

**ENABLING STATUTE OF THE
DEFENSE NUCLEAR FACILITIES SAFETY
BOARD**



**ATOMIC ENERGY ACT OF 1954,
CHAPTER 21, AS AMENDED**

42 U.S.C. § 2286 *ET SEQ.*

APRIL 2023

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**ATOMIC ENERGY ACT OF 1954, CHAPTER 21, AS AMENDED
CODIFIED AT 42 U.S.C. § 2286 *ET SEQ.***

As Amended by,
National Defense Authorization Act, Fiscal Year 1989
(Pub. L. No. 100-456, September 29, 1988),
National Defense Authorization Act for Fiscal Year 1991
(Pub. L. No. 101-510, November 5, 1990),
National Defense Authorization Act for Fiscal Years 1992 and 1993
(Pub. L. No. 102-190, December 5, 1991),
Energy Policy Act of 1992
(Pub. L. No. 102-486, October 24, 1992),
National Defense Authorization Act for Fiscal Year 1994
(Pub. L. No. 103-160, November 30, 1993),
Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001
(Pub. L. No. 106-398, October 30, 2000),
Bob Stump National Defense Authorization Act for Fiscal Year 2003
(Pub. L. No. 107-314, December 2, 2002),
National Defense Authorization Act for Fiscal Year 2004
(Pub. L. No. 108-136, November 7, 2003),
Duncan Hunter National Defense Authorization Act for Fiscal Year 2009
(Pub. L. No. 110-417, October 14, 2008),
National Defense Authorization Act for Fiscal Year 2013
(Pub. L. No. 112-239, January 2, 2013),
Carl Levin and Howard P. “Buck” McKeon
National Defense Authorization Act for Fiscal Year 2015
(Pub. L. No. 113-291, December 19, 2014),
National Defense Authorization Act for Fiscal Year 2016
(Pub. L. No. 114-92, November 25, 2015),
National Defense Authorization Act for Fiscal Year 2020
(Pub. L. No. 116-92, December 20, 2019),
William M. (Mac) Thornberry National
Defense Authorization Act for Fiscal Year 2021
(Pub. L. No. 116-283, January 1, 2021),
National Defense Authorization Act for Fiscal Year 2022
(Pub. L. No. 117-81, December 27, 2021), and
James M. Inhofe National Defense Authorization Act for Fiscal year 2023
(Pub. L. No. 117-263, December 23, 2022).

**TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 23. DEVELOPMENT AND CONTROL OF
ATOMIC ENERGY
SUBCHAPTER XVII.A.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD
42 U.S.C. § 2286 *et seq.***

§ 2286. Establishment [Atomic Energy Act, Sec. 311]

(a) Establishment

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

(b) Membership

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

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

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

(4) The President shall enter into an arrangement with the National Academy of Sciences under which the National Academy shall maintain a list of individuals who meet the qualifications described in paragraph (1) to assist the President in

selecting individuals to nominate for positions as members of the Board.

(c) Chairperson, Vice Chairperson, and Members

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

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

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

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

(C) the use and expenditure of funds.

(3) (A) The Chairperson may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

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

(i) Administrative functions of the Board.

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

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

(iv) Preparation of—

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

(II) the budget estimate for the Board; and

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

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

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

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

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

(C) have one vote.

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

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

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

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

(ii) The general counsel.

(d) Terms

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

(2) Of the members first appointed—

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

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

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

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

(E) one shall be appointed for a term of five years, as designated by the President at the time of appointment.

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

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

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

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

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

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

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

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

(e) Quorum

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

(2) In accordance with paragraph (4), during a covered period, the Chairperson, in consultation with an eligible member, may carry out the functions and powers of the Board under sections 2286a through 2286e of this title, notwithstanding that a quorum does not exist.

(3) Not later than 30 days after a covered period begins, the Chairperson shall notify the congressional defense committees that a quorum does not exist.

(4) The Chairperson may make recommendations to the Secretary of Energy and initiate investigations into defense nuclear facilities under section 2286a of this title pursuant to paragraph (2) only if—

(A) a period of 30 days elapses following the date on which the Chairperson submits the notification required under paragraph (3);

(B) not later than 30 days after making any such recommendation or initiating any such investigation, the Chairperson notifies the congressional defense committees of such recommendation or investigation; and

(C) any eligible member concurs with such recommendation or investigation.

(5) In this subsection:

(A) The term ‘congressional defense committees’ has the meaning given such term in section 101(a) of title 10, United States Code.

(B) The term ‘covered period’ means a period beginning on the date on which a quorum specified in paragraph (1) does not exist by reason of either or both a vacancy in the membership of the Board or the incapacity of a member of the Board and ending on the earlier of—

(i) the date that is one year after such beginning date; or

(ii) the date on which a quorum exists.

(C) The term ‘eligible member’ means a member of the Board, other than the Chairperson, serving during a covered period and who is not incapacitated.

§ 2286a. Mission and Functions of the Board [Atomic Energy Act, Sec. 312]¹

(a) Mission

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

(b) Functions

The Board shall perform the following functions:

(1) Review and evaluation of standards

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

¹ *Construction of Section 3202 of Pub. L. 112–239; Safety Standards* Pub. L. 112–239, div. C, title XXXII, §3202(h), Jan. 2, 2013, 126 Stat. 2220, provided that: "Nothing in this section [in pertinent part: amending section 2286a to include a mission statement and require the Board to specifically assess risk when making recommendations; and amending section 2286d to provide for a draft recommendation process] or in the amendments made by this section shall be construed to cause a reduction in nuclear safety standards."

(2) Investigations

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

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

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

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

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

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

(3) Analysis of design and operational data

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

(4) Review of facility design and construction

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

(5) Recommendations

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

(c) Excluded functions

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

§ 2286b. Powers of Board [Atomic Energy Act, Sec. 313]

(a) Hearings

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and

sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairperson or any member of the Board designated by him and shall be served by any person designated by the Chairperson, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) Staff

(1) The Board may, for the purpose of performing its responsibilities under this subchapter—

(A) in accordance with section 2286(c)(6) of this title, hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 130 full-time employees; and

(B) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5 at rates the Board determines to be reasonable.

(2) The authority and requirements provided in section 2201(d) of this title with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(3)(A) The Board shall have an Executive Director of Operations who shall be appointed under section 2286(c)(6).

(B) The Executive Director of Operations shall report to the Chairperson.

(C) The Executive Director of Operations shall be the senior employee of the Board Responsible for –

(i) general administration and technical matters;

(ii) ensuring that the members of the Board are fully and currently informed with respect to matters for which the members are responsible; and

(iii) the functions delegated by the Chairperson pursuant to section 2286(c)(3)(B).

(4) Subject to the approval of the Board, the Chairperson may organize the staff of the Board as the Chairperson considers appropriate to best accomplish the mission of the Board described in section 2286a(a).

(c) Regulations

The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter.

(d) Reporting requirements

The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 2167 or 2168 of this title.

(e) Use of Government facilities, etc.

The Board may, for the purpose of carrying out its responsibilities under this subchapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) Assistance from certain agencies of Federal Government

With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) Assistance from organizations outside Federal Government

Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the

Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this subchapter.

(h) Resident inspectors

The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

(i) Special studies

The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) Evaluation of information

The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to—

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 312(b)(1), the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

(k) Nonpublic Collaborative Discussions

(1) In general. Notwithstanding section 552b of title 5, United States Code, a quorum of the members of the Board may hold a meeting that is not open to public observation to discuss official business of the Board if—

(A) no formal or informal vote or other official action is taken at the meeting;

(B) each individual present at the meeting is a member or an employee of the Board;

(C) at least one member of the Board from each political party is present at the meeting, unless all members of the Board are of the same political party at the time of the meeting; and **(D)** the general counsel of the Board, or a designee of the general counsel, is present at the meeting.

(2) Disclosure of nonpublic collaborative discussions.

(A) In general. Except as provided by subparagraph **(B)**, not later than two business days after the conclusion of a meeting described in paragraph **(1)**, the Board shall make available to the public, in a place easily accessible to the public—

(i) a list of the individuals present at the meeting; and (ii) a summary of the matters, including key issues, discussed at the meeting, except for any matter the Board properly determines may be withheld from the public under section 552b(c) of title 5, United States Code.

(B) Information about matters withheld from public. If the Board properly determines under subparagraph **(A)(ii)** that a matter may be withheld from the public under section 552b(c) of title 5, United States Code, the Board shall include in the summary required by that subparagraph as much general information as possible with respect to the matter.

(3) Rules of construction. Nothing in this subsection may be construed—

(A) to limit the applicability of section 552b of title 5, United States Code, with respect to—

(i) a meeting of the members of the Board other than a meeting described in paragraph **(1)**; or (ii) any

information that is proposed to be withheld from the public under paragraph (2)(A)(ii); or (B) to authorize the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5, United States Code.

§ 2286c. Responsibilities of the Secretary of Energy [Atomic Energy Act, Sec. 314]

(a) Cooperation

Except as specifically provided by this section, the Secretary of Energy shall fully cooperate with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this subchapter. The access provided to defense nuclear facilities, personnel, and information under this subsection shall be provided without regard to the hazard or risk category assigned to a facility by the Secretary.

(b) Authority of the Secretary to deny information

(1) The Secretary of Energy may deny access to information under subsection (a) only to any person who—

(A) has not been granted an appropriate security clearance or access authorization by the Secretary; or

(B) does not need such access in connection with the duties of such person.

(2) If the Board requests access to information under subsection (a) in written form, and the Secretary denies access to such information pursuant to paragraph (1)—

(A) the Secretary shall provide the Board notice of such denial in written form; and

(B) not later than January 1 and July 1 of each year beginning in 2020—

(i) the Board shall submit to the congressional defense committees a report identifying each request for access to information under subsection (a) submitted to the Secretary in written form during the preceding six-month period and denied by the Secretary; and

(ii) the Secretary shall submit to the congressional defense committees a report identifying—

(I) each such request denied by the Secretary during that period; and

(II) the reason for the denial.

(3) In this subsection, the term ‘congressional defense committees’ has the meaning given that term in section 101(a) of title 10, United States Code.

(c) Application of nondisclosure protections by Board.

The Board may not publicly disclose information provided under this section if such information is otherwise protected from disclosure by law, including deliberative process information.

§ 2286d. Board Recommendations [Atomic Energy Act, Sec. 315]

(a) Submission of Recommendations

(1) Subject to subsections (h) and (i), not later than 30 days before the date on which the Board transmits a recommendation to the Secretary of Energy under section 312, the Board shall transmit to the Secretary in writing a draft of such recommendation and any related findings, supporting data, and analysis to ensure the Secretary is adequately informed of a formal recommendation and to provide the Secretary an opportunity to provide input to the Board before such recommendation is finalized.

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

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

(b) Public availability and comment

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

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

(2) publishing in the Federal Register—

(A) such recommendation and correspondence; and

(B) a request for the submission to the Board of public comments on such recommendation that provides interested persons with 30 days after the date of the publication in

which to submit comments, data, views, or arguments to the Board concerning the recommendation.

(c) Response by Secretary

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

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

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

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

(d) Provision of information to Secretary

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

(e) Final decision

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

(f) Implementation plan

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

(g) Implementation

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation

plan with respect to a recommendation (or part thereof) under subsection (f), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate setting forth the reasons for the delay and when implementation will be completed.

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

(h) Imminent or severe threat

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

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

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make

such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate. The President shall promptly notify such committees of his decision and the reasons for that decision.

(i) Limitation

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

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

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

§ 2286e. Reports [Atomic Energy Act, Sec. 316]

(a) Board report²

(1) The Board shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of Title 31, a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the

² *Certification of Budget Sufficiency* - The National Defense Authorization Act for Fiscal Year 2018 § 2301(b), Pub. L. No. 115-91, provided that: "Not later than 10 days after the date on which the budget of the President for fiscal year 2019 or any fiscal year thereafter is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Defense Nuclear Facilities Safety Board shall submit to the congressional defense committees a letter certifying that the requested budget is sufficient to carry out the mission of the Defense Nuclear Facilities Safety Board during the fiscal year covered by the budget request."

year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

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

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

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

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

(b) DOE report

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

§ 2286f. Judicial review [Atomic Energy Act, Sec. 317]

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

§ 2286g. “Department of Energy defense nuclear facility” defined [Atomic Energy Act, Sec. 318]

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

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

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982 [42 U.S.C. § 7158 note], pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

§ 2286h. Contract Authority Subject to Appropriations [Atomic Energy Act, Sec. 319]

The authority of the Board to enter into contracts under this subchapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.

§ 2286h-1. Transmittal of Certain Information to Congress [Atomic Energy Act, Sec. 320]

Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative

recommendation, or any statement or information in preparation of a report to be submitted to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate pursuant to section 2286e(a) of this title, the Board shall submit at the same time a copy thereof to such committees.

§ 2286i. Annual Authorization of Appropriations [Atomic Energy Act, Sec. 321]

Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorization Acts.

§ 2286j. Inspector general services for Defense Nuclear Facilities Safety Board³

Within 90 days of enactment of this Act [enacted Dec. 23, 2011], the Defense Nuclear Facilities Safety Board shall enter into an agreement for inspector general services with the Office of Inspector General for the Nuclear Regulatory Commission for fiscal years 2012 and 2013: *Provided further*, That at the expiration of such agreement, the Defense Nuclear Facilities Safety Board shall procure inspector general services annually thereafter.

§ 2286k. Inspector General [Atomic Energy Act, Sec. 322]

(a) In general

The Inspector General of the Nuclear Regulatory Commission shall serve as the Inspector General of the Board, in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Budget

³ Sections 2286j and 2286l were added to the United States Code by appropriations acts and are not part of the Atomic Energy Act of 1954. Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235; Consolidated Appropriations Act, 2012, Pub. L. No. 112-74.

In the budget materials submitted to the President by the Board in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for each fiscal year, the Board shall ensure that a separate, dedicated procurement line item is designated for the services of an Inspector General under subsection (a).

§ 2286l. Authority of Inspector General

Notwithstanding any other provision of law, the Inspector General of the Nuclear Regulatory Commission is authorized in this and subsequent years to exercise the same authorities with respect to the Defense Nuclear Facilities Safety Board, as determined by the Inspector General of the Nuclear Regulatory Commission, as the Inspector General exercises under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the Nuclear Regulatory Commission.