–398, §1 [div. C, title XXXI, §3157(3)], added subsec. (d).

## **§2411. Director for cost estimating and program evaluation**

### **(a) Establishment**

(1) There is in the Administration a Director for Cost Estimating and Program Evaluation (in this section referred to as the “Director”).

(2) The position of the Director shall be a Senior Executive Service position (as defined in section 3132(a) of title 5).

### **(b) Duties**

(1) The Director shall be the principal advisor to the Administrator, the Deputy Secretary of Energy, and the Secretary of Energy with respect to cost estimation and program evaluation for the Administration.

(2) The Administrator may not delegate responsibility for receiving or acting on communications from the Director with respect to cost estimation and program evaluation for the Administration.

### **(c) Activities for cost estimation**

(1) The Director shall be the responsible for the following activities relating to cost estimation:

(A) Advising the Administrator on policies and procedures for cost analysis and estimation by the Administration, including the determination of confidence levels with respect to cost estimates.

(B) Reviewing cost estimates and evaluating the performance baseline for each major atomic energy defense acquisition program.

(C) Advising the Administrator on policies and procedures for developing technology readiness assessments for major atomic energy defense acquisition programs that are consistent with the guidelines of the Department of Energy for technology readiness assessments.

(D) Reviewing technology readiness assessments for such programs to ensure that such programs are meeting levels of confidence associated with appropriate overall system performance.

(E) As directed by the Administrator, conducting independent cost estimates for such programs.

(2) A review, evaluation, or cost estimate conducted under subparagraph (B), (D), or (E) of paragraph (1) shall be considered an inherently governmental function, but the Director may use data collected by a national security laboratory or a management and operating contractor of the Administration in conducting such a review, evaluation, or cost estimate.

(3) The Director shall submit in writing to the Administrator the following:

(A) The certification of the Director with respect to each review, evaluation, and cost estimate conducted under subparagraph (B), (D), or (E) of paragraph (1).

(B) A statement of the confidence level of the Director with respect to each such review, evaluation, and cost estimate, including an identification of areas of uncertainty, risk, and opportunity discovered in conducting each such review, evaluation, and cost estimate.

### **(d) Activities for program evaluation**

(1) The Director shall be responsible for the following activities relating to program evaluation:

(A) Reviewing and commenting on policies and procedures for setting requirements for the future-years nuclear security program under section 2453 of this title and for prioritizing and estimating the funding required by the Administration for that program.

(B) Reviewing the future-years nuclear security program on an annual basis to ensure that the program is accurate and thorough.

(C) Advising the Administrator on policies and procedures for analyses of alternatives for major atomic energy defense acquisition programs.

(D) As part of the planning, programming, and budgeting process of the Administration under sections 2451 and 2452 of this title, analyzing the planning phase of that process, advising on programmatic and fiscal year guidance, and managing the program review phase of that process.

(E) Developing and managing the submittal of the Selected Acquisition Reports and independent cost estimates on nuclear weapons systems undergoing major life extension under section 2537 of this title.

(F) Reviewing cost and schedule baselines for projects under section 2753 of this title and managing notifications to the congressional defense committees of cost overruns under that section.

(2) A review conducted under paragraph (1)(B) shall be considered an inherently governmental function, but the Director may use data collected by a national security laboratory or a management and operating contractor of the Administration in conducting such a review.

(3) The Director shall submit to Congress a report on any major programmatic deviations from the future-years nuclear security program discovered in conducting a review under paragraph (1)(B) at or about the time the budget of the President is submitted to Congress under section 1105(a) of title 31 for the next fiscal year.

#### **(e) Data collection and accessibility**

The Administrator, acting through the Director, shall, as appropriate, seek to use procedures, processes, and policies for collecting cost data and making that data accessible that are similar to the procedures, processes, and policies used by the Defense Cost Analysis Resource Center of the Office of Cost Assessment and Program Evaluation of the Department of Defense for those purposes.

#### **(f) Staff**

The Administrator shall ensure that the Director has sufficient numbers of personnel who have competence in technical matters, budgetary matters, cost estimation, technology readiness analysis, and other appropriate matters to carry out the functions required by this section.

#### **(g) Reports by Director**

The Director shall submit to Congress at or about the time that the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31 for each of fiscal years 2015 through 2018, a report that includes the following:

(1) A description of activities conducted by the Director during the calendar year preceding the submission of the report that are related to the duties and activities described in this section.

(2) A list of all major atomic energy defense acquisition programs and a concise description of the status of each such program and project in meeting cost and critical schedule milestones.

#### **(h) Definitions**

In this section:

##### **(1) Major atomic energy defense acquisition program**

###### **(A) In general**

Except as provided in subparagraph (B), the term “major atomic energy defense acquisition program” means an atomic energy defense acquisition program of the Administration—

- (i) the total project cost of which is more than \$500,000,000; or
- (ii) the total lifetime cost of which is more than \$1,000,000,000.

###### **(B) Exclusion of capital assets acquisition projects**

The term “major atomic energy defense acquisition program” does not include a project covered by Department of Energy Order 413.3 (or a successor order) for the acquisition of capital assets for atomic energy defense activities.

##### **(2) Performance baseline**

The term “performance baseline”, with respect to a major atomic energy defense acquisition program, means the key parameters with respect to performance, scope, cost, and schedule for the project budget of the program.

(Pub. L. 106–65, div. C, title XXXII, §3221, as added Pub. L. 113–66, div. C, title XXXI, §3112(a)(1), Dec. 26, 2013, 127 Stat. 1050.)

## **SUBCHAPTER II—MATTERS RELATING TO SECURITY**

### **§2421. Protection of national security information**

#### **(a) Policies and procedures required**

The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

**(b) Prompt reporting**

The Administrator shall establish procedures to ensure prompt reporting to the Administrator of any significant problem, abuse, violation of law or Executive order, or deficiency relating to the management of classified information by personnel of the Administration.

(Pub. L. 106–65, div. C, title XXXII, §3231, Oct. 5, 1999, 113 Stat. 960.)

## **§2422. Office of Defense Nuclear Security**

**(a) Establishment**

There is within the Administration an Office of Defense Nuclear Security, headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for such position.

**(b) Chief of Defense Nuclear Security**

(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

(2) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning security matters.

(3) The Chief shall be responsible for the development and implementation of security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.

(Pub. L. 106–65, div. C, title XXXII, §3232, Oct. 5, 1999, 113 Stat. 960; Pub. L. 109–364, div. C, title XXXI, §3117(b)(1), Oct. 17, 2006, 120 Stat. 2507.)

### **AMENDMENTS**

**2006**—Pub. L. 109–364, §3117(b)(1)(A), struck out “Office of Defense Nuclear Counterintelligence and” before “Office of Defense Nuclear Security” in section catchline.

Subsec. (a). Pub. L. 109–364, §3117(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

“(1) There are within the Administration—

“(A) an Office of Defense Nuclear Counterintelligence; and

“(B) an Office of Defense Nuclear Security.

“(2) Each office established under paragraph (1) shall be headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for each such position.”

Subsecs. (b), (c). Pub. L. 109–364, §3117(b)(1)(C), (D), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the Chief of Defense Nuclear Counterintelligence.

## **§2423. Counterintelligence programs**

**(a) National security laboratories and nuclear weapons production facilities**

The Secretary of Energy shall, at each national security laboratory and nuclear weapons production facility, establish and maintain a counterintelligence program adequate to protect national security information at that laboratory or production facility.

**(b) Other facilities**

The Secretary of Energy shall, at each Administration facility not described in subsection (a) of this section at which Restricted Data is located, assign an employee of the Office of Counterintelligence of the Department of Energy who shall be responsible for and assess counterintelligence matters at that facility.

(Pub. L. 106–65, div. C, title XXXII, §3233, Oct. 5, 1999, 113 Stat. 961; Pub. L. 109–364, div. C, title XXXI, §3117(a)(2)(C), (c), Oct. 17, 2006, 120 Stat. 2507, 2508; Pub. L. 111–84, div. C, title XXXI, §3121, Oct. 28, 2009, 123 Stat. 2710.)

### **AMENDMENTS**

**2009**—Pub. L. 111–84 amended Pub. L. 109–364, §3117(a), see 2006 Amendment note below.

**2006**—Pub. L. 109–364, §3117(a), which, in par. (2), directed amendment of this section by substituting “Administrator” for “Secretary of Energy” in subsecs. (a) and (b) and “Administration” for “Office of Counterintelligence of the Department of Energy” in subsec. (b), effective Sept. 30, 2010, was amended generally by Pub. L. 111–84, and as so amended, no longer contains a par. (2) or amends this section.

Pub. L. 109–364, §3117(c), substituted “Secretary of Energy” for “Administrator” in subsecs. (a) and (b) and “Office of Counterintelligence of the Department of Energy” for “Office of Defense Nuclear Counterintelligence” in subsec. (b).

## **§2424. Procedures relating to access by individuals to classified areas and information of Administration**

The Administrator shall establish appropriate procedures to ensure that any individual is not permitted unescorted access to any classified area, or access to classified information, of the Administration until that individual has been verified to hold the appropriate security clearances.

(Pub. L. 106–65, div. C, title XXXII, §3234, Oct. 5, 1999, 113 Stat. 961.)

## **§2425. Government access to information on Administration computers**

### **(a) Procedures required**

The Administrator shall establish procedures to govern access to information on Administration computers. Those procedures shall, at a minimum, provide that any individual who has access to information on an Administration computer shall be required as a condition of such access to provide to the Administrator written consent which permits access by an authorized investigative agency to any Administration computer used in the performance of the duties of such employee during the period of that individual's access to information on an Administration computer and for a period of three years thereafter.

### **(b) Expectation of privacy in Administration computers**

Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986 (Public Law 99–508; 100 Stat. 1848)), no user of an Administration computer shall have any expectation of privacy in the use of that computer.

### **(c) Definition**

For purposes of this section, the term “authorized investigative agency” means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(Pub. L. 106–65, div. C, title XXXII, §3235, Oct. 5, 1999, 113 Stat. 961; Pub. L. 113–66, div. C, title XXXI, §3145(c), Dec. 26, 2013, 127 Stat. 1071.)

## **REFERENCES IN TEXT**

The Electronic Communications Privacy Act of 1986, referred to in subsec. (b), is Pub. L. 99–508, Oct. 21, 1986, 100 Stat. 1848. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

## **AMENDMENTS**

**2013**—Subsec. (b). Pub. L. 113–66 inserted “(Public Law 99–508; 100 Stat. 1848)” after “of 1986”.

## **§2426. Congressional oversight of special access programs**

### **(a) Annual report on special access programs**

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report on special access programs of the Administration.

(2) Each such report shall set forth—

(A) the total amount requested for such programs in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each such program in that budget, the following:

(i) A brief description of the program.

- (ii) A brief discussion of the major milestones established for the program.
- (iii) The actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted.
- (iv) The estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

**(b) Annual report on new special access programs**

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report that, with respect to each new special access program, provides—

- (A) notice of the designation of the program as a special access program; and
- (B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

- (A) the current estimate of the total program cost for the program; and
- (B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term “new special access program” means a special access program that has not previously been covered in a notice and justification under this subsection.

**(c) Reports on changes in classification of special access programs**

(1) Whenever a change in the classification of a special access program of the Administration is planned to be made or whenever classified information concerning a special access program of the Administration is to be declassified and made public, the Administrator shall submit to the congressional defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Administrator determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Administration, the Administrator may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

**(d) Notice of change in SAP designation criteria**

Whenever there is a modification or termination of the policy and criteria used for designating a program of the Administration as a special access program, the Administrator shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

**(e) Waiver authority**

(1) The Administrator may waive any requirement under subsection (a), (b), or (c) of this section that certain information be included in a report under that subsection if the Administrator determines that inclusion of that information in the report would adversely affect the national security. The Administrator may waive the report-and-wait requirement in subsection (f) of this section if the Administrator determines that compliance with such requirement would adversely affect the national security. Any waiver under this paragraph shall be made on a case-by-case basis.

(2) If the Administrator exercises the authority provided under paragraph (1), the Administrator shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the congressional defense committees.

**(f) Report and wait for initiating new programs**

A special access program may not be initiated until—

- (1) the congressional defense committees are notified of the program; and
- (2) a period of 30 days elapses after such notification is received.

(Pub. L. 106–65, div. C, title XXXII, §3236, Oct. 5, 1999, 113 Stat. 962.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 2122a of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 106–65, §3294(e)(1)(A).



## **§2441. Authority to establish certain contracting, program management, scientific, engineering, and technical positions**

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this chapter, establish not more than 600 contracting, program management, scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitations in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to, and subject to the limitations of, the authority under section 2201(d) of title 42 to make appointments and fix compensation with respect to officers and employees described in such section. To ensure that the positions established under this section are used, the Administrator, to the extent practicable, shall appoint an individual to such a position to replace the vacancy of a position not established under this section.

(Pub. L. 106–65, div. C, title XXXII, §3241, Oct. 5, 1999, 113 Stat. 964; Pub. L. 112–239, div. C, title XXXI, §3111(b)(1), (2), Jan. 2, 2013, 126 Stat. 2169; Pub. L. 113–66, div. C, title XXXI, §3145(d), Dec. 26, 2013, 127 Stat. 1071.)

### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

### **AMENDMENTS**

**2013**—Pub. L. 113–66, in last sentence, substituted “positions established” for “excepted positions established”, “a position” for “an excepted position”, and “position not established under this section” for “nonexcepted position”.

Pub. L. 112–239, in section catchline, inserted “contracting, program management,” before “scientific” and, in text, substituted “600 contracting, program management, scientific” for “300 scientific” and inserted at end “To ensure that the excepted positions established under this section are used, the Administrator, to the extent practicable, shall appoint an individual to such an excepted position to replace the vacancy of a nonexcepted position.”

## **§2441a. Authorized personnel levels of the Office of the Administrator**

### **(a) Full-time equivalent personnel levels**

#### **(1) Total number**

By October 1, 2014, the total number of employees of the Office of the Administrator may not exceed 1,825.

#### **(2) Excess**

For fiscal year 2015 and each fiscal year thereafter, the Administrator may not exceed the total number of employees authorized under paragraph (1) unless, during each fiscal year in which such total number exceeds 1,825, the Administrator submits to the congressional defense committees a report justifying such excess.

### **(b) Counting rule**

(1) A determination of the number of employees in the Office of the Administrator under subsection (a) shall be expressed on a full-time equivalent basis.

(2) Except as provided by paragraph (3), in determining the total number of employees in the Office of the Administrator under subsection (a), the Administrator shall count each employee of the Office without regard to whether the employee is located at the headquarters of the Administration, a site office of the Administration, a service or support center of the Administration, or any other location.

(3) The following employees may not be counted for purposes of determining the total number of employees in the Office of the Administrator under subsection (a):

- (A) Employees of the Office of Naval Reactors.
- (B) Employees of the Office of Secure Transportation.
- (C) Members of the Armed Forces detailed to the Administration.

(D) Personnel supporting the Office of the Administrator pursuant to the mobility program under subchapter VI of chapter 33 of title 5 (commonly referred to as the “Intergovernmental Personnel Act Mobility Program”).

**(c) Voluntary early retirement**

In accordance with section 3523 of title 5, the Administrator may offer voluntary separation or retirement incentives to meet the total number of employees authorized under subsection (a).

**(d) Use of IPA**

The Administrator shall ensure that the expertise of the national security laboratories and the nuclear weapons production facilities is made available to the Administration, the Department of Energy, the Department of Defense, other Federal agencies, and Congress through the temporary assignment of personnel from such laboratories and facilities pursuant to the Intergovernmental Personnel Act Mobility Program and other similar programs.

(Pub. L. 106–65, div. C, title XXXII, §3241A, as added Pub. L. 112–239, div. C, title XXXI, §3111(a)(1), Jan. 2, 2013, 126 Stat. 2168.)

**§2442. Repealed. Pub. L. 112–239, div. C, title XXXI, §3132(c)(1)(A), Jan. 2, 2013, 126 Stat. 2186**

Section, Pub. L. 106–65, div. C, title XXXII, §3242, Oct. 5, 1999, 113 Stat. 964, related to voluntary early retirement authority.

**§2443. Repealed. Pub. L. 107–107, div. C, title XXXI, §3143, Dec. 28, 2001, 115 Stat. 1371**

Section, Pub. L. 106–65, div. C, title XXXII, §3245, as added Pub. L. 106–377, §1(a)(2) [title III, §315], Oct. 27, 2000, 114 Stat. 1441, 1441A–81, related to prohibition on pay of personnel engaged in concurrent service or duties inside and outside Administration.

**§2444. Nonproliferation and national security scholarship and fellowship program**

**(a) Establishment**

The Administrator for Nuclear Security shall carry out a program to provide scholarships and fellowships for the purpose of enabling individuals to qualify for employment in the nonproliferation and national security programs of the Department of Energy.

**(b) Eligible individuals**

An individual shall be eligible for a scholarship or fellowship under the program established under this section if the individual—

- (1) is a citizen or national of the United States or an alien lawfully admitted to the United States for permanent residence;
- (2) has been accepted for enrollment or is currently enrolled as a full-time student at an institution of higher education (as defined in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)));
- (3) is pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Administrator;
- (4) enters into an agreement described in subsection (c); and
- (5) meets such other requirements as the Administrator prescribes.

**(c) Agreement**

An individual seeking a scholarship or fellowship under the program established under this section shall enter into an agreement, in writing, with the Administrator that includes the following:

- (1) The agreement of the Administrator to provide such individual with a scholarship or fellowship in the form of educational assistance for a specified number of school years (not to exceed five school years) during which such individual is pursuing a program of education in a qualifying field of study, which educational assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.
- (2) The agreement of such individual—
  - (A) to accept such educational assistance;
  - (B) to maintain enrollment and attendance in a program of education described in subsection (b)(2) until such individual completes such program;

(C) while enrolled in such program, to maintain satisfactory academic progress in such program, as determined by the institution of higher education in which such individual is enrolled; and

(D) after completion of such program, to serve as a full-time employee in a nonproliferation or national security position in the Department of Energy or at a laboratory of the Department for a period of not less than 12 months for each school year or part of a school year for which such individual receives a scholarship or fellowship under the program established under this section.

(3) The agreement of such individual with respect to the repayment requirements specified in subsection (d).

#### **(d) Repayment**

##### **(1) In general**

An individual receiving a scholarship or fellowship under the program established under this section shall agree to pay to the United States the total amount of educational assistance provided to such individual under such program, plus interest at the rate prescribed by paragraph (4), if such individual—

(A) does not complete the program of education agreed to pursuant to subsection (c)(2)(B);

(B) completes such program of education but declines to serve in a position in the Department of Energy or at a laboratory of the Department as agreed to pursuant to subsection (c)(2)(D); or

(C) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy or a laboratory of the Department before the end of the period for which such individual agreed to continue in the service of the Department pursuant to subsection (c)(2)(D).

##### **(2) Failure to repay**

If an individual who received a scholarship or fellowship under the program established under this section is required to repay, pursuant to an agreement under paragraph (1), the total amount of educational assistance provided to such individual under such program, plus interest at the rate prescribed by paragraph (4), and fails to repay such amount, a sum equal to such amount (plus such interest) is recoverable by the United States Government from such individual or the estate of such individual by—

(A) in the case of an individual who is an employee of the United States Government, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; or

(B) such other method as is provided by law for the recovery of amounts owed to the Government.

##### **(3) Waiver of repayment**

The Administrator may waive, in whole or in part, repayment by an individual under this subsection if the Administrator determines that seeking recovery under paragraph (2) would be against equity and good conscience or would be contrary to the best interests of the United States.

##### **(4) Rate of interest**

For purposes of repayment under this subsection, the total amount of educational assistance provided to an individual under the program established under this section shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

#### **(e) Preference for cooperative education students**

In evaluating individuals for the award of a scholarship or fellowship under the program established under this section, the Administrator may give a preference to an individual who is enrolled in, or accepted for enrollment in, an institution of higher education that has a cooperative education program with the Department of Energy.

#### **(f) Coordination of benefits**

A scholarship or fellowship awarded under the program established under this section shall be taken into account in determining the eligibility of an individual receiving such scholarship or fellowship for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.].

#### **(g) Report to Congress**

Not later than January 1, 2010, the Administrator shall submit to the congressional defense committees a report on the activities carried out under the program established under this section, including any recommendations for future activities under such program.

#### **(h) Funding**

Of the amounts authorized to be appropriated by section 3101(a)(2) <sup>1</sup> for defense nuclear nonproliferation activities, \$3,000,000 shall be available to carry out the program established under this section.

(Pub. L. 110–417, div. C, title XXXI, §3113, Oct. 14, 2008, 122 Stat. 4754; Pub. L. 111–383, div. A, title

## REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 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 1001 of Title 20 and Tables.

Section 3101(a)(2), referred to in subsec. (h), is section 3101(a)(2) of Pub. L. 110–417, div. C, title XXXI, Oct. 14, 2008, 122 Stat. 4752, which is not classified to the Code.

## CODIFICATION

Section was enacted as part of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

## AMENDMENTS

**2011**—Subsec. (b)(2). Pub. L. 111–383, §1075(e)(19)(A), inserted closing parenthesis before semicolon.

Subsec. (d)(2). Pub. L. 111–383, §1075(e)(19)(B), substituted “fails to repay” for “fails repay”.

## “CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees has the meaning given that term in section 101(a)(16) of Title 10, Armed Forces, see section 3 of Pub. L. 110–417, Oct. 14, 2008, 122 Stat. 4372. See note under section 101 of Title 10.

<sup>1</sup> See References in Text note below.

## SUBCHAPTER IV—BUDGET AND FINANCIAL MANAGEMENT

### §2451. Separate treatment in budget

#### (a) President's budget

In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for the Administration shall be set forth separately within the other amounts requested for the Department of Energy.

#### (b) Budget justification materials

(1) In the budget justification materials submitted to Congress in support of each such budget, the amounts requested for the Administration shall be specified in individual, dedicated program elements.

(2) In the budget justification materials submitted to Congress in support of each such budget, the Administrator shall include an assessment of how the budget maintains the core nuclear weapons skills of the Administration, including nuclear weapons design, engineering, production, testing, and prediction of stockpile aging.

(Pub. L. 106–65, div. C, title XXXII, §3251, Oct. 5, 1999, 113 Stat. 966; Pub. L. 112–239, div. C, title XXXI, §3112, Jan. 2, 2013, 126 Stat. 2169; Pub. L. 113–66, div. C, title XXXI, §3145(e), Dec. 26, 2013, 127 Stat. 1071.)

## AMENDMENTS

**2013**—Subsec. (a). Pub. L. 113–66 substituted “Congress” for “the Congress”.

Subsec. (b). Pub. L. 112–239 designated existing provisions as par. (1) and added par. (2).

## TEN-YEAR PLAN FOR USE AND FUNDING OF CERTAIN DEPARTMENT OF ENERGY FACILITIES

Pub. L. 111–84, div. C, title XXXI, §3141, Oct. 28, 2009, 123 Stat. 2715, provided that:

“(a) IN GENERAL.—The Administrator for Nuclear Security and the Under Secretary for Science of the Department of Energy shall jointly develop a plan to use and fund, over a ten-year period, the following facilities of the Department of Energy:

“(1) The National Ignition Facility at the Lawrence Livermore National Laboratory, California.

“(2) The Los Alamos Neutron Science Center at the Los Alamos National Laboratory, New Mexico.

“(3) The Z Machine at the Sandia National Laboratories, New Mexico.

“(4) The Microsystems and Engineering Sciences Application Facility at the Sandia National Laboratories, New Mexico.

“(b) **SUBMITTAL OF PLAN.**—Not later than 45 days after the date of the enactment of this Act [Oct. 28, 2009], the Administrator for Nuclear Security and the Under Secretary for Science of the Department of Energy shall submit to the appropriate congressional committees the plan required by subsection (a).

“(c) **REQUIREMENT TO SPECIFY SOURCE OF FACILITY FUNDING IN BUDGET REQUESTS.**—In any budget request for the Department of Energy for a fiscal year that is submitted to Congress after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Energy shall identify for that fiscal year the portion of the funding for each facility specified in subsection (a) that is to be provided by the National Nuclear Security Administration and by the Office of Science of the Department of Energy.

“(d) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term ‘appropriate congressional committees’ means—

“(1) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Science and Technology [now Committee on Science, Space, and Technology] of the House of Representatives; and

“(2) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Energy and Natural Resources of the Senate.”

## **§2452. Planning, programming, and budgeting process**

### **(a) Procedures required**

The Administrator shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Administration comport with sound financial and fiscal management principles. Those procedures shall, at a minimum, provide for the planning, programming, and budgeting of activities of the Administration using funds that are available for obligation for a limited number of years.

### **(b) Annual plan for obligation of funds**

(1) Each year, the Administrator shall prepare a plan for the obligation of the amounts that, in the President's budget submitted to Congress that year under section 1105(a) of title 31, are proposed to be appropriated for the Administration for the fiscal year that begins in that year (in this section referred to as the “budget year”) and the two succeeding fiscal years.

(2) For each program element and construction line item of the Administration, the plan shall provide the goal of the Administration for the obligation of those amounts for that element or item for each fiscal year of the plan, expressed as a percentage of the total amount proposed to be appropriated in that budget for that element or item.

### **(c) Submission of plan and report**

The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress under section 1105(a) of title 31, each of the following:

(1) The plan required by subsection (b) of this section prepared with respect to that budget.

(2) A report on the plans prepared with respect to the preceding years' budgets, which shall include, for each goal provided in those plans—

(A) the assessment of the Administrator as to whether or not that goal was met; and

(B) if that assessment is that the goal was not met—

(i) the reasons why that goal was not met; and

(ii) the plan of the Administrator for meeting or, if necessary, adjusting that goal.

(Pub. L. 106–65, div. C, title XXXII, §3252, Oct. 5, 1999, 113 Stat. 966; Pub. L. 106–398, §1 [div. C, title XXXI, §3158(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–469.)

## **AMENDMENTS**

**2000**—Pub. L. 106–398 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

## FIRST REPORT ON ASSESSMENT OF PRIOR PLANS; GAO REPORT

Pub. L. 106–398, §1 [div. C, title XXXI, §3158(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–469, provided that:

“(b) EFFECTIVE DATE OF REQUIREMENT TO ASSESS PRIOR PLAN.—The first report submitted under paragraph (2) of subsection (c) of such section [subsec. (c)(2) of this section] (as added by subsection (a)) shall be the report on the plan prepared with respect to the budget submitted in calendar year 2001.

“(c) GAO REPORT.—Not later than March 15, 2001, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an assessment of the adequacy of the planning, programming, and budgeting processes of the National Nuclear Security Administration.”

### §2453. Future-years nuclear security program

#### (a) Submission to Congress

The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

#### (b) Elements

Each future-years nuclear security program shall contain the following:

(1) A detailed description of the program elements (and the projects, activities, and construction projects associated with each such program element) during the applicable five-fiscal-year period for at least each of the following:

(A) For defense programs—

- (i) directed stockpile work;
- (ii) campaigns;
- (iii) readiness in technical base and facilities; and
- (iv) secure transportation asset.

(B) For defense nuclear nonproliferation—

- (i) nonproliferation and verification, research, and development;
- (ii) arms control; and
- (iii) fissile materials disposition.

(C) For naval reactors, naval reactors operations and maintenance.

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support each program element specified pursuant to paragraph (1).

(3) A detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal-year period will help ensure that the nuclear weapons stockpile is safe and reliable, as determined in accordance with the criteria established under section 2522(a) of this title.

(4) A description of the anticipated workload requirements for each Administration site during that five-fiscal-year period.

(5) A plan, developed in consultation with the Director of the Office of Health, Safety, and Security of the Department of Energy, for the research and development, deployment, and lifecycle sustainment of the technologies employed within the nuclear security enterprise to address physical and cyber security threats during the applicable five-fiscal-year period, together with—

(A) for each site in the nuclear security enterprise, a description of the technologies deployed to address the physical and cyber security threats posed to that site;

(B) for each site and for the nuclear security enterprise, the methods used by the Administration to establish priorities among investments in physical and cyber security technologies; and

(C) a detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal-year period will help carry out that plan.

#### (c) Consistency in budgeting

(1) The Administrator shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Administrator in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years nuclear security program submitted pursuant to subsection (a) of this section.

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

**(d) Treatment of management contingencies**

Nothing in this section shall be construed to prohibit the inclusion in the future-years nuclear security program of amounts for management contingencies, subject to the requirements of subsection (c) of this section.

(Pub. L. 106–65, div. C, title XXXII, §3253, Oct. 5, 1999, 113 Stat. 966; Pub. L. 106–398, §1 [div. C, title XXXI, §3154], Oct. 30, 2000, 114 Stat. 1654, 1654A–465; Pub. L. 109–364, div. C, title XXXI, §3111(b), Oct. 17, 2006, 120 Stat. 2503; Pub. L. 110–181, div. C, title XXXI, §3123, Jan. 28, 2008, 122 Stat. 580; Pub. L. 112–239, div. C, title XXXI, §3132(a)(1), (d)(2), Jan. 2, 2013, 126 Stat. 2185, 2187; Pub. L. 113–66, div. C, title XXXI, §3145(f), Dec. 26, 2013, 127 Stat. 1071.)

**AMENDMENTS**

**2013**—Subsec. (b). Pub. L. 113–66 substituted “five-fiscal-year” for “five-fiscal year” wherever appearing, redesignated par. (6) as (5) and struck out “National Nuclear Security” before “Administration” in subpar. (B), and struck out former par. (5) which read as follows: “A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support the programs required to implement the plan to transform the nuclear security enterprise under section 2534 of this title, together with a detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal-year period will help ensure that those programs are implemented. The statement shall assume year-to-year funding profiles that account for increases only for projected inflation.”

Subsec. (b)(3). Pub. L. 112–239, §3132(d)(2), substituted “section 2522(a) of this title” for “section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note)”.

Subsec. (b)(5), (6). Pub. L. 112–239, §3132(a)(1), substituted “nuclear security enterprise” for “nuclear weapons complex” wherever appearing.

**2008**—Subsec. (b)(6). Pub. L. 110–181 added par. (6).

**2006**—Subsec. (b)(5). Pub. L. 109–364 added par. (5).

**2000**—Subsec. (b). Pub. L. 106–398, §1 [div. C, title XXXI, §3154(a)], added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: “The estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration during the five-fiscal year period covered by the program, expressed in a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31.”

Subsec. (c). Pub. L. 106–398, §1 [div. C, title XXXI, §3154(b)(1), (2)], redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “The Administrator shall include in the materials the Administrator submits to Congress in support of the budget for any fiscal year that is submitted by the President pursuant to section 1105 of title 31 a description of how the funds identified for each program element in the weapons activities budget of the Administration for such fiscal year will help ensure that the nuclear weapons stockpile is safe and reliable as determined in accordance with the criteria established under section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2257; 42 U.S.C. 2121 note).”

Subsec. (d). Pub. L. 106–398, §1 [div. C, title XXXI, §3154(b)(2), (3)], redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsection (d)”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106–398, §1 [div. C, title XXXI, §3154(b)(2)], redesignated subsec. (e) as (d).

**TECHNICAL BASE AND FACILITIES MAINTENANCE AND RECAPITALIZATION ACTIVITIES**

Pub. L. 108–136, div. C, title XXXI, §3114, Nov. 24, 2003, 117 Stat. 1744, as amended by Pub. L. 108–375, div. C, title XXXI, §3113(a), Oct. 28, 2004, 118 Stat. 2160; Pub. L. 109–364, div. C, title XXXI, §3112, Oct. 17, 2006, 120 Stat. 2503, provided that:

“(a) INCLUSION OF PROJECTS IN FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM.—(1) The Administrator for Nuclear Security shall complete the selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program of the National Nuclear Security Administration not later than December 31, 2004.

“(2) Except as provided in paragraph (3), no project may be included in the Facilities and Infrastructure Recapitalization Program after December 31, 2004, unless such project has been selected for inclusion in that program as of that date.

“(3)(A) Subject to the provisions of this paragraph, a project described in subparagraph (B) may be carried out under the Facilities and Infrastructure Recapitalization Program after December 31, 2004, if the Administrator approves the project. The Administrator may not delegate the authority to approve projects under the preceding sentence.

“(B) A project described in this subparagraph is a project that consists of a specific building, facility, or other improvement (including fences, roads, or similar improvements).

“(C) Funds may not be obligated or expended for a project under this paragraph until 60 days after the date on which the Administrator submits to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a notice on the project, including a description of the project and the nature of the project, a statement explaining why the project was not included in the Facilities and Infrastructure Recapitalization Program under paragraph (1), and a statement explaining why the project was not included in any other program under the jurisdiction of the Administrator.

“(D) The total number of projects that may be carried out under this paragraph in any fiscal year may not exceed five projects.

“(E) The Administrator may not utilize the authority in this paragraph until 60 days after the later of—

“(i) the date of the submittal to the congressional defense committees of a list of the projects selected for inclusion in the Facilities and Infrastructure Recapitalization Program under paragraph (1); or

“(ii) the date of the submittal to the congressional defense committees of the report required by subsection (c).

“(F) A project may not be carried out under this paragraph unless the project will be completed by September 30, 2013.

“(b) TERMINATION OF FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM.—The Administrator shall terminate the Facilities and Infrastructure Recapitalization Program not later than September 30, 2013.

“(c) READINESS IN TECHNICAL BASE AND FACILITIES PROGRAM.—(1) Not later than September 30, 2004, the Administrator shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report setting forth guidelines on the conduct of the Readiness in Technical Base and Facilities program of the National Nuclear Security Administration.

“(2) Such guidelines shall include the following:

“(A) Criteria for the inclusion of projects in the program, and for establishing priorities among projects included in the program.

“(B) Mechanisms for the management of facilities under the program, including maintenance activities referred to in subparagraph (C).

“(C) A description of the scope of maintenance activities under the program, including recurring maintenance, construction of facilities, recapitalization of facilities, and decontamination and decommissioning of facilities.

“(3) Such guidelines shall ensure that the maintenance activities referred to in paragraph (2) (C) are carried out in a timely and efficient manner designed to avoid maintenance backlogs.

“(d) OPERATIONS OF FACILITIES PROGRAM.—(1) The Administrator shall continue the Operations of Facilities program of the National Nuclear Security Administration as a subprogram within the Readiness in Technical Base and Facilities program.

“(2) The Deputy Administrator for Defense Programs shall designate a single manager to be responsible for overseeing the operations of the Operations of Facilities subprogram within the



Readiness in Technical Base and Facilities program.

“(3) For fiscal year 2005, and for each fiscal year thereafter, the Secretary of Energy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives], together with the budget justification materials submitted to Congress in support of the National Nuclear Security Administration budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a separate statement of the amounts requested for such fiscal year for each element of the Operations of Facilities subprogram, as follows:

“(A) Maintenance.

“(B) Facilities management and support.

“(C) Utilities.

“(D) Environment, safety, and health.

“(E) Each other element of the subprogram.”

[Pub. L. 108–375, div. C, title XXXI, §3113(b), Oct. 28, 2004, 118 Stat. 2161, provided that: “The amendments made by subsection (a) [amending section 3114 of Pub. L. 108–136, set out above] may not be construed to authorize any delay in either of the following:

[“(1) The selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program under subsection (a) of section 3114 of the National Defense Authorization Act for Fiscal Year 2004 [Pub. L. 108–136, set out above].

[“(2) The submittal of the report required by subsection (c) of such section.”]

## **§2454. Semiannual financial reports on defense nuclear nonproliferation programs**

### **(a) Semiannual reports required**

The Administrator shall submit to the Committees on Armed Services of the Senate and the House of Representatives a semiannual report on the amounts available for the defense nuclear nonproliferation programs of the Administration. Each such report shall cover a half of a fiscal year (in this section referred to as a “fiscal half”) and shall be submitted not later than 30 days after the end of that fiscal half.

### **(b) Contents**

Each report for a fiscal half shall, for each such defense nuclear nonproliferation program for which amounts are available for the fiscal year that includes that fiscal half, set forth the following:

(1) The aggregate amount available for such program as of the beginning of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

(2) The aggregate amount newly made available for such program during such fiscal half and, within such amount, the amount made available by appropriations, by transfers, by reprogrammings, and by other means.

(3) The aggregate amount available for such program as of the end of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

(Pub. L. 106–65, div. C, title XXXII, §3254, as added Pub. L. 108–136, div. C, title XXXI, §3121(a), Nov. 24, 2003, 117 Stat. 1746.)

### **FIRST REPORT**

Pub. L. 108–136, div. C, title XXXI, §3121(b), Nov. 24, 2003, 117 Stat. 1747, provided that: “The first report required to be submitted by section 3254 of the National Nuclear Security Administration Act (as added by subsection (a) [this section]) shall be the report covering the first half of fiscal year 2004.”

## **§2455. Comptroller General assessment of adequacy of budget requests with respect to the modernization and refurbishment of the nuclear weapons stockpile**

### **(a) GAO study and reports**

(1) For the nuclear security budget materials submitted in each fiscal year by the Administrator, the Comptroller General of the United States shall conduct a study on whether both the budget for the fiscal year following the fiscal year in which such budget materials are submitted and the future-years nuclear

security program submitted to Congress in relation to such budget under section 2453 of this title provide for funding of the nuclear security enterprise at a level that is sufficient for the modernization and refurbishment of the nuclear security enterprise.

(2) Not later than 90 days after the date on which the Administrator submits the nuclear security budget materials, the Comptroller General shall submit to the congressional defense committees a report on the study under paragraph (1), including—

(A) the findings of such study; and

(B) whether the nuclear security budget materials support the requirements for infrastructure recapitalization of the facilities of the nuclear security enterprise.

### **(b) Definitions**

In this section:

(1) The term “budget” means the budget for a fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term “nuclear security budget materials” means the materials submitted to Congress by the Administrator in support of the budget for a fiscal year.

(Pub. L. 106–65, div. C, title XXXII, §3255, as added Pub. L. 111–84, div. C, title XXXI, §3116(a), Oct. 28, 2009, 123 Stat. 2707; amended Pub. L. 111–383, div. C, title XXXI, §3113(a), Jan. 7, 2011, 124 Stat. 4509; Pub. L. 112–239, div. C, title XXXI, §3132(a)(2), Jan. 2, 2013, 126 Stat. 2185.)

## **AMENDMENTS**

**2013**—Subsec. (a). Pub. L. 112–239, §3132(a)(2)(A), substituted “nuclear security enterprise” for “nuclear security complex” wherever appearing.

Subsec. (b)(3). Pub. L. 112–239, §3132(a)(2)(B), struck out par. (3), which defined “nuclear security complex”.

**2011**—Pub. L. 111–383 amended section generally. Prior to amendment, section related to biennial plan and budget assessment on the modernization and refurbishment of the nuclear security complex.

## **§2455a. National Nuclear Security Administration authority for urgent nonproliferation activities**

### **(a) In general**

Subject to the notification requirement under subsection (b), not more than 10 percent of the total amounts appropriated or otherwise made available in any fiscal year for the nonproliferation programs of the Department of Energy National Nuclear Security Administration may be expended, notwithstanding any other law, for activities described under subsection (b)(1)(B).

### **(b) Determination and notice**

#### **(1) Determination**

The Secretary of Energy, with the concurrence of the Secretary of State and the Secretary of Defense, may make a written determination that—

(A) threats arising from the proliferation of nuclear or radiological weapons or weapons-related materials, technologies, and expertise must be addressed urgently;

(B) certain provisions of law would unnecessarily impede the Secretary's ability to carry out nonproliferation activities of the National Nuclear Security Administration to address such threats; and

(C) it is necessary to expend amounts described in subsection (a) to carry out such activities.

#### **(2) Notice required**

Not later than 15 days before obligating or expending funds under the authority provided in subsection (a), the Secretary of Energy shall notify the appropriate congressional committees of the determination made under paragraph (1). The notice shall include—

(A) the determination;

(B) the activities to be undertaken by the nonproliferation programs of the National Nuclear Security Administration;

(C) the expected time frame for such activities; and

(D) the expected costs of such activities.

### **(c) Appropriate congressional committees**

In this section, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on

Appropriations of the Senate.

(Pub. L. 111–84, div. C, title XXXI, §3120, Oct. 28, 2009, 123 Stat. 2710.)

## CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2010, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

## SUBCHAPTER V—MISCELLANEOUS PROVISIONS

### §2461. Environmental protection, safety, and health requirements

#### (a) Compliance required

The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

#### (b) Procedures required

The Administrator shall develop procedures for meeting such requirements.

#### (c) Rule of construction

Nothing in this chapter shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.

(Pub. L. 106–65, div. C, title XXXII, §3261, Oct. 5, 1999, 113 Stat. 967.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

### §2462. Compliance with Federal Acquisition Regulation

The Administrator shall establish procedures to ensure that the mission and programs of the Administration are executed in full compliance with all applicable provisions of the Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41.

(Pub. L. 106–65, div. C, title XXXII, §3262, Oct. 5, 1999, 113 Stat. 967; Pub. L. 113–66, div. C, title XXXI, §3145(g), Dec. 26, 2013, 127 Stat. 1071.)

## AMENDMENTS

**2013**—Pub. L. 113–66 substituted “section 1303(a)(1) of title 41” for “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)”, which had been translated as “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” based on the enactment of Title 41, Public Contracts, by Pub. L. 111–350.

### §2463. Sharing of technology with Department of Defense

The Administrator shall, in cooperation with the Secretary of Defense, establish procedures and programs to provide for the sharing of technology, technical capability, and expertise between the Administration and the Department of Defense to further national security objectives.

(Pub. L. 106–65, div. C, title XXXII, §3263, Oct. 5, 1999, 113 Stat. 967.)

### §2464. Use of capabilities of national security laboratories by entities outside the Administration

The Secretary of Energy, in consultation with the Administrator, shall establish appropriate procedures

to provide for the use, in a manner consistent with the national security mission of the Administration under section 2401(b) of this title, of the capabilities of the national security laboratories by elements of the Department of Energy not within the Administration, other Federal agencies, and other appropriate entities, including the use of those capabilities to support efforts to defend against weapons of mass destruction.

(Pub. L. 106–65, div. C, title XXXII, §3264, Oct. 5, 1999, 113 Stat. 967; Pub. L. 113–66, div. C, title XXXI, §3145(h), Dec. 26, 2013, 127 Stat. 1072.)

## AMENDMENTS

**2013**—Pub. L. 113–66 inserted “of Energy” after “Secretary”.

## §2465. Enhancing private-sector employment through cooperative research and development activities

### (a) In general

The Administrator for Nuclear Security shall encourage cooperative research and development activities at the national security laboratories (as defined in section 2471 of this title) that lead to the creation of new private-sector employment opportunities.

### (b) Reports

Not later than January 31 of each year from 2012 through 2017, the Administrator shall submit to Congress a report detailing the number of new private-sector employment opportunities created as a result of the previous years’ cooperative research and development activities at each national security laboratory.

(Pub. L. 111–383, div. C, title XXXI, §3122, Jan. 7, 2011, 124 Stat. 4514.)

## CODIFICATION

Section was enacted as part of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

## SUBCHAPTER VI—DEFINITIONS

## §2471. Definitions

For purposes of this chapter:

(1) The term “national security laboratory” means any of the following:

- (A) Los Alamos National Laboratory, Los Alamos, New Mexico.
- (B) Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.
- (C) Lawrence Livermore National Laboratory, Livermore, California.

(2) The term “nuclear weapons production facility” means any of the following:

- (A) The Kansas City Plant, Kansas City, Missouri.
- (B) The Pantex Plant, Amarillo, Texas.
- (C) The Y–12 National Security Complex, Oak Ridge, Tennessee.
- (D) The Savannah River Site, Aiken, South Carolina.
- (E) The Nevada National Security Site, Nevada.

(F) Any facility of the Department of Energy that the Secretary of Energy, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.

(3) The term “classified information” means any information that has been determined pursuant to Executive Order No. 12333 of December 4, 1981 ([former] 50 U.S.C. 401 note) [now 50 U.S.C. 3001 note], Executive Order No. 12958 of April 17, 1995 ([former] 50 U.S.C. 435 note) [now 50 U.S.C. 3161 note], or successor orders, to require protection against unauthorized disclosure and that is so designated.

(4) The term “Restricted Data” has the meaning given such term in section 2014(y) of title 42.

(5) The term “congressional defense committees” means—

- (A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(6) The term “nuclear security enterprise” means the physical facilities, technology, and human capital of the national security laboratories and the nuclear weapons production facilities.

(Pub. L. 106–65, div. C, title XXXII, §3281, Oct. 5, 1999, 113 Stat. 968; Pub. L. 112–239, div. C, title XXXI, §3132(a)(3), (d)(3), (4), Jan. 2, 2013, 126 Stat. 2185, 2187; Pub. L. 113–66, div. C, title XXXI, §3145(i), Dec. 26, 2013, 127 Stat. 1072.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

## AMENDMENTS

**2013**—Par. (2)(C). Pub. L. 112–239, §3132(d)(3)(A), substituted “Y–12 National Security Complex” for “Y–12 Plant”.

Par. (2)(D). Pub. L. 112–239, §3132(d)(3)(B), struck out “tritium operations facilities at the” before “Savannah River Site”.

Par. (2)(E). Pub. L. 112–239, §3132(d)(4), substituted “Nevada National Security Site” for “Nevada Test Site”.

Par. (2)(F). Pub. L. 113–66 substituted “Congress” for “the Congress”.

Par. (6). Pub. L. 112–239, §3132(a)(3), added par. (6).

## SUBCHAPTER VII—TRANSITION PROVISIONS

### §2481. Functions transferred

#### (a) Transfers

There are hereby transferred to the Administrator all national security functions and activities performed immediately before October 5, 1999, by the following elements of the Department of Energy:

- (1) The Office of Defense Programs.
- (2) The Office of Nonproliferation and National Security.
- (3) The Office of Fissile Materials Disposition.
- (4) The nuclear weapons production facilities.
- (5) The national security laboratories.
- (6) The Office of Naval Reactors.

#### (b) Authority to transfer additional functions

The Secretary of Energy may transfer to the Administrator any other facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.

#### (c) Environmental remediation and waste management activities

In the case of any environmental remediation and waste management activity of any element of the Administration, the Secretary of Energy may determine to transfer responsibility for that activity to another element of the Department.

#### (d) Transfer of funds

(1) Any balance of appropriations that the Secretary of Energy determines is available and needed to finance or discharge a function, power, or duty or an activity that is transferred to the Administration shall be transferred to the Administration and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(A) be credited to any applicable appropriation account of the Administration; or

(B) be credited to a new account that may be established on the books of the Department of the Treasury;

and shall be merged with the funds already credited to that account and accounted for as one fund.

(2) Balances of appropriations credited to an account under paragraph (1)(A) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

#### **(e) Personnel**

(1) With respect to any function, power, or duty or activity of the Department of Energy that is transferred to the Administration, those employees of the element of the Department of Energy from which the transfer is made that the Secretary of Energy determines are needed to perform that function, power, or duty, or for that activity, as the case may be, shall be transferred to the Administration.

(2) The authorized strength in civilian employees of any element of the Department of Energy from which employees are transferred under this section is reduced by the number of employees so transferred. (Pub. L. 106–65, div. C, title XXXII, §3291, Oct. 5, 1999, 113 Stat. 968; Pub. L. 112–239, div. C, title XXXI, §3132(b)(1), Jan. 2, 2013, 126 Stat. 2185; Pub. L. 113–66, div. C, title XXXI, §3145(j), Dec. 26, 2013, 127 Stat. 1072.)

### **AMENDMENTS**

**2013**—Subsec. (c). Pub. L. 112–239, §3132(b)(1)(A), substituted “of the Administration” for “specified in subsection (a)”.

Subsec. (d). Pub. L. 112–239, §3132(b)(1)(B), added subsec. (d).

Subsec. (d)(1). Pub. L. 113–66 realigned margins of concluding provisions.

Subsec. (e). Pub. L. 112–239, §3132(b)(1)(B), added subsec. (e).

### **CONSTRUCTION**

Pub. L. 112–239, div. C, title XXXI, §3132(b)(3), Jan. 2, 2013, 126 Stat. 2186, provided that: “Nothing in section 3291 of the National Nuclear Security Administration Act (50 U.S.C. 2481), as amended by paragraph (1), may be construed to affect any function or activity transferred by the Secretary of Energy to the Administrator for Nuclear Security before the date of the enactment of this Act [Jan. 2, 2013].”

### **TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### **§§2482, 2483. Repealed. Pub. L. 112–239, div. C, title XXXI, §3132(c)(1)(B), (C), Jan. 2, 2013, 126 Stat. 2186, 2187**

Section 2482, Pub. L. 106–65, div. C, title XXXII, §3292, Oct. 5, 1999, 113 Stat. 969, related to transfer of funds and employees.

Section 2483, Pub. L. 106–65, div. C, title XXXII, §3295, Oct. 5, 1999, 113 Stat. 970, related to transition provisions.

### **§2484. Applicability of preexisting laws and regulations**

With respect to any facility, mission, or function of the Department of Energy that the Secretary of Energy transfers to the Administrator under section 3291, unless otherwise provided in this chapter, all provisions of law and regulations in effect immediately before the date of the transfer that are applicable to such facility, mission, or function shall continue to apply to the corresponding functions of the Administration.

(Pub. L. 106–65, div. C, title XXXII, §3296, Oct. 5, 1999, 113 Stat. 971; Pub. L. 112–239, div. C, title XXXI, §3132(b)(2), Jan. 2, 2013, 126 Stat. 2186.)

### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this

chapter. For effective date of this chapter, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of this title. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

#### **AMENDMENTS**

**2013**—Pub. L. 112–239 amended section generally. Prior to amendment, text read as follows: “Unless otherwise provided in this chapter, all provisions of law and regulations in effect immediately before the effective date of this chapter that are applicable to functions of the Department of Energy specified in section 2481 of this title shall continue to apply to the corresponding functions of the Administration.”