

**Public Comment on the Scope of the Programmatic Environmental Impact
Statement for Plutonium Pit Production
2025-08140 (90 FR 19706)
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The Programmatic Environmental Impact Statement (PEIS) should assess a *true no-action alternative* in which there would be no plutonium pit production at Los Alamos National Laboratory, Savannah River Site, or elsewhere, and no related activities at Lawrence Livermore National Laboratory and other sites. In the context of a long-duration, nation-wide program with major security and environmental dimensions, a *programmatic* review encompassing a true no-action alternative would inform whole of government decision-making and reflect an intent to comply with U.S. international legal obligations.

It is noteworthy that the U.S. Air Force 2023 environmental impact statement for deployment of the new Sentinel ICBM includes a no-action alternative in which deployment would not take place.¹ That is so though the purpose and need for the deployment is characterized as implementation of a legislate mandate.² No less should be done with respect to environmental review of planned plutonium pit production, including for pits in warheads for the Sentinel ICBM.

¹ *Final Environmental Impact Statement for the Sentinel (GBSD) Deployment and Minuteman Decommissioning and Disposal*, Air Force Global Strike Command, Section 2.3, No Action Alternative (March 2023), available at <https://www.afgsc.af.mil/Sentinel/Environmental-Impact-Statement/>. In a May 2023 Record of Decision, the Air Force chose a Reduced Utility Corridors Alternative for deployment.

² *Id.*, Section 1.3, Purpose and Need for Action.

NPT Disarmament Obligations and Commitments

Article VI of the 1970 Nuclear Non-Proliferation Treaty (NPT) provides: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

In its 1996 advisory opinion, the International Court of Justice interpreted Article VI, stating: “The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result - nuclear disarmament in all its aspects - by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.”³ In a unanimous conclusion, the Court stated: “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”⁴

At the 2000 NPT Review Conference, the United States and other NPT parties agreed to an outcome document which included the following provision: “An unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI.”⁵ That undertaking is in harmony with the Court’s analysis of Article VI. It was repeated in the outcome document of the 2010 NPT Review Conference.⁶

Other commitments made in the 2000 outcome document, and incorporated in the 2010 document, include:

- “The engagement as soon as appropriate of all the nuclear-weapon states in the process leading to the total elimination of their nuclear weapons.”
- “Further efforts by the nuclear-weapon states to reduce their nuclear arsenals unilaterally.”
- “A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination.”
- “The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.”⁷

³ *Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports, 1996, p. 226, para. 99.

⁴ *Id.*, para. 105(2)F.

⁵ 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Vol. I, p. 14, 15(6), <https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2000/docs/2000FD.pdf>.

⁶ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Conclusions and Recommendations for Follow-on Actions, Vol. I, p. 19, I(A)(2), <https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2010/FinalDocument.pdf>.

⁷ 2000 Final Document at pp. 14-15; 2010 Final Document at pp. 20-21, Actions 2, 3, 5(c).

At the April-May 2025 meeting of states parties to the NPT preparing for the 2026 Review Conference, the U.S. representative declared: "The United States remains a strong supporter of the NPT, including the disarmament-related obligations contained in Article VI.... We are here to advance our collective security by strengthening the NPT, preventing the proliferation of nuclear weapons, and, yes, pursuing their ultimate elimination. The next step is clear, we need China and Russia to work with us to that end."⁸

Also relevant is that a large majority of the world's states have expressed their strong support for the non-use and elimination of nuclear arms in the context of the NPT, proceedings in the International Court of Justice, and the UN General Assembly. Furthermore, non-nuclear weapon states negotiated the 2017 Treaty on the Prohibition of Nuclear Weapons, to which there are currently 94 signatories and 73 states parties.⁹ In general, there is a growing recognition that use and threatened use of nuclear weapons is incompatible with international law, including human rights law and the law of armed conflict.¹⁰ All of this adds to the normative force of the nuclear disarmament obligation.

During a February 13, 2025 press conference, President Donald Trump said that once things "settle down," his administration plans to discuss denuclearization and reduced military spending with the Russian Federation and China. He stated: "There's no reason for us to be building brand-new nuclear weapons. We already have so many, you could destroy the world 50 times over, 100 times over."¹¹ On March 6, 2025, he told reporters: "It would be great if everybody would get rid of their nuclear weapons. I know Russia and us have by far the most. China will have an equal amount within 4-5 years. It would be great if we could all denuclearize because the power of nuclear weapons is crazy."¹²

President Trump's remarks are consistent with the aim of previous presidents, notably Ronald Reagan and Barack Obama, to work toward and achieve a world free of nuclear weapons. Moreover, President Trump's remarks are in line with U.S. obligations under the Nuclear Non-Proliferation Treaty.

⁸ As Drafted Statement by the United States to the NPT Preparatory Committee, Cluster One Statement by Matthew Sharp, May 1, 2025, New York City, https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom25/statements/1May_USA.pdf.

⁹ https://www.icanw.org/signature_and_ratification_status

¹⁰ See John Burroughs, "The Inadmissibility of Nuclear Threats," Arms Control Today, April 2024, <https://www.armscontrol.org/act/2024-04/features/inadmissibility-nuclear-threats>.

¹¹ <https://www.newsweek.com/donald-trump-nuclear-weapons-announcement-2030823>

¹² <https://www.newsweek.com/donald-trump-wants-get-rid-nuclear-weapons-2040867>

Implications for the Scope of the PEIS

If the United States and other nuclear-armed states, in particular China and Russia, in accordance with Article VI take a negotiated path to the global elimination of nuclear weapons in the foreseeable future, there will be no need, perceived or real, for plutonium pit production.^{13, 14} While the current international landscape is not conducive to that enterprise, it should not be assumed that pit production will take place over the next several decades. The negotiation of the abolition of nuclear arms is a legal obligation of extraordinary practical and moral importance. The PEIS should not assume non-compliance with the obligation.

Additionally, a sometimes overlooked element of Article VI is *cessation of the nuclear arms race at an early date*. Production of pits for new-design warheads on a new delivery system, the Sentinel ICBM, and on submarine-based ballistic missiles,¹⁵ has aspects of nuclear arms racing, both in reality and, importantly, as it is perceived by rival nuclear-armed states. If the W87-1 serves to enable MIRVing of the Sentinel ICBM,¹⁶ it would contribute to quantitative arms racing; MIRVing also would be destabilizing. Moreover, according to the Department of Defense, the Sentinel ICBM will have enhanced capabilities¹⁷ and thus its development and deployment amounts to qualitative arms racing. It also appears that the W93 warhead for submarine-based missiles will add some military capability.¹⁸ Again, the United States is obligated to pursue negotiations in good faith to cease arms racing involving new-design warheads and new delivery systems *at an early date*. Moreover, the United States has made an NPT commitment to “a diminishing role for nuclear weapons in security policies.”

¹³ For a critical assessment of the alleged need for pit production in general, see *Plutonium Pit Production: The Risks and Costs of US Plans to Build New Nuclear Weapons*, Dylan K. Spaulding, Union of Concerned Scientists, May 2025, pp. 62-68 (“UCS Report”), <https://www.ucs.org/sites/default/files/2025-05/Plutonium-Pit-Production-report.pdf>. The report also observes that it would be desirable to eliminate the ground-based ICBM force entirely. *Id.* at pp. 68-70.

¹⁴ Effectuating nuclear disarmament will involve a set of activities in addition to refraining from new pit production, activities such as wholesale and irreversible dismantlement of warheads. Those activities will have their own environmental consequences, and environmental review will be needed.

¹⁵ It appears that enabling such production is a driver for of the schedule for establishing the capability to manufacture pits. UCS Report, p. 53.

¹⁶ See UCS Report, p. 54.

¹⁷ See UCS Report, p. 58, citing a Department of Defense statement quoted in Toby Dalton et al, *Assessing U.S. Options for the Future of the ICBM Force: A Report to the Office of the Under Secretary of Defense for Policy*, Carnegie Endowment for International Peace, May 2022, p. 6, https://carnegie-production-assets.s3.amazonaws.com/static/files/ICBM_DOD_final.pdf.

¹⁸ According to the UCS Report, p. 56: “As a lightweight warhead, the W93 would add capability to future Columbia-class submarines; the NNSA and the Pentagon have argued that the lighter weight would help compensate for the fact that the submarines will carry fewer warheads than the existing Ohio-class due to having fewer missile tubes. A lighter, relatively high-yield (or variable yield) warhead would provide the Navy with the ability to ‘hold all targets in current plans at risk,’ implying that it would make possible strikes from a greater distance against hardened targets,” citing John Donnelly, “Trump team’s case for new nuke cites risks in current arsenal,” Roll Call, July 29, 2020, <https://rollcall.com/2020/07/29/trump-teams-case-for-new-nuke-cites-risks-in-current-arsenal/>.

Improvements in military capabilities of nuclear forces imply an expanding, not diminishing, role of nuclear weapons – operational, if not doctrinal – in security policies.

The PEIS should not rule out the possibility that nuclear arms racing will cease and nuclear disarmament will be implemented in accordance with NPT Article VI and Review Conference commitments. Failing to consider a true no-action alternative would have that effect.

The NEPA Basis for a True No-action Alternative

The Notice of Intent to Prepare a [PEIS] for Plutonium Pit Production states under Purpose and Need for Agency Action that to “meet the need outlined in Federal legislation and requirements delineated by the U.S. Department of Defense, NNSA must establish a workforce and infrastructure capable of producing no few than 80 pits per year as soon as possible” The Notice also states that the “No-Action Alternative will be based on NNSA’s prior decision to produce 30 pits year at LANL, with surge efforts to produce up to 80 pits per year.”

Such a narrow scope is inappropriate in the context of a long-duration, nation-wide program with major security and environmental dimensions. A no-action alternative should not include the proposed project or a component of it. It should set the baseline, even if continuation of the baseline is not contemplated under current policy and law. As noted earlier, that was the approach taken with respect to environmental review of deployment of the Sentinel ICBM.¹⁹

More broadly, in a matter of this scope and importance, an environmental review should inform the whole of government, and indeed the public. The President has envisioned a future of denuclearization; pit production would not be part of that future. Congress and the Department of Defense may change the requirements for pit production, and environmental review that includes an alternative of no pit production would inform decisions about such changes. Determining the scope of environmental review depends on the circumstances and nature of the project and on the reasoned exercise of judgment; it is not a mechanical process but rather a choice, within the discretion of the reviewing agency. The current pit production mandate constrains ultimate implementation, but it does not foreclose NEPA assessment of alternatives that could be adopted through subsequent legislative or executive action.²⁰

¹⁹ See p. 1 of this comment and footnotes 1 and 2.

²⁰ In *Natural Resources Defense Council, Inc., v. Morton*, 458 F.2d 827 (D.C. Cir. 1972), the D.C. Circuit Court of Appeals stated that “[w]hen the proposed action is an integral part of a coordinated plan to deal with a broad problem, the range of alternatives that must be evaluated is broadened,” *id.* at 835, and “[t]he mere fact that an alternative requires legislative implementation does not automatically establish it as beyond the domain of what is required for discussion,” *id.* at 837. Citing that case and others, in *National Wildlife Federation v. U.S. Army Corps of Engineers* (7th Cir. 2023), 75 F.4th 743, 753, the Seventh Circuit Court of Appeals observed: “Courts have repeatedly said that an otherwise reasonable alternative should not be eliminated solely because it would require legislative action.”

Conclusion

NPT Article VI is part of the law of the land under the U.S. Constitution, and the United States has consistently affirmed its intent to fulfill Article VI. Analysis of a true no-action alternative of no pit production in the PEIS is consistent with NEPA practice, as illustrated by the environmental review of the Sentinel ICBM, and with fulfillment of Article VI.