

Note: This publication is a compilation of the text of selected defense-related nuclear laws, as amended through December 31, 2003, prepared for the Committee on Armed Services of the House of Representatives. While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code; the legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).

Please report any errors to the Committee.

108th Congress }
2d Session }

COMMITTEE PRINT

{ No. 6

DEFENSE-RELATED NUCLEAR LAWS

(As Amended Through December 31, 2003)

DEFENSE-RELATED LAWS — VOLUME IV INCLUDING

ATOMIC ENERGY ACT OF 1954
DEPARTMENT OF ENERGY ORGANIZATION ACT
NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT
ATOMIC ENERGY DEFENSE ACT
RADIATION EXPOSURE COMPENSATION ACT
ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSA-
TION PROGRAM ACT OF 2000
SELECTED OTHER MATTERS RELATING TO NATIONAL SE-
CURITY PROGRAMS OF THE DEPARTMENT OF ENERGY

PREPARED FOR THE USE OF THE

COMMITTEE ON ARMED SERVICES

OF THE

HOUSE OF REPRESENTATIVES



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For changes after the closing date of this publication (December 31, 2003) to provisions of law contained in this publication that are also set forth in the United States Code, see the United States Code Classification Tables published by the Office of the Law Revision Counsel of the House of Representatives at the following address: <http://uscode.house.gov/usctt.htm>.

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PREFACE

This publication (House Armed Services Committee Print No. 6) contains the text of provisions of law relating to the national security programs and activities of the Department of Energy. This publication is Volume IV of the House Armed Services Committee publication of Defense-Related Laws.

Most provisions contained in this publication relate to nuclear activities. Some provisions do not relate to nuclear activities but nonetheless relate to national security.

The April 2004 edition is the first edition of this publication. In previous years, certain laws relating to the national security programs and activities of the Department of Energy were included in the publication titled "Compilation of Defense-Related Federal Laws". Due to the size, scope, and importance of recent legislation relating to such programs and activities, a separate publication has been created.

The House Armed Services Committee also produces other publications containing defense-related laws. One publication contains the text of title 10, United States Code. Other relevant committee publications containing defense-related laws are "Laws Relating to Federal Procurement", "Compilation of Defense-Related Federal Laws", and "Compilation of Defense-Related Health Laws".

Section 3141 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1752; 50 U.S.C. 2501 note) consolidated into a single Act many provisions of law on Department of Energy national security programs. The Act into which those provisions were consolidated was the Atomic Energy Defense Act (division D of Public Law 107-314), which before the consolidation had contained only a single subtitle relating to recurring national security authorization provisions. As part of the consolidation, that subtitle and the many other provisions affected were re-classified to a single chapter of title 50, United States Code. In most cases, the provision previously had been classified to title 42, United States Code; in some cases, the provision previously had been classified to another title of the Code; in certain cases, the provision previously had not been classified to any part of the Code.

The following three tables show the source and disposition of the provisions of law affected by the consolidation.

The first table is a source table: it is sorted in order of Atomic Energy Defense Act section number (and, because that Act is classified in sequence to title 50, United States Code, it is also sorted in order of new title 50 section number) and shows the corresponding original Public Law citation and previous United States Code classification.

The second and third tables are disposition tables: they are sorted in order of original Public Law citation and previous United States Code classification, respectively, and show the corresponding new AEDA and title 50 section numbers.

Source Law of Each AEDA Section Resulting From AEDA Consolidation

Table #1 shows the source of each section of the Atomic Energy Defense Act, as amended by section 3141 of the National Defense Authorization Act for Fiscal Year 2004.

**AEDA Cross-Reference Table #1
(SOURCE LAW FOR EACH AEDA PROVISION)**

AEDA SECTION (50 USC SEC.)	ORIGINAL PUBLIC LAW CITATION	PREVIOUS USC CLASSIFICATION
4001 (2501 nt) ...	PL 107-314 § 3601	42 USC 7501 nt
4002 (2501)	[new]	[new]
TITLE XLI:		
4101 (2511)	PL 98-525 § 1634	42 USC 7158 nt
4102 (2512)	PL 104-201 § 3140	42 USC 7252 nt
4103 (2513)	PL 96-540 § 210	42 USC 7272
TITLE XLII:		
4201 (2521)	PL 103-160 § 3138	42 USC 2121 nt
4202 (2522)	PL 105-261 § 3158	42 USC 2121 nt
4203 (2523)	PL 105-85 § 3151	42 USC 2121 nt
4204 (2524)	PL 106-65 § 3133	42 USC 2121 nt
4205 (2525)	PL 107-314 § 3141	42 USC 7274s
4206 (2526)	PL 106-398 § 3194	42 USC 2121 nt
4207 (2527)	PL 100-456 § 1436	42 USC 2121 nt
4208 (2528)	PL 104-106 § 3152	42 USC 2121 nt
4209 (2529)	PL 107-314 § 3143	42 USC 7271d
4210 (2530)	PL 102-337 § 507(f)	42 USC 2121 nt
4211 (2531)	PL 103-160 § 3137	42 USC 2121 nt
4212 (2532)	PL 104-106 § 3137	42 USC 2121 nt
4213 (2533)	PL 107-314 § 3159	42 USC 7274o
4231 (2541)	PL 104-106 § 3133	42 USC 2121 nt
4232 (2542)	PL 104-106 § 3136	[not in USC]
4233 (2543)	PL 104-201 § 3133(c,d)	[not in USC]
4234 (2544)	PL 104-201 § 3134	[not in USC]
4235 (2545)	PL 106-65 § 3134	[not in USC]
TITLE XLIII:		
4301 (2561)	PL 105-85 § 3133	42 USC 7273c
4302 (2562)	PL 106-65 § 3136	[not in USC]
4303 (2563)	PL 106-398 § 3171	22 USC 5952 nt
4304 (2564)	PL 106-398 § 3172	[not in USC]
4305 (2565)	PL 104-106 § 3131	22 USC 5952 nt
4306 (2566)	PL 107-314 § 3182	[not in USC]
4307 (2567)	PL 107-107 § 3155	[not in USC]
TITLE XLIV:		
4401 (2581)	PL 102-190 § 3134	42 USC 7274f
4402 (2582)	PL 104-201 § 3153	42 USC 7274k nt
4403 (2583)	PL 106-65 § 3172	[not in USC]
4404 (2584)	PL 103-160 § 3153	42 USC 7274k
4405 (2585)	PL 104-106 § 3156	42 USC 7274k nt
4406 (2586)	PL 101-189 § 3141	42 USC 7274a
4407 (2587)	PL 101-510 § 3134	42 USC 7274c

**AEDA Cross-Reference Table #1—Continued
(SOURCE LAW FOR EACH AEDA PROVISION)**

AEDA SECTION (50 USC SEC.)	ORIGINAL PUBLIC LAW CITATION	PREVIOUS USC CLASSIFICATION
4408 (2588)	PL 103-337 § 3160(e)	42 USC 7274g nt
4421 (2601)	PL 104-201 § 3143	42 USC 7274n
4422 (2602)	PL 101-189 § 3156	42 USC 7274b
4431 (2611)	PL 105-85 § 3132	[not in USC]
4441 (2621)	PL 101-510 § 3137	[not in USC]
4442 (2622)	PL 105-261 § 3139	[not in USC]
4443 (2623)	PL 106-398 § 3141(a)	[not in USC]
4444 (2624)	PL 106-398 § 3131	[not in USC]
4451 (2631)	PL 104-201 § 3141	[not in USC]
4452 (2632)	PL 104-201 § 3142(e)	[not in USC]
4453 (2633)	PL 106-398 § 3137(a)	[not in USC]
4453A (2634)	PL 106-65 § 3132	[not in USC]
4453B (2635)	PL 105-261 § 3135	[not in USC]
4453C (2636)	PL 105-85 § 3136(b)	[not in USC]
4453D (2637)	PL 104-201 § 3142(f)	[not in USC]
4454 (2638)	PL 106-398 § 3137(b)	[not in USC]
TITLE XLV:		
4501 (2651)	PL 104-106 § 3154	42 USC 2164 nt
4502 (2652)	PL 106-65 § 3146	42 USC 7383c
4503 (2653)	PL 106-65 § 3143	42 USC 7383a
4504 (2654)	PL 107-107 § 3152	42 USC 7383h-1
4504A (2655)	PL 106-65 § 3154	42 USC 7383h
4505 (2656)	PL 106-65 § 3150	42 USC 7383d
4506 (2657)	PL 105-85 § 3162	42 USC 7274m nt
4507 (2658)	PL 106-65 § 3152	42 USC 7383f
4508 (2659)	PL 106-65 § 3153	42 USC 7383g
4521 (2671)	PL 104-106 § 3155	42 USC 2162 nt
4522 (2672)	PL 105-261 § 3161	50 USC 435 nt
4523 (2673)	PL 106-65 § 3149	50 USC 435 nt
4524 (2674)	PL 106-65 § 3145	42 USC 7383b
4525 (2675)	PL 106-65 § 3173	50 USC 435 nt
4541 (2691)	PL 104-106 § 3158	[not in USC]
TITLE XLVI:		
4601 (2701)	PL 103-337 § 3161	42 USC 7231 nt
4602 (2702)	PL 106-65 § 3164	42 USC 7239
4603 (2703)	PL 106-398 § 3136	42 USC 7274n nt
4604 (2704)	PL 102-484 § 3161	42 USC 7274h
4605 (2705)	PL 106-398 § 3195	42 USC 2121 nt
4621 (2721)	PL 101-189 § 3142	42 USC 7236
4622 (2722)	PL 103-337 § 3131	[not in USC]
4623 (2723)	PL 104-106 § 3140	42 USC 2121 nt
4641 (2731)	PL 102-190 § 3131	42 USC 7274d
4642 (2732)	PL 103-337 § 3163	42 USC 7274m
4643 (2733)	PL 102-484 § 3162	42 USC 7274i
4644 (2734)	PL 101-510 § 3138	[not in USC]
TITLE XLVII:		
4701 (2741)	PL 107-314 § 3620	42 USC 7386
4702 (2742)	PL 107-314 § 3621	42 USC 7386a
4703 (2743)	PL 107-314 § 3622	42 USC 7386b

AEDA Cross-Reference Table #1—Continued
(SOURCE LAW FOR EACH AEDA PROVISION)

AEDA SECTION (50 USC SEC.)	ORIGINAL PUBLIC LAW CITATION	PREVIOUS USC CLASSIFICATION
4704 (2744)	PL 107-314 § 3623	42 USC 7386c
4705 (2745)	PL 107-314 § 3624	42 USC 7386d
4706 (2746)	PL 107-314 § 3625	42 USC 7386e
4707 (2747)	PL 107-314 § 3626	42 USC 7386f
4708 (2748)	PL 107-314 § 3627	42 USC 7386g
4709 (2749)	PL 107-314 § 3628	42 USC 7386h
4710 (2750)	PL 107-314 § 3629	42 USC 7386i
4711 (2751)	PL 107-314 § 3630	42 USC 7386j
4712 (2752)	PL 107-314 § 3631	42 USC 7386k
4721 (2761)	PL 99-661 § 3132	42 USC 7273a
4722 (2762)	PL 96-540 § 211	42 USC 7273
4731 (2771)	PL 95-509 § 208	42 USC 7271
TITLE XLVIII:		
4801 (2781)	PL 99-145 § 1534	42 USC 7256a
4802 (2782)	PL 101-189 § 3151	42 USC 7256b
4803 (2783)	PL 101-510 § 3141	42 USC 2212
4811 (2791)	PL 101-510 § 3132	42 USC 7257a
4812 (2792)	PL 105-85 § 3137	42 USC 7257c
4812A (2793)	PL 104-201 § 3136	42 USC 7257b
4813 (2794)	PL 102-190 § 3136	42 USC 2123
4814 (2795)	PL 105-85 § 3155	50 USC 7381 nt
4831 (2811)	PL 105-85 § 3158	42 USC 7274q
4832 (2812)	PL 106-398 § 3156	42 USC 7274r nt
4833 (2813)	PL 105-85 § 3138	42 USC 7256 nt
4851 (2821)	PL 105-85 § 3153(f)	42 USC 7274h nt
4852 (2822)	PL 104-201 § 3144	[not in USC]

**Disposition, by Original Public Law Citation, of Provisions
Consolidated into AEDA**

Table #2 lists the original Public Law citation of provisions consolidated into the Atomic Energy Defense Act and shows the disposition of those provisions within that Act.

**AEDA Cross-Reference Table #2
(DISPOSITIONS, BY ORIGINAL P.L. CITATION)**

ORIGINAL P.L. CITATION	PREVIOUS U.S. CODE CLASSIFICATION	AEDA SECTION (50 USC SEC.)
PL 95-509:		
§ 208	42 USC 7271	4731 (2771)
PL 96-540:		
§ 210	42 USC 7272	4103 (2513)
§ 211	42 USC 7273	4722 (2762)
PL 98-525:		
§ 1634	42 USC 7158 nt	4101 (2511)
PL 99-145:		
§ 1534	42 USC 7256a	4801 (2781)
PL 99-661:		
§ 3132	42 USC 7273a	4721 (2761)
PL 100-456:		
§ 1436	42 USC 2121 nt	4207 (2527)
PL 101-189:		
§ 3141	42 USC 7274a	4406 (2586)
§ 3142	42 USC 7236	4621 (2721)
§ 3151	42 USC 7256b	4802 (2782)
§ 3156	42 USC 7274b	4422 (2602)
PL 101-510:		
§ 3132	42 USC 7257a	4811 (2791)
§ 3134	42 USC 7274c	4407 (2587)
§ 3137	[not in USC]	4441 (2621)
§ 3138	[not in USC]	4644 (2734)
§ 3141	42 USC 2212	4803 (2783)
PL 102-190:		
§ 3131	42 USC 7274d	4641 (2731)
§ 3134	42 USC 7274f	4401 (2581)
§ 3136	42 USC 2123	4813 (2794)
PL 192-337:		
§ 507(f)	42 USC 2121 nt	4210 (2530)
PL 102-484:		
§ 3161	42 USC 7274h	4604 (2704)
§ 3162	42 USC 7274i	4643 (2733)
PL 103-160:		
§ 3137	42 USC 2121 nt	4211 (2531)
§ 3138	42 USC 2121 nt	4201 (2521)
§ 3153	42 USC 7274k	4404 (2584)
PL 103-337:		
§ 3131	[not in USC]	4622 (2722)

**AEDA Cross-Reference Table #2—Continued
(DISPOSITIONS, BY ORIGINAL P.L. CITATION)**

ORIGINAL P.L. CITATION	PREVIOUS U.S. CODE CLASSIFICATION	AEDA SECTION (50 USC SEC.)
§ 3160(e)	42 USC 7274g nt	4408 (2588)
§ 3161	42 USC 7231 nt	4601 (2701)
§ 3163	42 USC 7274m	4642 (2732)
PL 104–106:		
§ 3131	22 USC 5952 nt	4305 (2565)
§ 3133	42 USC 2121 nt	4231 (2541)
§ 3136	[not in USC]	4232 (2542)
§ 3137	42 USC 2121 nt	4212 (2532)
§ 3140	42 USC 2121 nt	4623 (2723)
§ 3152	42 USC 2121 nt	4208 (2528)
§ 3154	42 USC 2164 nt	4501 (2651)
§ 3155	42 USC 2162 nt	4521 (2671)
§ 3156	42 USC 7274k nt	4405 (2585)
§ 3158	[not in USC]	4541 (2691)
PL 104–201:		
§ 3133(c,d)	[not in USC]	4233 (2543)
§ 3134	[not in USC]	4234 (2544)
§ 3136	42 USC 7257b	4812A (2793)
§ 3140	42 USC 7252 nt	4102 (2512)
§ 3141	[not in USC]	4451 (2631)
§ 3142(e)	[not in USC]	4452 (2632)
§ 3142(f)	[not in USC]	4453D (2637)
§ 3143	42 USC 7274n	4421 (2601)
§ 3144	[not in USC]	4852 (2822)
§ 3153	42 USC 7274k nt	4402 (2582)
PL 105–85:		
§ 3132	[not in USC]	4431 (2611)
§ 3133	42 USC 7273c	4301 (2561)
§ 3136(b)	[not in USC]	4453C (2636)
§ 3137	42 USC 7257c	4812 (2792)
§ 3138	42 USC 7256 nt	4833 (2813)
§ 3151	42 USC 2121 nt	4203 (2523)
§ 3153(f)	42 USC 7274h nt	4851 (2821)
§ 3155	50 USC 7381 nt	4814 (2795)
§ 3158	42 USC 7274q	4831 (2811)
§ 3162	42 USC 7274m nt	4506 (2657)
PL 105–261:		
§ 3135	[not in USC]	4453B (2635)
§ 3139	[not in USC]	4442 (2622)
§ 3158	42 USC 2121 nt	4202 (2522)
§ 3161	50 USC 435 nt	4522 (2672)
PL 106–65:		
§ 3132	[not in USC]	4453A (2634)
§ 3133	42 USC 2121 nt	4204 (2524)
§ 3134	[not in USC]	4235 (2545)
§ 3136	[not in USC]	4302 (2562)
§ 3143	42 USC 7383a	4503 (2653)
§ 3145	42 USC 7383b	4524 (2674)
§ 3146	42 USC 7383c	4502 (2652)

**AEDA Cross-Reference Table #2—Continued
(DISPOSITIONS, BY ORIGINAL P.L. CITATION)**

ORIGINAL P.L. CITATION	PREVIOUS U.S. CODE CLASSIFICATION	AEDA SECTION (50 USC SEC.)
§ 3149	50 USC 435 nt	4523 (2673)
§ 3150	42 USC 7383d	4505 (2656)
§ 3152	42 USC 7383f	4507 (2658)
§ 3153	42 USC 7383g	4508 (2659)
§ 3154	42 USC 7383h	4504A (2655)
§ 3164	42 USC 7239	4602 (2702)
§ 3172	[not in USC]	4403 (2583)
§ 3173	50 USC 435 nt	4525 (2675)
PL 106–398:		
§ 3131	[not in USC]	4444 (2624)
§ 3136	42 USC 7274n nt	4603 (2703)
§ 3137(a)	[not in USC]	4453 (2633)
§ 3137(b)	[not in USC]	4454 (2638)
§ 3141(a)	[not in USC]	4443 (2623)
§ 3156	42 USC 7274r nt	4832 (2812)
§ 3171	22 USC 5952 nt	4303 (2563)
§ 3172	[not in USC]	4304 (2564)
§ 3194	42 USC 2121 nt	4206 (2526)
§ 3195	42 USC 2121 nt	4605 (2705)
PL 107–107:		
§ 3152	42 USC 7383h–1	4504 (2654)
§ 3155	[not in USC]	4307 (2567)
PL 107–314:		
§ 3141	42 USC 7274s	4205 (2525)
§ 3143	42 USC 7271d	4209 (2529)
§ 3159	42 USC 7274o	4213 (2533)
§ 3182	[not in USC]	4306 (2566)
§ 3601	42 USC 7501 nt	4001 (2501 nt)
§ 3620	42 USC 7386	4701 (2741)
§ 3621	42 USC 7386a	4702 (2742)
§ 3622	42 USC 7386b	4703 (2743)
§ 3623	42 USC 7386c	4704 (2744)
§ 3624	42 USC 7386d	4705 (2745)
§ 3625	42 USC 7386e	4706 (2746)
§ 3626	42 USC 7386f	4707 (2747)
§ 3627	42 USC 7386g	4708 (2748)
§ 3628	42 USC 7386h	4709 (2749)
§ 3629	42 USC 7386i	4710 (2750)
§ 3630	42 USC 7386j	4711 (2751)
§ 3631	42 USC 7386k	4712 (2752)

**Disposition, by Previous United States Code Section, of
Provisions Consolidated into AEDA**

Table #3 lists the previous United States Code classification of provisions consolidated into the Atomic Energy Defense Act and shows the disposition of those provisions within that Act.

**AEDA Cross-Reference Table #3
(DISPOSITIONS, BY PREVIOUS U.S.C. CLASSIFICATION)**

PREVIOUS USC CLASSIFICATION	ORIGINAL PUBLIC LAW CITATION	AEDA SECTION (50 USC SEC.)
22 USC 5952 nt	PL 104-106 § 3131	4305 (2565)
22 USC 5952 nt	PL 106-398 § 3171	4303 (2563)
42 USC 2121 nt	PL 100-456 § 1436	4207 (2527)
42 USC 2121 nt	PL 102-337 § 507(f)	4210 (2530)
42 USC 2121 nt	PL 103-160 § 3137	4211 (2531)
42 USC 2121 nt	PL 103-160 § 3138	4201 (2521)
42 USC 2121 nt	PL 104-106 § 3133	4231 (2541)
42 USC 2121 nt	PL 104-106 § 3137	4212 (2532)
42 USC 2121 nt	PL 104-106 § 3140	4623 (2723)
42 USC 2121 nt	PL 104-106 § 3152	4208 (2528)
42 USC 2121 nt	PL 105-85 § 3151	4203 (2523)
42 USC 2121 nt	PL 105-261 § 3158	4202 (2522)
42 USC 2121 nt	PL 106-65 § 3133	4204 (2524)
42 USC 2121 nt	PL 106-398 § 3194	4206 (2526)
42 USC 2121 nt	PL 106-398 § 3195	4605 (2705)
42 USC 2123	PL 102-190 § 3136	4813 (2794)
42 USC 2162 nt	PL 104-106 § 3155	4521 (2671)
42 USC 2164 nt	PL 104-106 § 3154	4501 (2651)
42 USC 2212	PL 101-510 § 3141	4803 (2783)
42 USC 7158 nt	PL 98-525 § 1634	4101 (2511)
42 USC 7231 nt	PL 103-337 § 3161	4601 (2701)
42 USC 7236	PL 101-189 § 3142	4621 (2721)
42 USC 7239	PL 106-65 § 3164	4602 (2702)
42 USC 7252 nt	PL 104-201 § 3140	4102 (2512)
42 USC 7256 nt	PL 105-85 § 3138	4833 (2813)
42 USC 7256a	PL 99-145 § 1534	4801 (2781)
42 USC 7256b	PL 101-189 § 3151	4802 (2782)
42 USC 7257a	PL 101-510 § 3132	4811 (2791)
42 USC 7257b	PL 104-201 § 3136	4812A (2793)
42 USC 7257c	PL 105-85 § 3137	4812 (2792)
42 USC 7271	PL 95-509 § 208	4731 (2771)
42 USC 7271d	PL 107-314 § 3143	4209 (2529)
42 USC 7272	PL 96-540 § 210	4103 (2513)
42 USC 7273	PL 96-540 § 211	4722 (2762)
42 USC 7273a	PL 99-661 § 3132	4721 (2761)
42 USC 7273c	PL 105-85 § 3133	4301 (2561)
42 USC 7274a	PL 101-189 § 3141	4406 (2586)
42 USC 7274b	PL 101-189 § 3156	4422 (2602)
42 USC 7274c	PL 101-510 § 3134	4407 (2587)

AEDA Cross-Reference Table #3—Continued
(DISPOSITIONS, BY PREVIOUS U.S.C. CLASSIFICATION)

PREVIOUS USC CLASSIFICATION	ORIGINAL PUBLIC LAW CITATION	AEDA SECTION (50 USC SEC.)
42 USC 7274d	PL 102-190 § 3131	4641 (2731)
42 USC 7274f	PL 102-190 § 3134	4401 (2581)
42 USC 7274g nt ..	PL 103-337 § 3160(e)	4408 (2588)
42 USC 7274h	PL 102-484 § 3161	4604 (2704)
42 USC 7274h nt ..	PL 105-85 § 3153(f)	4851 (2821)
42 USC 7274i	PL 102-484 § 3162	4643 (2733)
42 USC 7274k	PL 103-160 § 3153	4404 (2584)
42 USC 7274k nt ..	PL 104-106 § 3156	4405 (2585)
42 USC 7274k nt ..	PL 104-201 § 3153	4402 (2582)
42 USC 7274m	PL 103-337 § 3163	4642 (2732)
42 USC 7274m nt ..	PL 105-85 § 3162	4506 (2657)
42 USC 7274n	PL 104-201 § 3143	4421 (2601)
42 USC 7274n nt ..	PL 106-398 § 3136	4603 (2703)
42 USC 7274o	PL 107-314 § 3159	4213 (2533)
42 USC 7274q	PL 105-85 § 3158	4831 (2811)
42 USC 7274r nt ..	PL 106-398 § 3156	4832 (2812)
42 USC 7274s	PL 107-314 § 3141	4205 (2525)
42 USC 7383a	PL 106-65 § 3143	4503 (2653)
42 USC 7383b	PL 106-65 § 3145	4524 (2674)
42 USC 7383c	PL 106-65 § 3146	4502 (2652)
42 USC 7383d	PL 106-65 § 3150	4505 (2656)
42 USC 7383f	PL 106-65 § 3152	4507 (2658)
42 USC 7383g	PL 106-65 § 3153	4508 (2659)
42 USC 7383h	PL 106-65 § 3154	4504A (2655)
42 USC 7383h-1 ...	PL 107-107 § 3152	4504 (2654)
42 USC 7386	PL 107-314 § 3620	4701 (2741)
42 USC 7386a	PL 107-314 § 3621	4702 (2742)
42 USC 7386b	PL 107-314 § 3622	4703 (2743)
42 USC 7386c	PL 107-314 § 3623	4704 (2744)
42 USC 7386d	PL 107-314 § 3624	4705 (2745)
42 USC 7386e	PL 107-314 § 3625	4706 (2746)
42 USC 7386f	PL 107-314 § 3626	4707 (2747)
42 USC 7386g	PL 107-314 § 3627	4708 (2748)
42 USC 7386h	PL 107-314 § 3628	4709 (2749)
42 USC 7386i	PL 107-314 § 3629	4710 (2750)
42 USC 7386j	PL 107-314 § 3630	4711 (2751)
42 USC 7386k	PL 107-314 § 3631	4712 (2752)
42 USC 7501 nt ...	PL 107-314 § 3601	4001 (2501 nt)
50 USC 435 nt	PL 105-261 § 3161	4522 (2672)
50 USC 435 nt	PL 106-65 § 3149	4523 (2673)
50 USC 435 nt	PL 106-65 § 3173	4525 (2675)
50 USC 7381 nt ...	PL 105-85 § 3155	4814 (2795)

ATOMIC ENERGY ACT OF 1954

ATOMIC ENERGY ACT OF 1954

Act of August 1, 1946, ch. 724, as amended by the Act of Aug. 30, 1954, ch. 1073
(68 Stat. 921) and by subsequent amendments

An Act for the development and control of atomic energy.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

ATOMIC ENERGY ACT OF 1954

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- [Sec. 203. Repealed.]
- [Sec. 204. Repealed.]
- [Sec. 205. Repealed.]

²The bracketed material is in the section heading as amended by section 10 of P.L. 87-206 (75 Stat. 477). There was no conforming amendment made to the table of sections.

[Sec. 206. Repealed.]

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³Section 3173(a) of Public Law 107-314 (116 Stat. 2743) inserts after section 234B a new section 234C. There was no conforming amendment made to add a new item for this section to the table of sections.

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TITLE I—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

SECTION 1. DECLARATION.—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

[42 U.S.C. 2011]

SEC. 2. FINDINGS.—The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

[b. Repealed by Pub. L. 88–489, § 1, 78 Stat. 602, Aug. 26, 1964.]

c. The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

f. The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or

⁴Section 3116(a)(1) of Public Law 104–134 (110 Stat. 1321–349) repealed chapters 22 through 26.

utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

[h. Repealed by Pub. L. 88-489, § 2, 78 Stat. 602, Aug. 26, 1964.]

i. In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

[42 U.S.C. 2012]

SEC. 3. PURPOSE.—It is the purpose of this Act to effectuate the policies set forth above by providing for—

a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons;

d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

e. a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

[42 U.S.C. 2013]

CHAPTER 2. DEFINITIONS

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. The term “agency of the United States” means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

b. The term “agreement for cooperation” means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91c., 103, 104, or 144, and made pursuant to section 123.

c. The term “atomic energy” means all forms of energy released in the course of nuclear fission or nuclear transformation.

d. The term “atomic weapon” means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

e. The term “byproduct material” means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

f. The term “Commission” means the Atomic Energy Commission.⁵

g. The term “common defense and security” means the common defense and security of the United States.

h. The term “defense information” means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

i. The term “design” means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

j. The term “extraordinary nuclear occurrence” means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as ap-

⁵The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 104 and 201 of the Energy Reorganization Act of 1974, Pub. L. 93-438. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 301(a) and 703 of the Department of Energy Organization Act, Pub. L. 95-91.

For transfer of certain functions from the Nuclear Regulatory Commission to the Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585.

appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or the "contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170.

k. The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

l. The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

n. The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

o. The term "Energy Committees" means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

p. The term "licensed activity" means an activity licensed pursuant to this Act and covered by the provisions of section 170 a.

q. The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used on connection with the operation of a licensed

stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

r. The term “operator” means any individual who manipulates the controls of a utilization or production facility.

s. The term “person” means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

t. The term “person indemnified” means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

u. The term “produce,” when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

v. The term “production facility” means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility,⁶ such term as used in chapters 10 and 16 shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

w. The term “public liability” means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State,

⁶Section 3116(b) of Public Law 104-134 (110 Stat. 1321-349) amended this section by striking out “or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology”. It should have struck out “or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology”. The word “production” was omitted in the original amendment. This amendment was executed to the probable intent of the Congress.

or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of section 170, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

x. The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

y. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

z. The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

aa. The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially⁷ enriched by any of the foregoing, but does not include source material.

bb. The term "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

cc. The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

⁷ So in law. Probably should be "artificially".

dd. The terms “high-level radioactive waste” and “spent nuclear fuel” have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term “transuranic waste” means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term “nuclear waste activities”, as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96–164 (93 Stat. 1265).

gg. The term “precautionary evacuation” means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

hh. The term “public liability action”, as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

jj.⁸ LEGAL COSTS.—As used in section 170, the term “legal costs” means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

[42 U.S.C. 2014]

⁸No subsection ii. in original.

CHAPTER 3. ORGANIZATION

[SEC. 21. ATOMIC ENERGY COMMISSION.—Repealed by Pub. L. 93-438, § 104(a), 88 Stat. 1237, Oct. 11, 1974.]

[42 U.S.C. 2031]

[SEC. 22. MEMBERS.—Repealed by Pub. L. 93-438, § 104(a), 88 Stat. 1237, Oct. 11, 1974.]

[42 U.S.C. 2032]

SEC. 23. OFFICE.—The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia.

[42 U.S.C. 2033]

SEC. 24. GENERAL MANAGER, DEPUTY AND ASSISTANT GENERAL MANAGERS.—There is hereby established with⁹ the Commission—

a. a General Manager, who shall be the chief executive officer of the Commission, and who shall discharge such of the administrative and executive functions of the Commission as the Commission may direct. The General Manager shall be appointed by the Commission, shall serve at the pleasure of the Commission, and shall be removable by the Commission.

b. a Deputy General Manager, who shall act in the stead of the General Manager during his absence when so directed by the General Manager, and who shall perform such other administrative and executive functions as the General Manager shall direct. The Deputy General Manager shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

c. Assistant General Managers, or their equivalents (not to exceed a total of three positions), who shall perform such administrative and executive functions as the General Manager shall direct. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

[42 U.S.C. 2034]

SEC. 25. DIVISIONS, OFFICES, AND POSITIONS.—There is hereby established within the Commission—

a. a Division of Military Application and such other program divisions (not to exceed ten in number) as the Commission may determine to be necessary to the discharge of its responsibilities, including a division or divisions the primary responsibilities of which include the development and application of civilian uses of atomic energy. The Division of Military Application shall be under the direction of an Assistant General Manager for Military Application, who shall be appointed by the Commission and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or

⁹ So in law. Probably should be "within".

grade, as appropriate. Each other program division shall be under the direction of a Director who shall be appointed by the Commission. The Commission shall require each such division to exercise such of the Commission's administrative and executive powers as the Commission may determine;

b. an Office of the General Counsel under the direction of the General Counsel who shall be appointed by the Commission; and

c. an Inspection Division under the direction of a Director who shall be appointed by the Commission. The Inspection Division shall be responsible for gathering information to show whether or not the contractors, licensees, and officers and employees of the Commission are complying with the provisions of this Act (except those provisions for which the Federal Bureau of Investigation is responsible) and the appropriate rules and regulations of the Commission;

d. such other executive management positions (not to exceed six in number) as the Commission may determine to be necessary to the discharge of its responsibilities. Such positions shall be established by the General Manager with the approval of the Commission. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

[42 U.S.C. 2035]

[SEC. 26. GENERAL ADVISORY COMMITTEE.—Repealed by Pub. L. 95-91, § 709(c)(1), 91 Stat. 608, Aug. 4, 1977.]

[42 U.S.C. 2036]

[SEC. 27. MILITARY LIAISON COMMITTEE.—Repealed by Pub. L. 99-691, § 3137(c), 100 Stat. 4066, Nov. 14, 1986.]

[42 U.S.C. 2037]

SEC. 28. APPOINTMENT OF ARMY, NAVY, OR AIR FORCE OFFICERS.—Notwithstanding the provisions of any other law, the officer of the Army, Navy, or Air Force serving as Assistant General Manager for Military Application shall serve without prejudice to his commissioned status as such officer. Any such officer serving as Assistant General Manager for Military Application shall receive in addition to his pay and allowances, including special and incentive pays, for which pay and allowances the Commission shall reimburse his service, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position. Notwithstanding the provisions of any other law, any active or retired officer of the Army, Navy, or Air Force may serve as Chairman of the Military Liaison Committee without prejudice to his active or retired status as such officer. Any such active officer serving as Chairman of the Military Liaison Committee shall receive, in addition to his pay and allowances, including special and incentive pays, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation fixed for such Chairman. Any such retired officer serving as Chairman of the

Military Liaison Committee shall receive the compensation fixed for such Chairman and his retired pay.

[42 U.S.C. 2038]

SEC. 29. ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.— There is hereby established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 163 shall be applicable to the Committee.

[42 U.S.C. 2039]

CHAPTER 4. RESEARCH

SEC. 31. RESEARCH ASSISTANCE.—

a. The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to—

- (1) nuclear processes;
- (2) the theory and production of atomic energy, including processes, materials, and devices related to such production;
- (3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;
- (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy; and
- (5) the protection of health and the promotion of safety during research and production activities.

b. The Commission is further authorized to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection a.

c. The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 3709 of the

Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

d. The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.

[42 U.S.C. 2051]

SEC. 32. RESEARCH BY THE COMMISSION.—The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 31.

[42 U.S.C. 2052]

SEC. 33. RESEARCH FOR OTHERS.—Where the Commission finds private facilities or laboratories are inadequate to the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of atomic energy. To the extent the Commission determines that private facilities or laboratories are inadequate to the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.

[42 U.S.C. 2053]

CHAPTER 5. PRODUCTION OF SPECIAL NUCLEAR MATERIAL

SEC. 41. OWNERSHIP AND OPERATION OF PRODUCTION FACILITIES.—

a. OWNERSHIP OF PRODUCTION FACILITIES.—The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon;

(2) are licensed by the Commission under this title; or (3) are owned by the United States Enrichment Corporation¹⁰.

b. OPERATION OF THE COMMISSION'S PRODUCTION FACILITIES.—The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.

c. OPERATION OF OTHER PRODUCTION FACILITIES.—Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.

[42 U.S.C. 2061]

SEC. 42. IRRADIATION OF MATERIALS.—The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.

[42 U.S.C. 2062]

SEC. 43. ACQUISITION OF PRODUCTION FACILITIES.—The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, con-

¹⁰Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

demn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefor.

[42 U.S.C. 2063]

SEC. 44. DISPOSITION OF ENERGY.—If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this Act shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.

[42 U.S.C. 2064]

CHAPTER 6. SPECIAL NUCLEAR MATERIAL

SEC. 51. SPECIAL NUCLEAR MATERIAL.—The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Energy Committees, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2071]

[SEC. 52. GOVERNMENT OWNERSHIP OF ALL SPECIAL NUCLEAR MATERIAL.—Repealed by Pub. L. 88-489, §4, 78 Stat. 603, Aug. 26, 1964.]

[42 U.S.C. 2072]

SEC. 53. DOMESTIC DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—

a. The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, pos-

sess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

c. (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (1), (2) or (4) and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (3). The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (1), (2) or (4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.

d. In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to section 103 or 104, in addition to consideration of the cost thereof, the Commission shall take into consideration—

- (1) the use to be made of the special nuclear material;
- (2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;
- (3) the energy value of the special nuclear material in the particular use for which the license is issued;
- (4) whether the special nuclear material is to be used in facilities licensed pursuant to section 103 or 104. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 103; and

(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53 c. (2), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104.

e. Each license issued pursuant to this section shall contain and be subject to the following conditions—

[(1) Repealed by Pub. L. 88-489, § 8, 78 Stat. 604, Aug. 26, 1964.]

(2) no right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act;

(4) all special nuclear material shall be subject to the right of recapture or control reserved by section 108 and to all other provisions of this Act;

(5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this Act;

(6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;

(7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and

(8) except to the extent that the indemnification and limitation of liability provisions of section 170 apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

f. The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.

[42 U.S.C. 2073]

SEC. 54. FOREIGN DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value \$10,000 in the case of one nation or \$50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however,* That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however,* That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Energy Committees and a period of sixty days shall elapse while Congress is in session (in computing such sixty days,

there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further*, That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further*, That prior to the elapse of the first thirty days of any such sixty-day period the Energy Committees shall submit to their respective houses reports of their views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57 d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

d. The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

e. The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2) (E) shall be subject to the requirements of section 131.

[42 U.S.C. 2074]

SEC. 55. ACQUISITION.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section.¹¹ *Providing*,¹² That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2) (E) shall be subject to the requirements of section 131.

[42 U.S.C. 2075]

SEC. 56. GUARANTEED PURCHASE PRICES.—The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in

¹¹So in law. Period probably should be a colon.

¹²So in law. "*Providing*" probably should be "*Provided*".

the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.

[42 U.S.C. 2076]

SEC. 57. PROHIBITION.—

a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear materials.

b. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978,¹³ establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978¹³ shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any

¹³The date of enactment was March 10, 1978.

trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further*, That the export of component parts as defined in subsection 11 v. (2) or 11 cc. (2) shall be governed by sections 109 and 126 of this Act: *Provided further*, That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54 d., section 64, or section 111 b.

c. The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

(2) distribute any special nuclear material or issue a license pursuant to section 53 to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

d. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

[42 U.S.C. 2077]

SEC. 58. REVIEW.—Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Energy Committees and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however*, That the Energy Committees, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.

[42 U.S.C. 2078]

CHAPTER 7. SOURCE MATERIAL

SEC. 61. SOURCE MATERIAL.—The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Energy Committees, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2091]

SEC. 62. LICENSE FOR TRANSFERS REQUIRED.—Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

[42 U.S.C. 2092]

SEC. 63. DOMESTIC DISTRIBUTION OF SOURCE MATERIAL.—

a. The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

or

(4) for any other use approved by the Commission as an aid to science or industry.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the source material to be distributed;

(2) the quantities of source material to be distributed; and

(3) the intended use of the source material to be distributed.

c. The Commission may make a reasonable charge determined pursuant to subsection 161 m. for the source material licensed and distributed under subsection 63 a. (1), subsection 63 a. (2), or subsection 63 a. (4), and shall make a reasonable charge determined pursuant to subsection 161 m., for the source material licensed and distributed under subsection 63 a. (3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection 63 a. (1), subsection 63 a. (2), or subsection 63 a. (4), considering, among other things, whether the licensee is a non-profit or eleemosynary institution and the purposes for which the source material will be used.

[42 U.S.C. 2093]

SEC. 64. FOREIGN DISTRIBUTION OF SOURCE MATERIAL.—The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

[42 U.S.C. 2094]

SEC. 65. REPORTING.—The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any source material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.

[42 U.S.C. 2095]

SEC. 66. ACQUISITION.—The Commission is authorized and directed, to the extent it deems necessary to effectuate the provisions of this Act—

- a. to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;
- b. to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and
- c. to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

Any purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or

upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.

[42 U.S.C. 2096]

SEC. 67. OPERATIONS ON LANDS BELONGING TO THE UNITED STATES.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however,* That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

[42 U.S.C. 2097]

SEC. 68. PUBLIC AND ACQUIRED LANDS.—

a. No individual corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to the date of the enactment of this Act made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

b. Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, inserted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946, or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is hereby released, remised, and quitclaimed to the person or persons entitled upon the date of this Act under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under applicable Federal or State laws: *Provided, however,* That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954, as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be subject to any rights

which may have been granted by the United States pursuant to any such reservation, but the releasees shall be subrogated to the rights of the United States.

c. Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended, and particularly section 5(b)(7) thereof, or the provisions of the Act of August 12, 1953 (67 Stat. 539), and particularly section 3 thereof any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material.

[42 U.S.C. 2098]

SEC. 69. PROHIBITION.—The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

[42 U.S.C. 2099]

CHAPTER 8. BYPRODUCT MATERIAL

SEC. 81. DOMESTIC DISTRIBUTION.—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt

certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

[42 U.S.C. 2111]

SEC. 82. FOREIGN DISTRIBUTION OF BYPRODUCT MATERIAL.—

a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123.

b. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such material as would be charged for the material if it were distributed within the United States: *Provided, however,* That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further,* That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

c. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

[42 U.S.C. 2112]

SEC. 83. OWNERSHIP AND CUSTODY OF CERTAIN BYPRODUCT MATERIAL AND DISPOSAL SITES.—

a. Any license issued or renewed after the effective date of this section¹⁴ under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11 e. (2), shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

(2) ownership of any byproduct material, as defined in section 11 e. (2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section¹⁴ and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

¹⁴The effective date was 3 years after Nov. 8, 1978. See Pub. L. 95-604, § 202(b).

(b)(1)(A)¹⁵ The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section¹⁵, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2), pursuant to such license shall be transferred to—

(i) the United States, or

(ii) the State in which such land is located, at the option of such State,

unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 81 of this Act in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

(4) In the case of any such license under section 62, which was in effect on the effective date of this section,¹⁶ the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this

¹⁵ So in law. Probably should be "b. (1)(A)".

¹⁶ The effective date was 3 years after Nov. 8, 1978. See Pub. L. 95-604, § 202(b).

subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standard promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.¹⁷

(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11 e. (2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

c. Upon termination on¹⁸ any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

[42 U.S.C. 2113]

SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.—

a. The Commission shall insure that the management of any byproduct material, as defined in section 11 e. (2), is carried out in such manner as—

¹⁷The date of enactment probably refers to Nov. 8, 1978.

¹⁸So in law. Probably should be "of".

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material, taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate,¹⁹

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

b. In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act.

c. In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11 e. (2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of

¹⁹Two commas in original.

the Environmental Protection Agency in accordance with section 275.

[42 U.S.C. 2114]

CHAPTER 9. MILITARY APPLICATION OF ATOMIC ENERGY

SEC. 91. AUTHORITY.—

a. The Commission is authorized to—

(1) conduct experiments and do research and development work in the military application of atomic energy;

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year;

(3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;

(4) carry out research on and development of technologies needed for the effective negotiation and verification of international agreements on control of special nuclear materials and nuclear weapons; and

(5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations so that the prospects for commercialization of such technology are enhanced.

b. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

c. The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation, and, notwithstanding the provisions of section 57, 62, or 81, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President—

(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

(2) utilization facilities for military applications; and

(3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123: *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

[42 U.S.C. 2121]

SEC. 92. PROHIBITION.—It shall be unlawful, except as provided in section 91, for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101.

[42 U.S.C. 2122]

[SEC. 93. Repealed P.L. 106-65, § 3294(e)(1)(A), Oct. 5, 1999, 113 Stat. 970.]

[42 U.S.C. 2122a]

CHAPTER 10. ATOMIC ENERGY LICENSES

SEC. 101. LICENSE REQUIRED.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

[42 U.S.C. 2131]

SEC. 102. UTILIZATION AND PRODUCTION FACILITIES FOR INDUSTRIAL OR COMMERCIAL PURPOSES.—

a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104 b. prior to enactment into law of this subsection, shall be issued under subsection 104 b.

c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104 b.

[42 U.S.C. 2132]

SEC. 103. COMMERCIAL LICENSES.—

a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

b. The Commission shall issue such licenses on a non-exclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

d. No license under this section may be given to any person or activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any any²⁰ corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be

²⁰ So in law.

inimical to the common defense and security or to the health and safety of the public.

f.²¹ Each license issued for a utilization facility under this section or section 104 b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this subsection²² to include the provisions required under this subsection.

[42 U.S.C. 2133]

SEC. 104. MEDICAL THERAPY AND RESEARCH AND DEVELOPMENT.—

a. The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.

b. As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.

c. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 31 and which are not facilities of the type specified in subsection 104 b. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person

²¹No subsection e. in original.

²²The date of enactment was June 30, 1980.

within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

[42 U.S.C. 2134]

SEC. 105. ANTITRUST PROVISIONS.—

a. Nothing contained in this Act shall relieve any person from the operation of the following Acts, as amended, “An Act to protect trade and commerce against unlawful restraints and monopolies” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled “An Act to reduce taxation, mission, to define its powers and duties, and for other purposes” approved August twenty-seven, eighteen hundred and ninety-four; “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes” approved October fifteen, nineteen hundred and fourteen; and “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes” approved September twenty-six, nineteen hundred and fourteen. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

b. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization or special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.

c. (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee’s activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection

104 b. prior to the enactment into law of this subsection,²³ any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdiction basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection,²³ whichever is later.

(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a.

(6) In the event the Commission's findings under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105 a.

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection,²³ which permit would be for issuance under section 103, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a con-

²³The date of enactment was Dec. 19, 1970.

struction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

[42 U.S.C. 2135]

SEC. 106. CLASSES OF FACILITIES.—The Commission may—

- a. group the facilities licensed either under section 103 or under section 104 into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;
- b. define the various activities to be carried on at each such class of facility.²⁴
- c. designate the amounts of special nuclear material available for use by each such facility.

[42 U.S.C. 2136]

SEC. 107. OPERATORS' LICENSES.—The Commission shall—

- a. prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this Act;
- b. determine the qualifications of such individuals;
- c. issue licenses to such individuals in such form as the Commission may prescribe; and
- d. suspend such licenses for violations of any provision of this Act or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

[42 U.S.C. 2137]

SEC. 108. WAR OR NATIONAL EMERGENCY.—Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 103 or 104, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

[42 U.S.C. 2138]

SEC. 109. COMPONENT AND OTHER PARTS OF FACILITIES.—

- a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 v. (2) or 11 cc. (2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing

²⁴Period in original. Probably should be “; and”.

will not constitute an unreasonable risk to the common defense and security.

b. After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in subsection 11 v. (2) or 11 cc. (2) and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b. (2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.

c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126 a., that the export would be inimical to the common defense and security of the United States.

[42 U.S.C. 2139]

SEC. 110. EXCLUSIONS.—Nothing in this chapter shall be deemed—

a. to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

b. to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91, or for the use of such facility by the Department of Defense or a contractor thereof.

[42 U.S.C. 2140]

SEC. 111. [LICENSING BY NUCLEAR REGULATORY COMMISSION OF DISTRIBUTION OF CERTAIN MATERIALS BY DEPARTMENT OF ENERGY.—]²⁵ a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursu-

²⁵No section heading in original.

ant to section 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided*, That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Nuclear Regulatory Commission and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision²⁶ and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any applicable criteria in subsection 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

[42 U.S.C. 2141]

CHAPTER 11. INTERNATIONAL ACTIVITIES

SEC. 121. EFFECT OF INTERNATIONAL ARRANGEMENTS.—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

[42 U.S.C. 2151]

SEC. 122. POLICIES CONTAINED IN INTERNATIONAL ARRANGEMENTS.—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

[42 U.S.C. 2152]

SEC. 123. COOPERATION WITH OTHER NATIONS.—

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed arrangement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooper-

²⁶The date of enactment was March 10, 1978.

ating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. 144 c., or 144 d., a guaranty by the cooperating party that no material transferred pursuant to the agreement for

cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy; and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission. The Secretary of State shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the cri-

teria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 d. which are to be implemented by the Department of Defense, by the Secretary of Defense;

b. the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d.), together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.) together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives²⁷ and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and deter-

²⁷The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

mination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided*, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection 123 a., have been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978,²⁸ the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state

²⁸The date of enactment was March 10, 1978.

until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

[42 U.S.C. 2153]

SEC. 124. INTERNATIONAL ATOMIC POOL.—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the non-military applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54 a., 57, 64, 82, 103, 104, or 144 a.: *Provided, however,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

[42 U.S.C. 2154]

SEC. 125. COOPERATION WITH BERLIN.—The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54 a., 57, 64, 82, 103, or 104: *Provided,* That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.

[42 U.S.C. 2153]

SEC. 126. EXPORT LICENSING PROCEDURES.—

a. No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 54, 64, or 82, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section,²⁹ establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, and the Nuclear Regulatory Commission, for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such dead-

²⁹The date of enactment was March 10, 1978.

lines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can³⁰ be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives³¹ of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 403 or 404(a) of the Nuclear Non-Proliferation Act of 1978;

(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 127 of this Act will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether, in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

³⁰So in law. Probably should be "can".

³¹The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other applicable statutory requirements, are met: *Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section,³² and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section³²: *Provided, further*, That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives³³ or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act: *And additionally provided*, That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to

³²The date of enactment was March 10, 1978.

³³The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

b. (1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g.) and shall be referred to the Committee on Foreign Affairs of the House of Representatives³⁴ and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further*, That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch reviews, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of

³⁴The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further*, That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a. (1) of this section.

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives,³⁵ as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.

[42 U.S.C. 2155]

SEC. 127. CRITERIA GOVERNING UNITED STATES NUCLEAR EXPORTS.—

The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

³⁵The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 304(d) of the Nuclear Non-Proliferation Act of 1978, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

[42 U.S.C. 2156]

SEC. 128. ADDITIONAL EXPORT CRITERION AND PROCEDURES.—

a. (1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

b. The criterion set forth in subsection a. shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection a. which is filed after eighteen months from the date of enactment of this section,³⁶ or for any such application under which the first export would occur at least twenty-four months after the date of enactment of this section,³⁶ except as provided in the following paragraphs:

(1) if the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives³⁷ and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted

³⁶The date of enactment was March 10, 1978.

³⁷The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*.³⁸ That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

[42 U.S.C. 2157]

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—

No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section,³⁹

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,³⁹

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

³⁸Period in original. Probably should be comma.

³⁹The effective date was March 10, 1978.

(C) entered into an agreement after the date of enactment of this section⁴⁰ for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives⁴¹ and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

[42 U.S.C. 2158]

SEC. 130. CONGRESSIONAL REVIEW PROCEDURES.—

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 126 a. (2), 126 b. (2), 128 b., 129, 131 a. (3), or 131 f. (1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives,⁴² shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

b. When the relevant committee of committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a.) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a., as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House

⁴⁰The date of enactment was March 10, 1978.

⁴¹The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d.

d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the _____ transmitted to the Congress by the President on _____, _____", the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

g. (1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 123—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

h. This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

i. (1) For the purposes of this subsection, the term "joint resolution" means a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on . . .", with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91 c., 144 b., or 144 c., the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and

passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

[42 U.S.C. 2159]

SEC. 131. SUBSEQUENT ARRANGEMENTS.—

a. (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Secretary of State is required to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the requirement to prepare a Nuclear Proliferation Assessment Statement shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

(2) If in the view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission a proposed subsequent arrangement might significantly contribute to proliferation, the Secretary of State, in consultation with such Secretary or the Commission, shall prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to fur-

ther any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this Act which is not subject to the procedures set forth in section 111 b., section 126, or section 109 b.;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this Act, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 123 of this Act.

(4) All other statutory requirements under other sections of this Act for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to subsection a. (1).

b. With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs

of the House of Representatives⁴² and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978⁴³ or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978,⁴³ or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in his view, and that of the Secretary of State, satisfy the standards set forth in paragraph (2).

c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordi-

⁴²The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

⁴³The date of enactment was March 10, 1978.

nators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State shall so declare in his response to the Department of Energy. If the Secretary of State declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Secretary of State's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives⁴⁴ and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section⁴⁵ shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

d. Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 105 of the Nuclear Non-Proliferation Act of 1978; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor to prejudice open and objective consideration of the results of the evaluation.

e. Notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

f. (1) With regard to any subsequent arrangement under subsection a. (2) (E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangements, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and has

⁴⁴The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

⁴⁵The date of enactment was March 10, 1978.

been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives⁴⁶ and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submission;

(B) The Secretary of Energy has complied with subsection a.; and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this Act, under sections 54 and 55 and any other applicable sections, and any other requirements of law.

(2) Subsection⁴⁷ (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign Affairs and Science, Space, and Technology of the House of Representatives⁴⁸ and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under subsection f. (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, re-

⁴⁶ See footnote 44.

⁴⁷ So in law. Probably should be "Paragraph".

⁴⁸ The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186). The name of the Committee Science, Space, and Technology was changed to the Committee on Science at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 187).

ardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

[42 U.S.C. 2160]

SEC. 132. AUTHORITY TO SUSPEND NUCLEAR COOPERATION WITH NATIONS WHICH HAVE NOT RATIFIED THE CONVENTION ON THE PHYSICAL SECURITY OF NUCLEAR MATERIAL.—

The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.

[42 U.S.C. 2160b]

SEC. 133. CONSULTATION WITH THE DEPARTMENT OF DEFENSE CONCERNING CERTAIN EXPORTS AND SUBSEQUENT ARRANGEMENTS.—

a. In addition to other applicable requirements—

(1) a license may be issued by the Nuclear Regulatory Commission under this Act for the export of special nuclear material described in subsection b.; and

(2) approval may be granted by the Secretary of Energy under section 131 of this Act for the transfer of special nuclear material described in subsection b.;

only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

b. Subsection a. applies to the export or transfer of more than 2 kilograms of plutonium or more than 20 kilograms⁴⁹ of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.

[42 U.S.C. 2160c]

SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

a. The Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

⁴⁹Section 829 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) amended section 133 b. of the Atomic Energy Act of 1954 by striking “20 kilograms” and inserting “5 kilograms”.

Section 851 of (P.L. 103-236) provides that on “the date of enactment of the first Foreign Relations Authorization Act that is enacted after the enactment of this Act, the provisions of parts A and B of this title shall cease to be effective, the amendments made by those parts shall be repealed, and any provision of law repealed by those parts shall be reenacted.”.

(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

b. As used in this section—

(1) the term “alternative nuclear reactor fuel or target” means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

(2) the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; and

(3) a fuel or target “can be used” in a nuclear research or test reactor if—

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.

[42 U.S.C. 2160d]

CHAPTER 12. CONTROL OF INFORMATION

SEC. 141. POLICY.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

[42 U.S.C. 2161]

SEC. 142. CLASSIFICATION AND DECLASSIFICATION OF RESTRICTED DATA.—

a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk of the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

b. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed

from the category of Restricted Data without undue risk to the common defense and security.

c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

d. The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection b. or d. of section 144.

e. The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

[42 U.S.C. 2162]

SEC. 143. DEPARTMENT OF DEFENSE PARTICIPATION.—The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145 b. and 145 c. to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

[42 U.S.C. 2163]

SEC. 144. INTERNATIONAL COOPERATION.—

a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

(1) refining, purification, and subsequent treatment of source material;

- (2) civilian reactor development;
- (3) production of special nuclear material;
- (4) health and safety;
- (5) industrial and other applications of atomic energy for peaceful purposes; and
- (6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this Act.⁵⁰

b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

- (1) the development of defense plans;
- (2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;
- (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and
- (4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

c. In addition to the cooperation authorized in subsections 144 a. and 144 b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

- (1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

- (2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with

⁵⁰The effective date was Aug. 30, 1954.

the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

d. (1) In addition to the cooperation authorized in subsections a., b., and c., the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 142, as is necessary for—

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph—

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

e. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144 a., b., c., or d., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

[42 U.S.C. 2164]

SEC. 145. RESTRICTIONS.—

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission⁵¹ shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined

⁵¹ Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.

that permitting such person to have access to Restricted Data will not endanger the common defense and security.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection b. of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

d. In the event an investigation made pursuant to subsection a. and b. of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

e. (1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections a., b., and c. of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program, any investigation required by subsections a., b., and c. of this section shall be made by the Federal Bureau of Investigation.

f. (1) Notwithstanding the provisions of subsections a., b., and c. of this section, but subject to subsection e. of this section, a majority of the members of the Commission may direct that an investigation required by such provisions on an individual described in paragraph (2) be carried out by the Federal Bureau of Investigation rather than by the Civil Service Commission.

(2) An individual described in this paragraph is an individual who is employed—

(A) in a program certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity; or

(B) in any other specific position certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity.

g. The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections a., b., and c., of this section, that permitting a person access to restricted data will not endanger the

common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

h. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145 b., to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

[42 U.S.C. 2165]

SEC. 146. GENERAL PROVISIONS.—

a. Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

b. The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

[42 U.S.C. 2166]

SEC. 147. SAFEGUARDS INFORMATION.—

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)⁵²

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by signifi-

⁵²So in law. Probably should be followed by a semicolon.

cantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, as specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

[42 U.S.C. 2167]

SEC. 148. PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN UNCLASSIFIED INFORMATION.—

a. (1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the "Secretary"), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection a. (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

b. (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code.

e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

a. The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search of the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations—

- (1) to implement procedures for the taking of fingerprints;
- (2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the dissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

[42 U.S.C. 2169]

CHAPTER 13. PATENTS AND INVENTIONS

SEC. 151. INVENTIONS RELATING TO ATOMIC WEAPONS, AND FILING OF REPORTS.—

a. No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is hereby revoked, and just compensation shall be made therefor.

b. No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are hereby revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

c. Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

d. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection 151 c., and shall provide the Commission access to all such applications.

e. Reports filed pursuant to subsection c. of this section, and applications to which access is provided under subsection d. of this section, shall be kept in confidence by the Commission, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission.

[42 U.S.C. 2181]

SEC. 152. INVENTIONS MADE OR CONCEIVED DURING COMMISSION CONTRACTS.—Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, sub-

contract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Board of Patent Appeals and Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures

governing the appeals from the Board of Patent Appeals and Interferences.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.

[42 U.S.C. 2182]

SEC. 153. NONMILITARY UTILIZATION.—

a. The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this Act.

b. Whenever any patent has been declared affected with the public interest, pursuant to subsection 153 a.—

(1) the Commission is hereby licensed to use the invention or discovery covered by such patent in performing any of its powers under this Act; and

(2) any person may apply to the Commission for a non-exclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this Act.

c. Any person—

(1) who has made application to the Commission for a license under sections 53, 62, 63, 81, 103, or 104, or a permit or lease under section 67;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 62 or 81; or

(4) whose activities or proposed activities are authorized under section 31,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a

patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

d. Whenever any person has made an application to the Commission for a patent license pursuant to subsection 153 c.—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

e. If, after any hearing conducted pursuant to subsection 153 d., the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this Act; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

f. The Commission shall not grant any patent license pursuant to subsection 153 e. for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection 153 c., and without separate notification and hearing as provided in subsection 153 d., and without a separate finding as provided in subsection 153 e.

g. The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection 153 b. or 153 e. shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery license by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to subsection 157 c.

h. The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.

[42 U.S.C. 2183]

SEC. 154. INJUNCTIONS.—No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by subsection 153 b. or 153 e. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to subsection 157 c., together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to subsection 157 c. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

[42 U.S.C. 2184]

SEC. 155. PRIOR ART.—In connection with applications for patents covered by this Chapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

[42 U.S.C. 2185]

SEC. 156. COMMISSION PATENT LICENSES.—The Commission shall establish standard specifications upon which it may grant a patent license to use any patent declared to be affected with the public interest pursuant to subsection 153 a. Such a patent license shall not waive any of the other provisions of this Act.

[42 U.S.C. 2186]

SEC. 157. COMPENSATION, AWARDS, AND ROYALTIES.—

a. PATENT COMPENSATION BOARD.—The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284, of Title 18 of the United States Code,⁵³ except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

b. ELIGIBILITY.—

(1) Any owner of a patent licensed under section 158 or subsections 153 b. or 153 e., or any patent licensee thereunder may make application to the Commission for the determination of a rea-

⁵³ Sections 281, 283, and 284 of title 18 were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of title 18, United States Code.

sonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in section 151 shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this Act and who has complied with the provisions of section 151 c. hereof may make application to the Commission for, and the Commission may grant, an award. The Commission may also, upon the recommendation of the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

c. STANDARDS.—

(1) In determining a reasonable royalty fee as provided for in subsections 153 b. or 153 e., the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in section 151, or in determining the amount of any award under subsection 157 b. (3), the Commission shall take into account the considerations set forth in subsection 157 c. (1) and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

d. PERIOD OF LIMITATIONS.—Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed.

[42 U.S.C. 2187]

SEC. 158. MONOPOLISTIC USE OF PATENTS.—Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production or special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in subsection 105 a., there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 157.

[42 U.S.C. 2188]

SEC. 159. FEDERALLY FINANCED RESEARCH.—Nothing in this Act shall affect the right of the Commission to require that patents granted on inventions made or conceived during the course of fed-

erally financed research or operations, be assigned to the United States.

[42 U.S.C. 2189]

SEC. 160. SAVING CLAUSE.—Any patent application on which a patent was denied by the United States Patent Office⁵⁴ under sections 11(a)(1), 11(a)(2), or 11(b) of the Atomic Energy Act of 1946, and which is not prohibited by section 151 or section 155 of this Act may be reinstated upon application to the Commissioner of Patents⁵⁵ within one year after enactment of this Act and shall then be deemed to have been continuously pending since its original filing date: *Provided, however*, That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.

[42 U.S.C. 2190]

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and and⁵⁶ other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

c. make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

⁵⁴Section 3 of Pub. L. 93-596 deemed references in all laws to "Patent Office" to mean "Patent and Trademark Office".

⁵⁵Section 3 of Pub. L. 93-596 deemed references in all laws to "Commissioner of Patents" to mean "Commissioner of Patents and Trademarks".

⁵⁶So in law.

d. appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949,⁵⁷ as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949,⁵⁷ as amended) whose position would be subject to the Classification Act of 1949,⁵⁷ as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949,⁵⁷ as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

e. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases, and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising⁵⁸ and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated

⁵⁷The Classification Act of 1949 has been codified as chapter 51, and subchapter III of chapter 53, of title 5, United States Code.

⁵⁸So in law. The phrase "and without advertising" probably should be deleted.

personnel, to perform such functions on its behalf as may appear desirable;

g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;

h. consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

j. without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection 161 m. shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry

firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

[l. Repealed by Pub. L. 87-456, § 303(c), 76 Stat. 78, May 24, 1962.]

m. enter into agreements with persons licensed under Section 103, 104, 53 a. (4), or 63 a. (4) for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.;

o. require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in

section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105; and

p. make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

q. The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, or upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

r. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the commission may make minor expansions and extensions of any distributing sys-

tem or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

s. establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

t. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161 m.;

u. (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated

useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land, any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

v. provide services in support of the United States Enrichment Corporation⁵⁹, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992⁶⁰ in performing such services;

w. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., or which operates any facility regulated or certified under section 1701 or 1702, any fee, charge, or price which it may require, in accordance with the provisions of section 483a of title 31 of the United States Code⁶¹ or any other law, of applicants for, or holders of, such licenses or certificates.

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and

⁵⁹Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

⁶⁰The date of enactment was Oct. 24, 1992.

⁶¹Prior section 483a of title 31, United States Code, has been codified as section 9701 of such title.

reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection,⁶² the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section⁶² or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

[42 U.S.C. 2201]

SEC. 162. CONTRACTS.—The President may, in advance, exempt any specification of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.

[42 U.S.C. 2202]

SEC. 163. ADVISORY COMMITTEES.—The members of the General Advisory committee established pursuant to section 26⁶³ and the members of advisory boards established pursuant to section 161 a. may serve as such without regard to the provisions of sections 281, 283, or 284 of Title 18 of the United States Code,⁶⁴ except insofar as such sections may prohibit any such member from receiving compensation from a source other than a nonprofit educational institution in respect of any particular matter which di-

⁶²The date of enactment was Nov. 8, 1978.

⁶³Section 26 was repealed by Pub. L. 95-91, title VII, § 709(e)(1), Aug. 4, 1977, 91 Stat. 608.

⁶⁴Sections 281, 283 and 284 of title 18 were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of title 18, United States Code.

rectly involves the Commission or in which the Commission is directly interested.

[42 U.S.C. 2203]

SEC. 164. ELECTRIC UTILITY CONTRACTS.—The Commission is authorized in connection with the construction or operation of the Oak Ridge, Paducah, and Portsmouth installations of the Commission, without regard to section 3679 of the Revised Statutes,⁶⁵ as amended, to enter into new contracts or modify or confirm existing contracts to provide for electric utility services for periods not exceeding twenty-five years, and such contracts shall be subject to termination by the Commission upon payment of cancellation costs as provided in such contracts, and any appropriation presently or hereafter made available to the Commission shall be available for the payment of such cancellation costs. Any such cancellation payments shall be taken into consideration in determination of the rate to be charged in the event the Commission or any other agency of the Federal Government shall purchase electric utility services from the contractor subsequent to the cancellation and during the life of the original contract. The authority of the Commission under this section to enter into new contracts or modify or confirm existing contracts to provide for electric utility services includes, in case such electric utility services are to be furnished to the commission by the Tennessee Valley Authority, authority to contract with any person to furnish electric utility services to the Tennessee Valley Authority in replacement thereof. Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: *Provided, however,* That the Energy Committees, after having received the proposed contract, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2204]

SEC. 165. CONTRACT PRACTICES.—

a. In carrying out the purposes of this Act the Commission shall not use the cost-plus-percentage-of-cost system of contracting.

b. No contract entered into under the authority of this Act shall provide, and no contract entered into under the authority of the Atomic Energy Act of 1946, as amended, shall be modified or amended after the date of enactment of this Act to provide, for direct payment or direct reimbursement by the Commission of any Federal income taxes on behalf of any contractor performing such contract for profit.

[42 U.S.C. 2205]

SEC. 166. COMPTROLLER GENERAL AUDIT.—No moneys appropriated for the purposes of this Act shall be available for payments under any contract with the Commission, negotiated without advertising, except contracts with any foreign government or any agency

⁶⁵Section 3679 of the Revised Statutes has been codified as sections 1341, 1342, 1349–1351, and subchapter II of chapter 15, of title 31, United States Code.

thereof and contracts with foreign producers, unless such contract includes a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to such contracts or subcontracts: *Provided, however,* That no moneys so appropriated shall be available for payment under such contract which includes any provision precluding an audit by the General Accounting Office of any transaction under such contract: *And provided further,* That nothing in this section shall preclude the earlier disposal of contractor and subcontractor records in accordance with records disposal schedules agreed upon between the Commission and the General Accounting Office.

[42 U.S.C. 2206]

SEC. 167. CLAIMS SETTLEMENTS.—The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of \$5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of any program undertaken by the Commission involving the detonation of an explosive device, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however,* That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. If the Commission considers that a claim in excess of \$5,000 is meritorious and would otherwise be covered by this section, the Commission may report the facts and circumstances thereof to the Congress for its consideration.

[42 U.S.C. 2207]

SEC. 168. PAYMENTS IN LIEU OF TAXES.—In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.

[42 U.S.C. 2208]

SEC. 169. NO SUBSIDY.—No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 103 or 104 except under contract or other arrangement entered into pursuant to section 31.

[42 U.S.C. 2209]

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—⁶⁶

a. REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES.—Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in section 2 i. have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the “Commission”) in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection b. to cover public liability claims. Whenever such financial protection is required it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and re-

⁶⁶This section is commonly referred to as the Price-Anderson Act.

quired of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further:* That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than \$63,000,000 (subject to adjustment for inflation under subsection t.), but not more than \$10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further,* That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee

to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (a)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

c. INDEMNIFICATION OF LICENSEES⁶⁷ BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and December 31, 2003, for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial

⁶⁷So in law. Probably should be "LICENSEES."

protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2003, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2003.

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the “Secretary”) may have, the Secretary shall, until December 31, 2004, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

(B)(i)(I) Beginning 60 days after the date of enactment of the Price-Anderson Amendments Act of 1988,⁶⁸ agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85–804 entered into between August 1, 1987, and the date of enactment of the Price-Anderson Amendments Act of 1988⁶⁸.

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b.

(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indem-

⁶⁸The date of enactment was Aug. 20, 1988.

nified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1988,⁶⁸ to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the energy Reorganization Act of 1974 (42 U.S.C. 5842).

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed \$100,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o. (1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the maximum amount of financial protection required under subsection b. or the amount of indemnity and financial protection that may be required under paragraph (3) of subsection d., whichever amount is more; and

(C) in the case of all licensees of the Commission required to maintain financial protection under this section—

(i) \$500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds \$60,000,000, \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in section 170 i. and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to section b., to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of \$100,000,000, together with the amount of financial protection required of the contractor.

f. COLLECTION OF FEES BY NUCLEAR REGULATORY COMMISSION.—The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

g. USE OF SERVICES OF PRIVATE INSURERS.—In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5), as amended, upon a showing by the Commission or the

Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

h. CONDITIONS OF AGREEMENTS OF INDEMNIFICATION.—The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

i. COMPENSATION PLANS.—(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), the Secretary or the Commission⁶⁹, as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1) the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection e. (1);

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the

⁶⁹So in law. Probably should be "Commission".

payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection 170 e. (2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6⁷⁰ of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted—

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term “resolution” means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: “That the _____ approves the compensation plan numbered _____ submitted to the Congress on _____, 19 ____.”, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from

⁷⁰So in law. Probably should be “(6)”.

further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

j. **CONTRACTS IN ADVANCE OF APPROPRIATIONS.**—In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code.

k. **EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.**—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and August 1, 2002, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of

\$250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

(1)⁷¹ PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.—(1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1988,⁷² the President shall establish a commission (in this subsection referred to as the “study commission”) in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate

⁷¹So in law. Probably should be “1.”

⁷²The date of enactment was Aug. 20, 1988.

public liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988.⁷³

⁷³The date of enactment was Aug. 20, 1988.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. COORDINATED PROCEDURES FOR PROMPT SETTLEMENT OF CLAIMS AND EMERGENCY ASSISTANCE.—The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. WAIVER OF DEFENSES AND JUDICIAL PROCEDURES.—(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.⁷⁴

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or

⁷⁴So in law. Probably should be a comma.

defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection e.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1988)⁷⁵ or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988,⁷⁵ whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

- (i) a court, acting pursuant to subsection o., determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under

⁷⁵The date of enactment was Aug. 20, 1988.

subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. PLAN FOR DISTRIBUTION OF FUNDS.—(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection e. (1):

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage

claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b. (1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

(i) that such costs are reasonable and equitable; and

(ii) that such person has—

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by August 1, 1998, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

q. LIMITATION ON AWARDED OF PRECAUTIONARY EVACUATION COST.—No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

r. LIMITATION ON LIABILITY OF LESSORS.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

s. LIMITATION ON PUNITIVE DAMAGES.—No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b. (1) not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988,⁷⁶ in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term “Consumer Price Index” means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

[42 U.S.C. 2210]

SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—

a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than \$10,000.

b. The Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that—

(1) it is unlikely that a conflict of interest would exist, or

(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or ar-

⁷⁶The date of enactment was Aug. 20, 1988.

agement; except that if the Commission determines that such conflict of interests exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section, but in no event later than 120 days after such date.

[42 U.S.C. 2210a]

SEC. 170B. URANIUM SUPPLY.—

a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

c. The criteria referred to in subsection a. shall also include, but not be limited to—

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

d. The Secretary or ⁷⁷ Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.

[42 U.S.C. 2210b]

CHAPTER 15. COMPENSATION FOR PRIVATE PROPERTY ACQUIRED

SEC. 171. JUST COMPENSATION.—The United States shall make just compensation for any property or interests therein taken or requisitioned pursuant to sections 43, 55, 66, and 108. Except in

⁷⁷So in law. Probably should be “of”.

case of real property or any interest therein, the Commission shall determine and pay such just compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Claims Court⁷⁸, or in any district court of the United States for the district in which such claimant is a resident in the manner provided by section 1346 of Title 28 of the United States Code to recover such further sum as added to said 75 per centum will constitute just compensation.

[42 U.S.C. 2221]

SEC. 172. CONDEMNATION OF REAL PROPERTY.—Proceedings for condemnation shall be instituted pursuant to the provisions of the Act approved August 1, 1888, as amended, and section 1403 of Title 28 of the United States Code. The Act approved February 26, 1931, as amended, shall be applicable to any such proceedings.

[42 U.S.C. 2222]

SEC. 173. PATENT APPLICATION DISCLOSURES.—In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Claims Court or in any district court of the United States for the district in which such claimant is a resident in a manner provided by section 1346 of Title 28 of the United States Code to recover such further sum as added to such 75 per centum will constitute just compensation.

[42 U.S.C. 2223]

SEC. 174. ATTORNEY GENERAL APPROVAL OF TITLE.—All real property acquired under this Act shall be subject to the provisions of section 355 of the Revised Statutes, as amended: *Provided, however*, That real property acquired by purchase or donation, or other means of transfer may also be occupied, used, and improved for the purposes of this Act prior to approval of title by the Attorney General in those cases where the President determines that such action is required in the interest of the common defense and security.

[42 U.S.C. 2224]

CHAPTER 16. JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

SEC. 181. GENERAL.—The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946)⁷⁹ shall apply to all agency action taken under this Act, and the terms “agency” and “agency action” shall have the

⁷⁸The United States Claims Court was designated as the United States Court of Federal Claims by section 902 of the Federal Courts Administration Act of 1992 (Pub. L. 102-572; 106 Stat. 4516), enacted on Oct. 29, 1992.

⁷⁹The Administrative Procedure Act has been codified as subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

meaning specified in the Administrative Procedure Act:⁸⁰ *Provided, however,* That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 147 or information protected from dissemination under the authority of section 148, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 148 to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 148 were not involved.

[42 U.S.C. 2231]

SEC. 182. LICENSE APPLICATIONS.—

a. Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

b. The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104 b. for a construction permit or an operating license for a facility, any application under section 104 c. for a construction permit or an operating license for a testing facility, any application under section 104 a. or c. specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 103 or 104 a., b., or c. specifically referred to it by the Commission, and shall submit a report thereon

⁸⁰These terms are now defined in section 551 of title 5, United States Code.

which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

c. The Commission shall not issue any license under section 103 for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

d. The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 103, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.

[42 U.S.C. 2232]

SEC. 183. TERMS OF LICENSES.—Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this Act, including the following provisions:

[a. Repealed by Pub. L. 88-489, §18, 78 Stat. 607, Aug. 26, 1964.]

b. No right to the special nuclear material shall be conferred by the license except as defined by the license.

c. Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act.

d. Every license issued under this Act shall be subject to the right of recapture or control reserved by section 108, and to all of the other provisions of this Act, now or hereafter in effect and to all valid rules and regulations of the Commission.

[42 U.S.C. 2233]

SEC. 184. INALIENABILITY OF LICENSES.—No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest in such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations es-

established by the Commission to protect public health and safety and promote the common defense and security.

[42 U.S.C. 2234]

SEC. 185. CONSTRUCTION PERMITS and Operating Licenses⁸¹.—
a.⁸² All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a “license.”

b.⁸³ After holding a public hearing under section 189 a. (1)(A), the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189 a. (1)(B).

[42 U.S.C. 2235]

⁸¹ Typeface and capitalization so in law.

⁸² No indentation in original.

⁸³ Section 2801 of Pub. L. 102–486 (106 Stat. 3120) enacted on Oct. 24, 1992, added this subsection.

Section 2806 of Pub. L. 102–486 (106 Stat. 3121; 42 U.S.C. 2235 note) provides as follows:

SEC. 2806. EFFECT ON PENDING PROCEEDINGS.

Sections 185 b. and 189 a. (1)(B) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.

SEC. 186. REVOCATION.—

a. Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.

b. The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act⁸⁴ in revoking any license.

c. Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act.⁸⁵ Just compensation shall be paid for the use of the facility.

[42 U.S.C. 2236]

SEC. 187. MODIFICATION OF LICENSE.—The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this Act or by reason of rules and regulations issued in accordance with the terms of this Act.

[42 U.S.C. 2237]

SEC. 188. CONTINUED OPERATION OF FACILITIES.—Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 186, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

[42 U.S.C. 2238]

SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

a. (1)(A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licenses, and in any proceeding for the payment of compensation, an award or royalties under sections 153, 157, 186

⁸⁴Section 9(b) of the Administrative Procedure Act has been codified as section 558(c) of title 5, United States Code.

⁸⁵The Administrative Procedure Act has been codified as subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104 c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i)⁸⁶ Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185 b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

⁸⁶Section 2802 of Pub. L. 102-486 (106 Stat. 3120) enacted on Oct. 24, 1992, added this subparagraph.

Section 2806 of Pub. L. 102-486 (106 Stat. 3121; 42 U.S.C. 2235 note) provides as follows:

SEC. 2806. EFFECT ON PENDING PROCEEDINGS.

Sections 185 b. and 189 a. (1)(B) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph,⁸⁷ promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code, and chapter 7 of title 5, United States Code:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Pri-

⁸⁷The effective date was Jan. 4, 1983.

vativation Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

[42 U.S.C. 2239]

SEC. 190. LICENSEE INCIDENT REPORTS.—No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

[42 U.S.C. 2240]

SEC. 191. ATOMIC SAFETY AND LICENSING BOARD.—

a. Notwithstanding the provisions of sections 7(a) and 8(a) of the Administrative Procedure Act,⁸⁸ the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

b. Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 163 shall be applicable to board members appointed from private life.

[42 U.S.C. 2241]

SEC. 192. TEMPORARY OPERATING LICENSE.—

a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file peti-

⁸⁸Sections 7(a) and 8(a) of the Administrative Procedure Act have been codified as sections 556(b) and 557(b) of title 5, United States Code.

tions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 182 b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts

and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Natural Resources and on⁸⁹ Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28, United States Code. The requirements of section 189 a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

c. Any hearing on the application for the final operating license for a facility required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.

[42 U.S.C. 2242]

SEC. 193. LICENSING OF URANIUM ENRICHMENT FACILITIES.

(a) ENVIRONMENTAL IMPACT STATEMENT.—

(1) MAJOR FEDERAL ACTION.—The issuance of a license under sections 53 and 63 for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) TIMING.—An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.

(b) ADJUDICATORY HEARING.—

⁸⁹The name of the Committee on Natural Resources was changed to the Committee on Resources at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

(1) IN GENERAL.—The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 53 and 63.

(2) TIMING.—Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.

(3) SINGLE PROCEEDING.—No further Commission licensing action shall be required to authorize operation.

(c) INSPECTION AND OPERATION.—Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.

(d) INSURANCE AND DECOMMISSIONING.—

(1) The Commission shall require, as a condition of the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

(2) The Commission shall require, as a condition for the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

(A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).

(B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.

(C) External sinking fund in which deposits are made at least annually.

(e) NO PRICE-ANDERSON COVERAGE.—Section 170 of this Act shall not apply to any license under section 53 or 63 for a uranium enrichment facility constructed after the date of enactment of this section.⁹⁰

(f) LIMITATION.—No license or certificate of compliance may be issued to the United States Enrichment Corporation⁹¹ or its successor under this section or sections 53, 63, or 1701, if the Commission determines that—

⁹⁰The date of enactment was Nov. 15, 1990.

⁹¹Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

- (1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
 - (2) the issuance of such a license or certificate of compliance would be inimical to—
 - (A) the common defense and security of the United States;
- or
- (B) the maintenance of a reliable and economical domestic source of enrichment services.

[42 U.S.C. 2243]

[CHAPTER 17. JOINT COMMITTEE ON ATOMIC ENERGY]

[Chapter 17, consisting of §§ 201–207, was repealed by § 302 a. of the Atomic Energy Act of 1954, as added by Pub. L. 95–110, § 1, 91 Stat. 84, Sept. 20, 1977.]

[42 U.S.C. 2251–2257]

CHAPTER 18. ENFORCEMENT⁹²

SEC. 221. GENERAL PROVISIONS.—

a. To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

b. The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.

c. No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however,* That nothing in this subsection shall be construed as applying to administrative action taken by the Commission.

[42 U.S.C. 2271]

SEC. 222. VIOLATION OF SPECIFIC SECTIONS.—Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 57, 92, or 101, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108 shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

[42 U.S.C. 2272]

SEC. 223. VIOLATION OF SECTIONS GENERALLY.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under

⁹²See also sections 3559 and 3571 of title 18, United States Code, regarding fines for criminal offenses.

section 65 or subsections 161 b., i., or o. shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

- (1) the integrity of the reactor coolant pressure boundary,
- (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
- (3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated.

c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11 q. shall, upon conviction, notwithstanding section 3571 of title 18, United States Code, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, United States Code, punishment shall be a fine of not

more than \$50,000, or imprisonment for not more than five years, or both.

[42 U.S.C. 2273]

SEC. 224. COMMUNICATION OF RESTRICTED DATA.—Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

a. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both;

b. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$50,000 or imprisonment for not more than ten years, or both.

[42 U.S.C. 2274]

SEC. 225. RECEIPT OF RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both.

[42 U.S.C. 2275]

SEC. 226. TAMPERING WITH RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

[42 U.S.C. 2276]

SEC. 227. DISCLOSURE OF RESTRICTED DATA.—Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commis-

sion, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this Act or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$12,500.

[42 U.S.C. 2277]

SEC. 228. STATUTE OF LIMITATIONS.—Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 224 to 226, inclusive, of this Act, unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

[42 U.S.C. 2278]

SEC. 229,⁹³ TRESPASS UPON COMMISSION INSTALLATIONS.—

a.⁹⁴ The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved.

b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

[42 U.S.C. 2278a]

SEC. 230. PHOTOGRAPHING, ETC., OF COMMISSION INSTALLATIONS.—It shall be an offense, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both—

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the

⁹³So in law. Comma probably should be a period.

⁹⁴Indentation of subsections so in law.

product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

[42 U.S.C. 2278b]

SEC. 231. OTHER LAWS.—Sections 224 to 230 shall not exclude the applicable provisions of any other laws.

[42 U.S.C. 2279]

SEC. 232. INJUNCTION PROCEEDINGS.—Whenever in the judgment of the Commission any person has engaged or is about to be engaged in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order may be granted.

[42 U.S.C. 2280]

SEC. 233. CONTEMPT PROCEEDINGS.—In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161 c., the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

[42 U.S.C. 2281]

SEC. 234. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF LICENSING REQUIREMENTS.—

a. Any person who (1) violates any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the

particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

[42 U.S.C. 2282]

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a.⁹⁵ Any person who has entered into an agreement of indemnification under subsection 170 d.⁹⁶ (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed \$100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.

c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

⁹⁵Indentation style so in law.

⁹⁶So in law. Probably should be "section 170 d."

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

d. The provisions of this section shall not apply to:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

⁹⁷So in law. Probably should be "and".

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

[42 U.S.C. 2282a]

SEC. 234B. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS REGARDING SECURITY OF CLASSIFIED OR SENSITIVE INFORMATION OR DATA.—

a. Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this Act relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

b. The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

c. The powers and limitations applicable to the assessment of civil penalties under section 234A, except for subsection d. of that section, shall apply to the assessment of civil penalties under this section.

d. In the case of an entity specified in subsection d. of section 234A—

(1) the assessment of any civil penalty under subsection a. against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection a. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

[42 U.S.C. 2282b]

SEC. 234C. WORKER HEALTH AND SAFETY RULES FOR DEPARTMENT OF ENERGY NUCLEAR FACILITIES.

a. REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors

covered by agreements of indemnification under section 170 d. of the Atomic Energy Act of 1954, after public notice and opportunity for comment under section 553 of title 5, United States Code (commonly known as the "Administrative Procedure Act"). Such regulations shall, subject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

(2) **APPLICABILITY.**—The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (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)).⁹⁸

(3) **FLEXIBILITY.**—In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

(4) **NO EFFECT ON HEALTH AND SAFETY ENFORCEMENT.**—This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

b. CIVIL PENALTIES.—

(1) **IN GENERAL.**—A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 170 d. (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection a. shall be subject to a civil penalty of not more than \$70,000 for each such violation.

(2) **CONTINUING VIOLATIONS.**—If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

c. CONTRACT PENALTIES.—

(1) **IN GENERAL.**—The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 170 d. provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection a.

⁹⁸The text of the executive order is set out in this volume under Selected Other Matters.

(2) CONTENTS.—The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

d. COORDINATION OF PENALTIES.—

(1) CHOICE OF PENALTIES.—For any violation by a person of a regulation promulgated under subsection a., the Secretary shall pursue either civil penalties under subsection b. or contract penalties under subsection c., but not both.

(2) MAXIMUM AMOUNT.—In the case of an entity described in subsection d. of section 234A, the total amount of civil penalties under subsection b. and contract penalties under subsection c. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(3) COORDINATION WITH SECTION 234A.—The Secretary shall ensure that a contractor of the Department is not penalized both under this section and under section 234A for the same violation.

[42 U.S.C. 2282c]

SEC. 235.⁹⁹ PROTECTION OF NUCLEAR INSPECTORS.—

a. Whoever kills any person who performs any inspections which—

(1) are related to any activity or facility licensed by the Commission, and

(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104 b., or the safety of radioactive materials,

shall be punished as provided under sections 1111 and 1112 of title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code.

[42 U.S.C. 2283]

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste storage facility licensed under this Act;

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; or

⁹⁹ Section 202(a) of Pub. L. 96-295 added new section 235 at the end of chapter 18. Section 204(a) of Pub. L. 96-295 added section 236 after section 234. Section 236 was placed after section 235 in this compilation to reflect the probable intent of Congress.

(4) any uranium enrichment facility licensed by the Nuclear Regulatory Commission, or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

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

[42 U.S.C 2284]

CHAPTER 19. MISCELLANEOUS

SEC. 241. TRANSFER OF PROPERTY.—Nothing in this Act shall be deemed to repeal, modify, amend, or alter the provisions of section 9(a) of the Atomic Energy Act of 1946, as heretofore amended.¹⁰⁰

[42 U.S.C 2015]

SEC. 242. COLD STANDBY.

The Secretary is authorized to expend such funds as may be necessary for the purposes of maintaining enrichment capability at the Portsmouth, Ohio, facility.

[42 U.S.C 2015a]

[Sec. 251. REPORT TO CONGRESS.—Repealed by section 3152(a)(1) of P.L. 105–85, Nov. 18, 1997, 111 Stat. 2041.]

SEC. 261. APPROPRIATIONS.—

a. No appropriation shall be made to the Commission, nor shall the Commission waive charges for the use of materials under the Cooperative Power Reactor Demonstration Program, unless previously authorized by legislation enacted by the Congress.

b. Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

c. Notwithstanding the provisions of subsection a., funds are hereby authorized to be appropriated for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

d. Funds authorized to be appropriated for any construction project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another construction project not otherwise authorized if the substituted construction project is within the limit of cost of the construction project for which substitution is to be made, and the Commission certifies that—

¹⁰⁰Section 9(a) of the Atomic Energy Act of 1946 provided that:

“The President shall direct the transfer to the Commission of all interests owned by the United States or any Government agency in the following property:

- (1) the substituted project is essential to the common defense and security;
- (2) the substituted project is required by changes in weapon characteristics or weapon logistic operations; and
- (3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.

[42 U.S.C 2017]

SEC. 271. AGENCY JURISDICTION.—Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.

[42 U.S.C 2018]

SEC. 272. APPLICABILITY OF FEDERAL POWER ACT.—Every licensee under this Act who holds a license from the Commission for a utilization or production facility for the generation of commercial electric energy under section 103 and who transmits such electric energy in interstate commerce or sells it at wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act.

[42 U.S.C 2019]

SEC. 273. LICENSING OF GOVERNMENT AGENCIES.—Nothing in this Act shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under section 103, if qualified under the provisions of section 103, for the construction and operation of production or utilization facilities for the primary purpose of producing electric energy for disposition for ultimate public consumption.

[42 U.S.C 2020]

SEC. 274. COOPERATION WITH STATES.—

a. It is the purpose of this section—

- (1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;
- (2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;
- (3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;
- (4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with

respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

(1) byproduct materials as defined in section 11 e. (1);

(2) byproduct materials as defined in section 11 e. (2);

(3) source materials;

(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11 e. (2). Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to pro-

tect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

j. (1) The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161 b. or i. to issue rules, regulations, or orders to protect the common defense and security,

to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161 i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

n. As used in this section, the term "State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.

o. In the licensing and regulation of byproduct material, as defined in section 11 e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

(1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land) and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, and

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment on the radiological and non-radiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and ground water resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11 e. (2); and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83 b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161 x. of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11 e. (2), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.

[42 U.S.C. 2021]

SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

a. As soon as practicable, but not later than October 1, 1982, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings

Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. The Administrator may periodically revise any standard promulgated pursuant to this subsection. After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.

b. (1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11 e. (2) of this Act, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material. If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this Act without regard to any provision of this Act requiring such actions to comply with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this Act. Requirements established by the Commission under this Act with respect to byproduct material as defined in section 11 e. (2) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection f. (3) Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 11 e. (2) pending promulgation by the Commission of any such standard of general application. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying

such standards, and such other factors as the Administrator determines to be appropriate.¹⁰¹

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards: *Provided, however*, That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11 e. (2) of this Act. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 274 b. (2) shall apply such revised standard in the case of any license for byproduct material as defined in section 11 e. (2) or any revision thereof.

c. (1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such persons resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112 of title 28, United States Code. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. The judgment of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

d. Implementation and enforcement of the standards promulgated pursuant to subsection b. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274

¹⁰¹ Sections 22 and 18(a) of Pub. L. 97-415 both added material at the end of paragraph (1). The order was not specified.

b. (2) of this Act shall implement and enforce such standards in accordance with subsection o. of such section.

e. Nothing in this Act applicable to byproduct material, as defined in section 11 e. (2) of this Act, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.

f. (1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

(2) Following the proposal by the Administrator of standards under subsection b., the Commission shall review the October 3 regulations and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if—

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate by product material (as defined in section 11 e. (2)) under this Act on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 84 to promulgate regulations to protect the public health and safety and the environment.

[42 U.S.C. 2022]

SEC. 276. STATE AUTHORITY TO REGULATE RADIATION BELOW LEVEL OF REGULATORY CONCERN OF NUCLEAR REGULATORY COMMISSION.¹⁰²

(a) IN GENERAL.—No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or oth-

¹⁰²Section 2901(a) of Pub. L. 102-486 (106 Stat. 3122) enacted on Oct. 24, 1992, added this section 276. Section 2901(b) of that Public Law provides as follows:

Continued

erwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992¹⁰³ exempts such waste from regulation.

(b) RELATION TO OTHER STATE AUTHORITY.—This section may not be construed to imply preemption of existing State authority. Except as expressly provided in subsection (a), this section may not be construed to confer on any State any additional authority to regulate activities licensed by the Nuclear Regulatory Commission.

(c) DEFINITIONS.—For purposes of this section:

(1) The term “low-level radioactive waste” means radioactive material classified by the Nuclear Regulatory Commission as low-level radioactive waste on the date of the enactment of the Energy Policy Act of 1992.¹⁰⁴

(2) The term “off-site incineration” means any incineration of radioactive materials at a facility that is located off the site where such materials were generated.

(3) The term “State” means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

[42 U.S.C. 2023]

SEC. 281. SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[42 U.S.C. 2012 note]

SEC. 291. SHORT TITLE.—This Act may be cited as the “Atomic Energy Act of 1954.”

CHAPTER 20. JOINT COMMITTEE ON ATOMIC ENERGY ABOLISHED; FUNCTIONS AND RESPONSIBILITIES REASSIGNED

SEC. 301. JOINT COMMITTEE ON ATOMIC ENERGY ABOLISHED.—

a. The Joint Committee on Atomic Energy is abolished.

b. Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after the date of enactment of this section,¹⁰⁵ be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

c. All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such

“(b) REVOCATION OF RELATED NRC POLICY STATEMENTS.—The policy statements of the Nuclear Regulatory Commission published in the Federal Register on July 3, 1990 (55 Fed. Reg. 27522) and August 29, 1986 (51 Fed. Reg. 30839), relating to radioactive waste below regulatory concern, shall have no effect after the date of the enactment of this Act.”

¹⁰³The date of enactment was Oct. 24, 1992.

¹⁰⁴The date of enactment was Oct. 24, 1992.

¹⁰⁵The date of enactment was Sept. 20, 1977.

records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

[42 U.S.C. 2258]

SEC. 302. TRANSFERS OF CERTAIN FUNCTIONS OF THE JOINT COMMITTEE ON ATOMIC ENERGY AND CONFORMING AMENDMENTS TO CERTAIN OTHER LAWS.—

a. Effective on the date of enactment of this section,¹⁰⁶ chapter 17 of this Act is repealed.

b. Section 103 of the Atomic Energy Community Act of 1955, as amended, is repealed.

c. Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking the subsection designation “(a)”; and

(2) repealing subsection (b).

d. Section 252(a)(3) of the Legislative Reorganization Act of 1970 is repealed.

SEC. 303. INFORMATION AND ASSISTANCE TO CONGRESSIONAL COMMITTEES.—

a. The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

b. The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

c. Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

d. The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of

¹⁰⁶The date of enactment was Sept. 20, 1977.

Representatives, the prior written consent of the Committee on House Oversight.

[42 U.S.C. 2259]

CHAPTER 21. DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SEC. 311. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is hereby established an independent establishment in the executive branch, to be known as the “Defense Nuclear Facilities Safety Board” (hereafter in this chapter 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) Not later than 180 days after the date of the enactment of this chapter,¹⁰⁷ the President shall submit to the Senate nominations for appointment to the Board. In the event that the President is unable to submit the nominations within such 180-day period, the President shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a report describing the reasons for such inability and a plan for submitting the nominations within the next 90 days. If the President is unable to submit the nominations within that 90-day period, the President shall again submit to such committees and the Speaker such a report and plan. The President shall continue to submit to such committees and the Speaker such a report and plan every 90 days until the nominations are submitted.

(c) CHAIRMAN AND VICE CHAIRMAN.—(1) The President shall designate a Chairman and Vice Chairman of the Board from among members of the Board.

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

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

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

(C) the use and expenditure of funds.

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

¹⁰⁷The date of enactment was Sept. 29, 1988.

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

(d) TERMS.—(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. Members of the Board may be reappointed.

(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) 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. A member may serve after the expiration of that member's term until a successor has taken office.

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

[42 U.S.C. 2286]

SEC. 312. FUNCTIONS OF THE BOARD.

(a) IN GENERAL.—The Board shall perform the following functions:

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

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

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

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

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

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

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

(3) ANALYSIS OF DESIGN AND OPERATIONAL DATA.—The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

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

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

(b) EXCLUDED FUNCTIONS.—The functions of the Board under this chapter 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.

[42 U.S.C. 2286a]

SEC. 313. POWERS OF BOARD.

(a) HEARINGS.—(1) The Board or a member authorized by the Board may, for the purpose of carrying out this chapter, 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 Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, 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 chapter—

(A) 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 150 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, United States Code, at rates the Board determines to be reasonable.

(2) The authority and requirements provided in section 161 d. with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(c) REGULATIONS.—The Board may prescribe regulations to carry out the responsibilities of the Board under this chapter.

(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 147 or 148 of this Act.

(e) USE OF GOVERNMENT FACILITIES, ETC.—The Board may, for the purpose of carrying out its responsibilities under this chapter, 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 THE 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 THE 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 chapter.

(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(l), the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

[42 U.S.C. 2286b]

SEC. 314. RESPONSIBILITIES OF THE SECRETARY OF ENERGY.

(a) COOPERATION.—The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this chapter. 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 ready access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this chapter.

(b) ACCESS TO INFORMATION.—The Secretary of Energy may deny access to information provided to the Board to any person who—

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

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

[42 U.S.C. 2286c]

SEC. 315. BOARD RECOMMENDATIONS.

(a) PUBLIC AVAILABILITY AND COMMENT.—Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under section 312, the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit com-

ments, data, views, or arguments to the Board concerning the recommendations.

(b) 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 312, 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 (a), 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 (h), 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.

(c) 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 (a) or (b).

(d) FINAL DECISION.—If the Secretary of Energy, in a response under subsection (b)(1), rejects (in whole or part) any recommendation made by the Board under section 312, 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 (h), 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 and on Appropriations of the Senate and to the Speaker of the House of Representatives a written report containing that decision and reasoning.

(e) 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 and on Appropriations of the Senate and to the Speaker of the House of Representatives 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.

(f) 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 (e), 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 and on Appropriations of the Senate and to the Speaker of the House of Representatives 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 91 of this Act, the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

(g) IMMINENT OR SEVERE THREAT.—(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 312 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 (d).

(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 and on Appropriations of the Senate and to the Speaker of the House of Representatives. The President shall promptly notify such committees and the Speaker of his decision and the reasons for that decision.

(h) 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 147 and 148 of this Act to prohibit dissemination of certain information.

SEC. 316. REPORTS.

(a) BOARD REPORT.—(1) The Board shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United States Code, a written report concerning its activities under this chapter, including all recommendations made by the Board, during the 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.¹⁰⁸

(b) DOE REPORT.—The Secretary of Energy shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United States Code, a written report concerning the activities of the Department of Energy under this chapter during the year preceding the year in which the report is submitted.

[42 U.S.C. 2286e]

SEC. 317. JUDICIAL REVIEW.

Chapter 7 of title 5, United States Code, shall apply to the activities of the Board under this chapter.

[42 U.S.C. 2286f]

SEC. 318. DEFINITION.

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

(1) A production facility or utilization facility (as defined in section 11 of this Act) 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, pertaining to the Naval nuclear propulsion program;¹⁰⁹

(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

¹⁰⁸See also subsections (c) and (d) of section 1441 of Pub. L. 100-456 (102 Stat. 2084; 42 U.S.C. 2286e note) enacted Sept. 29, 1988, regarding additional requirements for first and fifth annual reports.

¹⁰⁹The text of the executive order is set out in this volume under Selected Other Matters.

(D) any facility owned by the United States Enrichment Corporation¹¹⁰.

(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.

[42 U.S.C. 2286g]

SEC. 319. CONTRACT AUTHORITY SUBJECT TO APPROPRIATIONS.

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

[42 U.S.C. 2286h]

SEC. 320. TRANSMITTAL OF CERTAIN INFORMATION TO CONGRESS.

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 Congress pursuant to section 316(a), the Board shall submit at the same time a copy thereof to the Congress.

[42 U.S.C. 2286h-1]

SEC. 321. ANNUAL AUTHORIZATION OF APPROPRIATIONS.

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

[42 U.S.C. 2286i]

TITLE II—UNITED STATES ENRICHMENT CORPORATION¹¹¹

CHAPTER 27—LICENSING AND REGULATION OF URANIUM ENRICHMENT FACILITIES

SEC. 1701. GASEOUS DIFFUSION FACILITIES.

(a) ISSUANCE OF STANDARDS.—Within 2 years after the date of the enactment of this title,¹¹² the Nuclear Regulatory Commission shall establish by regulation such standards as are necessary to govern the gaseous diffusion uranium enrichment facilities of the Department in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Regulations promulgated pursuant to this subsection shall, among other things, require that adequate safeguards (within the meaning of section 147) are in place.

(b) ANNUAL REPORT.—

¹¹⁰ Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

¹¹¹ Section 3116(a)(1) of Public Law 104-134 (110 Stat. 1321-349) provides for the repeal of chapters 22 through 26 of the Atomic Energy Act of 1954.

¹¹² The date of enactment was Oct. 24, 1992.

(1) IN GENERAL.—Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear Regulatory Commission, in consultation with the Department and the Environmental Protection Agency, shall report to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion uranium enrichment facilities of the Department.

(2) REQUIRED DETERMINATION.—Such report shall include a determination regarding whether the gaseous diffusion uranium enrichment facilities of the Department are in compliance with the standards established under subsection (a) and all applicable laws.

(c) CERTIFICATION PROCESS.—

(1) ESTABLISHMENT.—The Nuclear Regulatory Commission shall establish a certification process to ensure that the Corporation complies with standards established under subsection (a).

(2) PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.

(3) TREATMENT OF CERTIFICATE OF COMPLIANCE.—The requirement for a certificate of compliance under paragraph (1) shall be in lieu of any requirement for a license for any gaseous diffusion facility of the Department leased by the Corporation.

(4) NRC REVIEW.—

(A) IN GENERAL.—The Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review the operations of the Corporation with respect to any gaseous diffusion uranium enrichment facilities of the Department leased by the Corporation to ensure that public health and safety are adequately protected.

(B) ACCESS TO FACILITIES AND INFORMATION.—The Corporation and the Department shall cooperate fully with the Nuclear Regulatory Commission and the Environmental Protection Agency and shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with the ready access to the facilities, personnel, and information the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection. A contractor operating a Corporation facility for the Corporation shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with ready access to the facilities, personnel, and information of the contractor as the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection.

(C) LIMITATION.—The Nuclear Regulatory Commission shall limit its finding under subsection (b)(2) to a deter-

mination of whether the facilities are in compliance with the standards established under subsection (a).

(d) **REQUIREMENT FOR OPERATION.**—The gaseous diffusion uranium enrichment facilities of the Department may not be operated by the Corporation unless the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, makes a determination of compliance under subsection (b) or approves a plan prepared by the Department for achieving compliance required under subsection (b).

[42 U.S.C. 2297f]

SEC. 1702. LICENSING OF OTHER TECHNOLOGIES.

(a) **IN GENERAL.**—Corporation facilities using alternative technologies for uranium enrichment, including AVLIS, shall be licensed under sections 53, 63, and 193.

(b) **COSTS FOR DECONTAMINATION AND DECOMMISSIONING.**—The Corporation shall provide for the costs of decontamination and decommissioning of any Corporation facilities described in subsection (a) in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.

[42 U.S.C. 2297f-1]

SEC. 1703. REGULATION OF RESTRICTED DATA.

The Corporation shall be subject to this Act with respect to the use of, or access to, Restricted Data to the same extent as any private corporation.

[42 U.S.C. 2297f-2]

CHAPTER 28—DECONTAMINATION AND DECOMMISSIONING

SEC. 1801. URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND.

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States an account to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this chapter as the “Fund”). The Fund, and any amounts deposited in it, including any interest earned thereon, shall be available to the Secretary subject to appropriations for the exclusive purpose of carrying out this chapter.

(b) **ADMINISTRATION.**—

(1) **IN GENERAL.**—The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) **INVESTMENTS.**—The Secretary of the Treasury shall invest amounts contained within the Fund in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate for what the Department determines to be the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding

marketable obligations of the United States with remaining periods to maturity comparable to these obligations.

[42 U.S.C. 2297g]

SEC. 1802. DEPOSITS.

(a) AMOUNT.—The Fund shall consist of deposits in the amount of \$518,233,333 per fiscal year (to be annually adjusted for inflation beginning on the date of the enactment of the Energy Policy Act of 1992 using the Consumer Price Index for all-urban consumers published by the Department of Labor) as provided in this section.

(b) SOURCE.—Deposits described in subsection (a) shall be from the following sources:

(1) Sums collected pursuant to subsection (c).

(2) Appropriations made pursuant to subsection (d).

(c) SPECIAL ASSESSMENT.—The Secretary shall collect a special assessment from domestic utilities. The total amount collected for a fiscal year shall not exceed \$150,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor). The amount collected from each utility pursuant to this subsection for a fiscal year shall be in the same ratio to the amount required under subsection (a) to be deposited for such fiscal year as the total amount of separative work units such utility has purchased from the Department of Energy for the purpose of commercial electricity generation, before the date of the enactment of this title,¹¹³ bears to the total amount of separative work units purchased from the Department of Energy for all purposes (including units purchased or produced for defense purposes) before the date of the enactment of this title.¹¹³ For purposes of this subsection—

(1) a utility shall be considered to have purchased a separative work unit from the Department if such separative work unit was produced by the Department, but purchased by the utility from another source; and

(2) a utility shall not be considered to have purchased a separative work unit from the Department if such separative work unit was purchased by the utility, but sold to another source.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund, for the period encompassing 15 years after the date of the enactment of this title,¹¹³ such sums as are necessary to ensure that the amount required under subsection (a) is deposited for each fiscal year.

(e) TERMINATION OF ASSESSMENTS.—The collection of amounts under subsection (c) shall cease after the earlier of—

(1) 15 years after the date of the enactment of this title;¹¹³

or

(2) the collection of \$2,250,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) under such subsection.

(f) CONTINUATION OF DEPOSITS.—Except as provided in subsection (e), deposits shall continue to be made into the Fund under subsection (d) for the period specified in such subsection.

¹¹³The date of enactment was Oct. 24, 1992.

(g) TREATMENT OF ASSESSMENT.—Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.

[42 U.S.C. 2297g-1]

SEC. 1803. DEPARTMENT FACILITIES.

(a) STUDY BY NATIONAL ACADEMY OF SCIENCES.—The National Academy of Sciences shall conduct a study and provide recommendations for reducing costs associated with decontamination and decommissioning, and shall report its findings to the Congress within 3 years after the date of the enactment of this title.¹¹³ Such report shall include a determination of the decontamination and decommissioning required for each facility, shall identify alternative methods, using different technologies, shall include site-specific surveys of the actual contamination, and shall provide estimated costs of those activities.

(b) PAYMENT OF DECONTAMINATION AND DECOMMISSIONING COSTS.—The costs of all decontamination and decommissioning activities of the Department shall be paid from the Fund until such time as the Secretary certifies and the Congress concurs, by law, that such activities are complete.

(c) PAYMENT OF REMEDIAL ACTION COSTS.—The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the Department shall be responsible for the cost of remedial action. No provision of this title may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.

[42 U.S.C. 2297g-2]

SEC. 1804. EMPLOYEE PROVISIONS.

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of uranium enrichment facilities of the Department shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a et seq.). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267) and the Act of June 13, 1934 (40 U.S.C. 276c). This section may not be construed to require the contracting out of activities associated with the decontamination or decommissioning of uranium enrichment facilities.

[42 U.S.C. 2297g-3]

SEC. 1805. REPORTS TO CONGRESS.

Within 3 years after the date of the enactment of this title,¹¹³ and at least once every 3 years thereafter, the Secretary shall report to the Congress on progress under this chapter. The 5th report

submitted under this section shall contain recommendations of the Secretary for the reauthorization of the program and Fund under this title.

[42 U.S.C. 2297g-4]

DEPARTMENT OF ENERGY ORGANIZATION ACT

DEPARTMENT OF ENERGY ORGANIZATION ACT

Public Law 95–91, as amended

An Act to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Department of Energy Organization Act”.

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¹ So in original. Should be “Sec.”.

² So in original. Should have “Sec.” before the section number.

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[42 U.S.C. 7101 note]

DEFINITIONS

SEC. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the “Department” means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this Act (1) reference to “function” includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to “perform”, when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, “Federal lease” means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

[42 U.S.C. 7101]

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress of the United States finds that—

(1) the United States faces an increasing shortage of non-renewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

[42 U.S.C. 7111]

PURPOSES

SEC. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Fed-

eral efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

[42 U.S.C. 7112]

RELATIONSHIP WITH STATES

SEC. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction.

[42 U.S.C. 7113]

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the “Secretary”), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary.

[42 U.S.C. 7131]

PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c)(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, non-proliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 3212 of the National Nuclear Security Administration Act. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

[42 U.S.C. 7132]

ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department six Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act.

[(5) Repealed P.L. 106-65, § 3294(b), Oct. 5, 1999, 113 Stat. 970.]

(6) Intergovernmental policies and relations including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all avail-

able information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

[42 U.S.C. 7133]

FEDERAL ENERGY REGULATORY COMMISSION

SEC. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

[42 U.S.C. 7134]

ENERGY INFORMATION ADMINISTRATION

SEC. 205. (a)(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 11 of the Energy Supply and

Environmental Coordination Act of 1974) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974, and the provisions of sections 53(d) and 59 thereof shall be applicable to the Administrator in the performance of any function under this Act.

(d) The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974.

(f) The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5, United States Code. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, shall continue to apply to any information obtained by the Administrator under such provisions.

(h)(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following the date of enactment of this Act the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analysis or evaluations as the Administrator finds is necessary to achieve the purposes of this Act.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this Act, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this Act.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)³ of section 657 of this Act.

(6) As used in this subsection the term—

(A) “energy-producing company” means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

³So in original. Section 657 of this Act was enacted without a subsection (a).

- (v) storage of mineral fuels or nonmineral energy resources;
 - (vi) the generation, transmission, or storage of electrical energy;
 - (vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or
 - (viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;
- (B) “energy industry” means all energy-producing companies; and
- (C) “person” has the meaning as set forth in section 11 of the Energy Supply and Environmental Coordination Act of 1974.
- (7) The provisions of section 1905 of title 18, United States Code, shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.
- (i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every two years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—
- (A) quantity of fuels consumed;
 - (B) energy expenditures;
 - (C) fuel switching capabilities; and
 - (D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.
- (2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).
- (j)(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.
- (2) In carrying out this subsection, the Administrator shall—
- (A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and
 - (B) otherwise take into account the reporting burdens of energy information by small businesses.
- (3) As used in this subsection, the term “renewable energy resources” includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.
- (k) Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—
- (1) conduct surveys of residential and commercial energy use at least once every 3 years, and make such information available to the public;
 - (2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of

measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

(l) In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k), consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

[42 U.S.C. 7135]

ECONOMIC REGULATORY ADMINISTRATION

SEC. 206. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of title IV, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

[42 U.S.C. 7136]

COMPTROLLER GENERAL FUNCTIONS

SEC. 207. The functions of the Comptroller General of the United States under section 12 of the Federal Energy Administration Act of 1974 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this Act or any other Act administered by the Department.

[42 U.S.C. 7137]

[Section 208 repealed by Public Law 100-504.]

OFFICE OF SCIENCE

SEC. 209. (a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of

the Executive Schedule under section 5315 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

[42 U.S.C. 7139]

LEASING LIAISON COMMITTEE

SEC. 210. There is hereby established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

[42 U.S.C. 7140]

OFFICE OF MINORITY ECONOMIC IMPACT

SEC. 211. (a) There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time,

develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) The Director may provide the management any⁴ technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e)(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

⁴ So in original. Probably should be “and”.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) As used in this section, the term—

(1) “minority” means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;

(2) “minority business enterprise” means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) “minority educational institution” means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed \$3,000,000 for fiscal year 1979, not to exceed \$5,000,000 for fiscal year 1980, and not to exceed \$6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).

[42 U.S.C. 7141]

[SEC. 212. Repealed P.L. 106–65, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970.]

[42 U.S.C. 7143]

ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY
ADMINISTRATION

SEC. 213. (a) The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary’s responsibilities under this section.

[42 U.S.C. 7144]

ESTABLISHMENT OF SECURITY, COUNTERINTELLIGENCE, AND
INTELLIGENCE POLICIES

SEC. 214. The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

[42 U.S.C. 7144a]

OFFICE OF COUNTERINTELLIGENCE

SEC. 215. (a) There is within the Department an Office of Counterintelligence.

(b)(1) The head of the Office shall be the Director of the Office of Counterintelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.

(3) The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.

(c)(1) The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of disclosure or loss of classified and other sensitive information at such facilities.

(2) The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.

(3) The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(d)(1) Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:

(A) The Secretary.

(B) The Director of Central Intelligence.

(C) The Director of the Federal Bureau of Investigation.

(D) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) Each such report shall include for the year covered by the report the following:

(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including—

(i) the number of violations that were investigated;

and

(ii) the number of violations that remain unresolved.

(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.

(D) The adequacy of the Department's procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.

(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.

(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Department of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.

(4) Each report under this subsection as submitted to the committees referred to in subparagraphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

[42 U.S.C. 7144b]

OFFICE OF INTELLIGENCE

SEC. 216. (a) There is within the Department an Office of Intelligence.

(b)(1) The head of the Office shall be the Director of the Office of Intelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.

(c) Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.

[42 U.S.C. 7144c]

TITLE III—TRANSFERS OF FUNCTIONS

GENERAL TRANSFERS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

[42 U.S.C. 7151]

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

Sec. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

- (A) the Southeastern Power Administration;
- (B) the Southwestern Power Administration;
- (C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;
- (D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and
- (E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration, shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(d) There are hereby transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

- (1) fuel supply and demand analysis and data gathering;
- (2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

[42 U.S.C. 7152]

ADMINISTRATION OF LEASING TRANSFERS

SEC. 303. (a) The Secretary of the Interior shall retain any authorities not transferred under section 302(b) of this Act and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 302(b) of this Act with respect to the issuance or supervision of Federal leases. Nothing in section 302(b) of this Act shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) In exercising the authority under section 302(b) of this Act to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(d) The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

[42 U.S.C. 7153]

TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 304. (a) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976, to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act, shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 509 of the Housing and Urban Development Act of 1970.

[42 U.S.C. 7154]

COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION

SEC. 305. **[Amends Section 502 of the Motor Vehicle Information and Cost Savings Act.]**

TRANSFER FROM THE INTERSTATE COMMERCE COMMISSION

SEC. 306. Except as provided in title IV, there are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

[42 U.S.C. 7155]

TRANSFERS FROM THE DEPARTMENT OF THE NAVY

SEC. 307. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

[42 U.S.C. 7156]

TRANSFERS FROM THE DEPARTMENT OF COMMERCE

SEC. 308. There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

[42 U.S.C. 7157]

NAVAL REACTOR AND MILITARY APPLICATION PROGRAMS

SEC. 309. The Division of Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit

shall be deemed to be an organizational unit established by this Act.

[42 U.S.C. 7158]

TRANSFER TO THE DEPARTMENT OF TRANSPORTATION

SEC. 310. Notwithstanding section 301(a), there are hereby transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act.

[42 U.S.C. 7159]

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b)(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1990 shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1)

the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) as assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

[42 U.S.C. 7171]

JURISDICTION OF THE COMMISSION

SEC. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act;

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act;

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act and Natural Gas Act.

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

(b) There are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

(c)(1) Pursuant to the procedures specified in section 404 and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973 which is required by section 8 or 12 of such Act to be transmitted by the President to, and reviewed by, each House of Congress, under section 551 of the Energy Policy and Conservation Act.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 8 or 12 of the Emergency Petroleum Allocation Act of 1973, and section 551 of the Energy Policy and Conservation Act.

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect

to any function under the jurisdiction of the Commission pursuant to section 402.

[42 U.S.C. 7172]

INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

SEC. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

[42 U.S.C. 7173]

REFERRAL OF OTHER RULEMAKING PROCEEDINGS TO COMMISSION

SEC. 404. (a) Except as provided in section 403, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402 (a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted. The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the

reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code.

[42 U.S.C. 7174]

RIGHT OF SECRETARY TO INTERVENE IN COMMISSION PROCEEDINGS

SEC. 405. The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

[42 U.S.C. 7175]

REORGANIZATION

SEC. 406. For the purposes of chapter 9 of title 5, United States Code, the Commission shall be deemed to be an independent regulatory agency.

[42 U.S.C. 7176]

ACCESS TO INFORMATION

SEC. 407. (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this Act.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 304 and section 311 of the Federal Power Act and section 10 and section 11 of the Natural Gas Act, shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

[42 U.S.C. 7177]

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

PROCEDURES

SEC. 501. (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402 (c)(1) or which the Secretary has assigned under section 402(e).

(b)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If, the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(c) The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term “geographic area within a State” means a special purpose district or other region recognized for governmental purpose within such State is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

[42 U.S.C. 7191]

JUDICIAL REVIEW

SEC. 502. (a) Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of de-

fense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Subject to the provisions of section 401(i) of this Act, and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

[42 U.S.C. 7192]

REMEDIAL ORDERS

SEC. 503. (a) If upon investigation the Secretary or his authorized representatives believes that a person has violated any regulation, rule, or order described in section 501(a) promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section "person" includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Nothing in this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) The provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after the effective date of this Act.

(g) With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

[42 U.S.C. 7193]

REQUESTS FOR ADJUSTMENTS

SEC. 504. (a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 501(a) issued under the Federal Energy Administration Act, the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this title when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litiga-

tion involving judicial review of such action shall be the responsibility of the Secretary.

[42 U.S.C. 7194]

REVIEW AND EFFECT

SEC. 505. Within one year after the effective date of this Act, the Secretary shall submit a report to Congress concerning the actions taken to implement section 501. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

[42 U.S.C. 7195]

TITLE VI—ADMINISTRATIVE PROVISIONS

[Part A (sections 601-603) repealed by P.L. 104-106.]

PART B—PERSONNEL PROVISIONS

OFFICERS AND EMPLOYEES

SEC. 621. (a) In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b)(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after the effective date of this Act, to fill such position under paragraph (1) leaves such position or

(B) on the day which is four years after such effective date, whichever is later.

(c)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections⁵ 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this Act and who immediately before the effective date of this Act, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, United States Code, under existing law, or under this Act and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(e) For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, United States Code, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

(f) All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of the date of enactment of this Act shall, while employed in such positions, be exempt from the competitive service.

[42 U.S.C. 7231]

SENIOR POSITIONS

SEC. 622. In addition to those positions created by title II of this Act, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

[42 U.S.C. 7232]

EXPERTS AND CONSULTANTS

SEC. 623. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

[42 U.S.C. 7233]

⁵ So in original. Should be "section."

ADVISORY COMMITTEES

SEC. 624. The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

[42 U.S.C. 7234]

ARMED SERVICES PERSONNEL

SEC. 625. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

[42 U.S.C. 7235]

PART C—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

SEC. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

[42 U.S.C. 7251]

DELEGATION

SEC. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

[42 U.S.C. 7252]

REORGANIZATION

SEC. 643. (a) Subject to subsection (b), the Secretary⁶ is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component.

(b) The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 3219 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65).

(b)⁷ The authority of the Secretary under subsection (a) does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 3212(e) of the National Nuclear Security Administration Act.

[42 U.S.C. 7253]

RULES

SEC. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

[42 U.S.C. 7254]

SUBPENA

SEC. 645. For the purpose of carrying out the provisions of this Act, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this Act. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section.

[42 U.S.C. 7255]

CONTRACTS

SEC. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be

⁶Section 3159(b)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 5408 as introduced in the 106th Congress and enacted by section 1 of Public Law 106–398; 114 Stat. 1654A–469) attempted to amend subsection (a) by striking “The Secretary” and inserting “(a) Except as provided in subsection (b), the Secretary”. The amendment could not be executed due to an earlier amendment by section 314(b)(1) of Public Law 106–377 (114 Stat. 1441A–79).

⁷So in law. The second subsection (b) was added by section 3159(b)(2) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 5408 as introduced in the 106th Congress and enacted by section 1 of Public Law 106–398; 114 Stat. 1654A–469).

necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

(1) is located at a facility of the Department of Energy to be closed or reconfigured;

(2) at the time the lease is entered into, is not needed by the Department of Energy; and

(3) is under the control of the Department of Energy.

(d)(1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e)(1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually sub-

mit to the Congress a report on amounts retained and amounts used under this subsection.

[42 U.S.C. 7256]

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

[42 U.S.C. 7257]

FACILITIES CONSTRUCTION

SEC. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

- (1) Emergency medical services and supplies;
- (2) Food and other subsistence supplies;
- (3) Messing facilities;
- (4) Audio-visual equipment, accessories, and supplies for recreation and training;
- (5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;
- (6) Living and working quarters and facilities; and
- (7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

[42 U.S.C. 7258]

USE OF FACILITIES

SEC. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District

of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, of facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

[42 U.S.C. 7259]

FIELD OFFICES

SEC. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

[42 U.S.C. 7260]

COPYRIGHTS

SEC. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

- (1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
- (2) licenses under copyrights, patents, and applications for patents; and
- (3) releases, before suit is brought, for past infringement of patents or copyrights.

【SEC. 652. Repealed by section 502 of P.L. 104–206 (110 Stat. 3002).】

CAPITAL FUND

SEC. 653. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

[42 U.S.C. 7263]

SEAL OF DEPARTMENT

SEC. 654. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

[42 U.S.C. 7264]

REGIONAL ENERGY ADVISORY BOARDS

SEC. 655. (a) The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and

Economic Development Act shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

[42 U.S.C. 7265]

DESIGNATION OF CONSERVATION OFFICERS

SEC. 656. The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

[42 U.S.C. 7266]

ANNUAL REPORT

SEC. 657. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:

- (1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel

and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities.

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State and local governments and nongovernmental entities to achieve the purposes of this Act;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United

States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

[42 U.S.C. 7267]

LEASING REPORT

SEC. 658. The Secretary of the Interior shall submit to the Congress not later than one year after the date of enactment of this Act, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

[42 U.S.C. 7268]

TRANSFER OF FUNDS

SEC. 659. The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

[42 U.S.C. 7269]

AUTHORIZATION OF APPROPRIATIONS

SEC. 660. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

[42 U.S.C. 7270]

GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 661. Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

[42 U.S.C. 7270a]

TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or

other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

[42 U.S.C. 7270b]

ANNUAL ASSESSMENT AND REPORT ON VULNERABILITY OF FACILITIES
TO TERRORIST ATTACK

SEC. 663. (a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.

[42 U.S.C. 7270c]

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING
PROVISIONS

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function⁸ transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act.

[42 U.S.C. 7291]

⁸So in original. Should be “functions.”.

EFFECT ON PERSONNEL

SEC. 702. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from the effective date of this Act or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

[42 U.S.C. 7292]

AGENCY TERMINATIONS

SEC. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316), shall terminate.

[42 U.S.C. 7293]

INCIDENTAL TRANSFERS

SEC. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be nec-

essary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

[42 U.S.C. 7294]

SAVINGS PROVISIONS

SEC. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any de-

partment or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

[42 U.S.C. 7295]

SEPARABILITY

SEC. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

[42 U.S.C. 7296]

REFERENCE

SEC. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

[42 U.S.C. 7297]

PRESIDENTIAL AUTHORITY

SEC. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

[42 U.S.C. 7298]

AMENDMENTS

【Section 709 amends the Federal Energy Administration Act of 1974, the Energy Reorganization Act of 1974, the Atomic Energy Act of 1954, the Housing and Urban Development Act of 1970, the Energy Conservation Standards for New Buildings Act of 1976, the Rural Electrification Act of 1936, and title 3, United States Code.】

ADMINISTRATIVE AMENDMENTS

【Section 710 amends title 5, United States Code】

TRANSITION

SEC. 711. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the

services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

[42 U.S.C. 7299]

CIVIL SERVICE COMMISSION REPORT

SEC. 712. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this Act, which shall include—

- (1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;
- (2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;
- (3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;
- (4) an estimate of the personnel costs associated with such reorganization;
- (5) the effects of such reorganization on labor management relations; and
- (6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

[42 U.S.C. 7300]

ENVIRONMENTAL IMPACT STATEMENTS

SEC. 713. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

[42 U.S.C. 7301]

TITLE VIII—ENERGY PLANNING

NATIONAL ENERGY POLICY PLAN

SEC. 801. (a) The President shall—

- (1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this title referred to as a “proposed Plan”) as provided in subsection (b);
- (2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;
- (3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—
 - (A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal,

State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

[42 U.S.C. 7321]

CONGRESSIONAL REVIEW

SEC. 802. (a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

[42 U.S.C. 7322]

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

SEC. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

[42 U.S.C. 7341]

INTERIM APPOINTMENTS

SEC. 902. In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

[42 U.S.C. 7342]

TITLE X—SUNSET PROVISIONS

SUBMISSION OF COMPREHENSIVE REVIEW

SEC. 1001. Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 660, for such programs for the fiscal year beginning October 1, 1982.

[42 U.S.C. 7351]

CONTENTS OF REVIEW

SEC. 1002. Each comprehensive review prepared for submission under section 1001 shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applica-

ble of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

[42 U.S.C. 7352]

NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT

NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT

Title XXXII of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65, approved Oct. 5, 1999), as amended

TITLE XXXII—NATIONAL NUCLEAR SECURITY ADMINISTRATION¹

- Sec. 3201. [50 U.S.C. 2401 note] Short title.
- Sec. 3202. Under Secretary for Nuclear Security of Department of Energy.
- Sec. 3203. Establishment of policy for National Nuclear Security Administration.
- Sec. 3204. Organization of Department of Energy counterintelligence and intelligence programs and activities.

Subtitle A—Establishment and Organization

- Sec. 3211. [50 U.S.C. 2401] Establishment and mission.
- Sec. 3212. [50 U.S.C. 2402] Administrator for Nuclear Security.
- Sec. 3213. [50 U.S.C. 2403] Principal Deputy Administrator for Nuclear Security.
- Sec. 3214. [50 U.S.C. 2404] Deputy Administrator for Defense Programs.
- Sec. 3215. [50 U.S.C. 2405] Deputy Administrator for Defense Nuclear Non-proliferation.
- Sec. 3216. [50 U.S.C. 2406] Deputy Administrator for Naval Reactors.
- Sec. 3217. [50 U.S.C. 2407] General counsel.
- Sec. 3218. [50 U.S.C. 2408] Staff of Administration.
- Sec. 3219. [50 U.S.C. 2409] Scope of authority of Secretary of Energy to modify organization of Administration.
- Sec. 3220. [50 U.S.C. 2410] Status of Administration and contractor personnel within Department of Energy.

Subtitle B—Matters Relating to Security

- Sec. 3231. [50 U.S.C. 2421] Protection of national security information.
- Sec. 3232. [50 U.S.C. 2422] Office of Defense Nuclear Counterintelligence and Office of Defense Nuclear Security.
- Sec. 3233. [50 U.S.C. 2423] Counterintelligence programs.
- Sec. 3234. [50 U.S.C. 2424] Procedures relating to access by individuals to classified areas and information of Administration.
- Sec. 3235. [50 U.S.C. 2425] Government access to information on Administration computers.
- Sec. 3236. [50 U.S.C. 2426] Congressional oversight of special access programs.

Subtitle C—Matters Relating to Personnel

- Sec. 3241. [50 U.S.C. 2441] Authority to establish certain scientific, engineering, and technical positions.
- Sec. 3242. [50 U.S.C. 2442] Voluntary early retirement authority.
- Sec. 3243. Severance pay.
- Sec. 3244. Continued coverage of health care benefits.

Subtitle D—Budget and Financial Management

- Sec. 3251. [50 U.S.C. 2451] Separate treatment in budget.
- Sec. 3252. [50 U.S.C. 2452] Planning, programming, and budgeting process.
- Sec. 3253. [50 U.S.C. 2453] Future-years nuclear security program.
- Sec. 3254. [50 U.S.C. 2454] Semiannual financial reports on defense nuclear non-proliferation programs.

¹The table of contents shown here is not identical to the table of contents in law. It has been edited for the convenience of the reader.

Subtitle E—Miscellaneous Provisions

- Sec. 3261. [50 U.S.C. 2461] Environmental protection, safety, and health requirements.
- Sec. 3262. [50 U.S.C. 2462] Compliance with Federal Acquisition Regulation.
- Sec. 3263. [50 U.S.C. 2463] Sharing of technology with Department of Defense.
- Sec. 3264. [50 U.S.C. 2464] Use of capabilities of national security laboratories by entities outside the Administration.

Subtitle F—Definitions

- Sec. 3281. [50 U.S.C. 2471] Definitions.

Subtitle G—Amendatory Provisions, Transition Provisions, and Effective Dates

- Sec. 3291. [50 U.S.C. 2481] Functions transferred.
- Sec. 3292. [50 U.S.C. 2482] Transfer of funds and employees.
- Sec. 3293. Pay levels.
- Sec. 3294. Conforming amendments.
- Sec. 3295. [50 U.S.C. 2483] Transition provisions.
- Sec. 3296. [50 U.S.C. 2484] Applicability of preexisting laws and regulations.
- Sec. 3297. [50 U.S.C. 2401 note] Report containing implementation plan of Secretary of Energy.
- Sec. 3298. [50 U.S.C. 2401 note] Classification in United States Code.
- Sec. 3299. [50 U.S.C. 2401 note] Effective dates.

SEC. 3201. [50 U.S.C. 2401 note] SHORT TITLE.

This title may be cited as the “National Nuclear Security Administration Act”.

SEC. 3202. UNDER SECRETARY FOR NUCLEAR SECURITY OF DEPARTMENT OF ENERGY.

[Omitted-Amendment]

SEC. 3203. ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION.

[Omitted-Amendment]

SEC. 3204. ORGANIZATION OF DEPARTMENT OF ENERGY COUNTER-INTELLIGENCE AND INTELLIGENCE PROGRAMS AND ACTIVITIES.

[Omitted-Amendment]

Subtitle A—Establishment and Organization**SEC. 3211. [50 U.S.C. 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 title 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 non-proliferation.

(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 CONSISTENT 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 protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.

SEC. 3212. [50 U.S.C. 2402] ADMINISTRATOR FOR NUCLEAR SECURITY.

(a) IN GENERAL.—(1) There is at the head of the Administration an Administrator for Nuclear Security (in this title referred to as the “Administrator”).

(2) Pursuant to subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of this Act, 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 3216(b)), 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 subtitle C of this title.
- (14) Procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code.
- (15) Legal matters.
- (16) Legislative affairs.
- (17) Public affairs.
- (18) 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 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(d) **POLICY AUTHORITY.**—The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.

(e) **MEMBERSHIP ON JOINT NUCLEAR WEAPONS COUNCIL.**—The Administrator serves as a member of the Joint Nuclear Weapons Council under section 179 of title 10, United States Code.

(f) **REORGANIZATION AUTHORITY.**—Except as provided by subsections (b) and (c) of section 3291:

(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.

SEC. 3213. [50 U.S.C. 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.

SEC. 3214. [50 U.S.C. 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.

SEC. 3215. [50 U.S.C. 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.

SEC. 3216. [50 U.S.C. 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 title, 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) (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)).²

SEC. 3217. [50 U.S.C. 2407] GENERAL COUNSEL.

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

SEC. 3218. [50 U.S.C. 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 Ad-

²The text of the executive order is set out in this volume under Selected Other Matters.

ministrator shall assign to the staff responsibility for the following functions:

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

SEC. 3219. [50 U.S.C. 2409] SCOPE OF AUTHORITY OF SECRETARY OF ENERGY TO MODIFY ORGANIZATION OF ADMINISTRATION.

Notwithstanding the authority granted by section 643 of the Department of Energy Organization Act (42 U.S.C. 7253) 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 3291.

SEC. 3220. [50 U.S.C. 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 202(c)(3) of the Department of Energy Organization Act;

(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 202(c)(3) of the Department of Energy Organization Act.

(c) CONSTRUCTION OF SECTION.—Subsections (a) and (b) 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 3212(a)(2) and 3216(a)(1):

(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 con-

currently 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.

Subtitle B—Matters Relating to Security

SEC. 3231. [50 U.S.C. 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.

SEC. 3232. [50 U.S.C. 2422] OFFICE OF DEFENSE NUCLEAR COUNTERINTELLIGENCE AND OFFICE OF DEFENSE NUCLEAR SECURITY.

(a) **ESTABLISHMENT.**—(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.

(b) **CHIEF OF DEFENSE NUCLEAR COUNTERINTELLIGENCE.**—(1) The head of the Office of Defense Nuclear Counterintelligence is the Chief of Defense Nuclear Counterintelligence, who shall report to the Administrator and shall implement the counterintelligence policies directed by the Secretary and Administrator.

(2) The Secretary shall appoint the Chief, in consultation with the Director of the Federal Bureau of Investigation, from among individuals who have special expertise in counterintelligence. If an individual to serve as the Chief of Defense Nuclear Counterintelligence is a Federal employee of an entity other than the Administration, the service of that employee as Chief shall not result in any loss of employment status, right, or privilege by that employee.

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

(4) The Chief shall be responsible for—

(A) the development and implementation of the counterintelligence programs of the Administration to prevent the disclosure or loss of classified or other sensitive information; and

(B) the development and administration of personnel assurance programs within the Administration.

(c) **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.

SEC. 3233. [50 U.S.C. 2423] COUNTERINTELLIGENCE PROGRAMS.

(a) NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES.—The Administrator 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 Administrator shall, at each Administration facility not described in subsection (a) at which Restricted Data is located, assign an employee of the Office of Defense Nuclear Counterintelligence who shall be responsible for and assess counterintelligence matters at that facility.

SEC. 3234. [50 U.S.C. 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.

SEC. 3235. [50 U.S.C. 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), 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.

SEC. 3236. [50 U.S.C. 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, United States Code; 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) 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) 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.

Subtitle C—Matters Relating to Personnel

SEC. 3241. [50 U.S.C. 2441] AUTHORITY TO ESTABLISH CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL POSITIONS.

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this title, establish not more than 300 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 161 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(d)) to make appointments and fix compensation with respect to officers and employees described in such section.

SEC. 3242. [50 U.S.C. 2442] VOLUNTARY EARLY RETIREMENT AUTHORITY.

(a) AUTHORITY.—An employee of the Department of Energy who is separated from the service under conditions described in subsection (b) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled

to an annuity in accordance with the provisions in chapter 83 or 84 of title 5, United States Code, as applicable.

(b) **CONDITIONS OF SEPARATION.**—Subsection (a) applies to an employee who—

(1) has been employed continuously by the Department of Energy for more than 30 days before the date on which the Secretary of Energy makes the determination required under paragraph (4)(A);

(2) is serving under an appointment that is not limited by time;

(3) has not received a decision notice of involuntary separation for misconduct or unacceptable performance that is pending decision; and

(4) is separated from the service voluntarily during a period with respect to which—

(A) the Secretary of Energy determines that the Department of Energy is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration; and

(B) the employee is within the scope of an offer of voluntary early retirement (as defined by organizational unit, occupational series or level, geographical location, any other similar factor that the Office of Personnel Management determines appropriate, or any combination of such definitions of scope), as determined by the Secretary under regulations prescribed by the Office.

(c) **TREATMENT OF EMPLOYEES.**—For purposes of chapters 83 and 84 of title 5, United States Code (including for purposes of computation of an annuity under such chapters), an employee entitled to an annuity under this section shall be treated as an employee entitled to an annuity under section 8336(d) or 8414(b) of such title, as applicable.

(d) **DEFINITIONS.**—As used in this section, the terms “employee” and “annuity”—

(1) with respect to individuals covered by the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code, have the meaning of such terms as used in such chapter; and

(2) with respect to individuals covered by the Federal Employees Retirement System established in chapter 84 of such title, have the meaning of such terms as used in such chapter.

(e) **LIMITATION AND TERMINATION OF AUTHORITY.**—The authority provided in subsection (a)—

(1) may be applied with respect to a total of not more than 600 employees of the Department of Energy; and

(2) shall expire on September 30, 2003.

SEC. 3243. SEVERANCE PAY.

[Omitted-Amendment]

SEC. 3244. CONTINUED COVERAGE OF HEALTH CARE BENEFITS.

[Omitted-Amendment]

Subtitle D—Budget and Financial Management**SEC. 3251. [50 U.S.C. 2451] SEPARATE TREATMENT IN BUDGET.**

(a) **PRESIDENT'S BUDGET.**—In each budget submitted by the President to the Congress under section 1105 of title 31, United States Code, amounts requested for the Administration shall be set forth separately within the other amounts requested for the Department of Energy.

(b) **BUDGET JUSTIFICATION MATERIALS.**—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.

SEC. 3252. [50 U.S.C. 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, United States Code, 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, United States Code, each of the following:

(1) The plan required by subsection (b) 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.

SEC. 3253. [50 U.S.C. 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, United States Code, a future-years nuclear security pro-

gram (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 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note).

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

(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, United States Code, for any fiscal year, as shown in the future-years nuclear security program submitted pursuant to subsection (a).

(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).

SEC. 3254. [50 U.S.C. 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.

Subtitle E—Miscellaneous Provisions

SEC. 3261. [50 U.S.C. 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 title shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.

SEC. 3262. [50 U.S.C. 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 the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

SEC. 3263. [50 U.S.C. 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.

SEC. 3264. [50 U.S.C. 2464] USE OF CAPABILITIES OF NATIONAL SECURITY LABORATORIES BY ENTITIES OUTSIDE THE ADMINISTRATION.

The Secretary, 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 3211(b), 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.

Subtitle F—Definitions

SEC. 3281. [50 U.S.C. 2471] DEFINITIONS.

For purposes of this title:

(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 Plant, Oak Ridge, Tennessee.

(D) The tritium operations facilities at the Savannah River Site, Aiken, South Carolina.

(E) The Nevada Test Site, Nevada.

(F) Any facility of the Department of Energy that the Secretary of Energy, in consultation with the Administrator and the 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 (50 U.S.C. 401 note), Executive Order No. 12958 of April 17, 1995 (50 U.S.C. 435 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 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(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.

**Subtitle G—Amendatory Provisions, Transition Provisions,
and Effective Dates****SEC. 3291. [50 U.S.C. 2481] FUNCTIONS TRANSFERRED.**

(a) TRANSFERS.—There are hereby transferred to the Administrator all national security functions and activities performed immediately before the date of the enactment of this Act 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 specified in subsection (a), the Secretary of Energy may determine to transfer responsibility for that activity to another element of the Department.

SEC. 3292. [50 U.S.C. 2482] TRANSFER OF FUNDS AND EMPLOYEES.

(a) 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.

(b) 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.

SEC. 3293. PAY LEVELS.

[Omitted-Amendment]

SEC. 3294. CONFORMING AMENDMENTS.

[Omitted-Amendment]

SEC. 3295. [50 U.S.C. 2483] TRANSITION PROVISIONS.

(a) COMPLIANCE WITH FINANCIAL PRINCIPLES.—(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with sound financial and fiscal management principles specified in section 3252 is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with those principles not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

(b) INITIAL REPORT FOR FUTURE-YEARS NUCLEAR SECURITY PROGRAM.—The first report under section 3253 shall be submitted in conjunction with the budget submitted for fiscal year 2001.

(c) PROCEDURES FOR COMPUTER ACCESS.—The regulations to implement the procedures under section 3235 shall be prescribed not later than 90 days after the effective date of this title.

(d) COMPLIANCE WITH FAR.—(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with the Federal Acquisition Regulation specified in section 3262 is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with the Federal Acquisition Regulation not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

SEC. 3296. [50 U.S.C. 2484] APPLICABILITY OF PREEXISTING LAWS AND REGULATIONS.

Unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effective date of this title that are applicable to functions of the Department of Energy specified in section 3291 shall continue to apply to the corresponding functions of the Administration.

SEC. 3297. [50 U.S.C. 2401 note] REPORT CONTAINING IMPLEMENTATION PLAN OF SECRETARY OF ENERGY.

Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary's plan for the implementation of the provisions of this title.

SEC. 3298. [50 U.S.C. 2401 note] CLASSIFICATION IN UNITED STATES CODE.

Subtitles A through F of this title (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.

SEC. 3299. [50 U.S.C. 2401 note] EFFECTIVE DATES.

(a) **IN GENERAL.**—Except as provided in subsection (b), the provisions of this title shall take effect on March 1, 2000.

(b) **EXCEPTIONS.**—(1) Sections 3202, 3204, 3251, 3295, and 3297 shall take effect on the date of the enactment of this Act.

(2) Sections 3234 and 3235 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.

ATOMIC ENERGY DEFENSE ACT

ATOMIC ENERGY DEFENSE ACT

Division D of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314, approved Dec. 2, 2002), as amended by section 3141 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, approved Nov. 24, 2003)

DIVISION D—ATOMIC ENERGY DEFENSE PROVISIONS

SEC. 4001. [50 U.S.C. 2501 note] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “Atomic Energy Defense Act”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

DIVISION D—ATOMIC ENERGY DEFENSE PROVISIONS

Sec. 4001. Short title; table of contents.

Sec. 4002. Definition.

TITLE XLI—ORGANIZATIONAL MATTERS

Sec. 4101. Naval Nuclear Propulsion Program.

Sec. 4102. Management structure for nuclear weapons production facilities and nuclear weapons laboratories.

Sec. 4103. Restriction on licensing requirement for certain defense activities and facilities.

TITLE XLII—NUCLEAR WEAPONS STOCKPILE MATTERS

Subtitle A—Stockpile Stewardship and Weapons Production

Sec. 4201. Stockpile stewardship program.

Sec. 4202. Report on stockpile stewardship criteria.

Sec. 4203. Plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile.

Sec. 4204. Nuclear weapons stockpile life extension program.

Sec. 4205. Annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile.

Sec. 4206. Form of certifications regarding the safety or reliability of the nuclear weapons stockpile.

Sec. 4207. Nuclear test ban readiness program.

Sec. 4208. Study on nuclear test readiness postures.

Sec. 4209. Requirements for specific request for new or modified nuclear weapons.

Sec. 4210. Limitation on underground nuclear weapons tests.

Sec. 4211. Testing of nuclear weapons.

Sec. 4212. Manufacturing infrastructure for refabrication and certification of nuclear weapons stockpile.

Sec. 4213. Reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants.

Subtitle B—Tritium

Sec. 4231. Tritium production program.

Sec. 4232. Tritium recycling.

Sec. 4233. Tritium production.

- Sec. 4234. Modernization and consolidation of tritium recycling facilities.
Sec. 4235. Procedures for meeting tritium production requirements.

TITLE XLIII—PROLIFERATION MATTERS

- Sec. 4301. International cooperative stockpile stewardship.
Sec. 4302. Nonproliferation initiatives and activities.
Sec. 4303. Annual report on status of Nuclear Materials Protection, Control, and Accounting Program.
Sec. 4304. Nuclear Cities Initiative.
Sec. 4305. Authority to conduct program relating to fissile materials.
Sec. 4306. Disposition of weapons-usable plutonium at Savannah River Site.
Sec. 4306A. Disposition of surplus defense plutonium at Savannah River Site, Aiken, South Carolina.

TITLE XLIV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS

Subtitle A—Environmental Restoration and Waste Management

- Sec. 4401. Defense Environmental Restoration and Waste Management Account.
Sec. 4402. Requirement to develop future use plans for environmental management program.
Sec. 4403. Integrated fissile materials management plan.
Sec. 4404. Baseline environmental management reports.
Sec. 4405. Accelerated schedule for environmental restoration and waste management activities.
Sec. 4406. Defense waste cleanup technology program.
Sec. 4407. Report on environmental restoration expenditures.
Sec. 4408. Public participation in planning for environmental restoration and waste management at defense nuclear facilities.

Subtitle B—Closure of Facilities

- Sec. 4421. Projects to accelerate closure activities at defense nuclear facilities.
Sec. 4422. Reports in connection with permanent closures of Department of Energy defense nuclear facilities.

Subtitle C—Privatization

- Sec. 4431. Defense environmental management privatization projects.

Subtitle D—Hanford Reservation, Washington

- Sec. 4441. Safety measures for waste tanks at Hanford nuclear reservation.
Sec. 4442. Hanford waste tank cleanup program reforms.
Sec. 4443. River Protection Project.
Sec. 4444. Funding for termination costs of River Protection Project, Richland, Washington.

Subtitle E—Savannah River Site, South Carolina

- Sec. 4451. Accelerated schedule for isolating high-level nuclear waste at the defense waste processing facility, Savannah River Site.
Sec. 4452. Multi-year plan for clean-up.
Sec. 4453. Continuation of processing, treatment, and disposal of legacy nuclear materials.
Sec. 4453A. Continuation of processing, treatment, and disposition of legacy nuclear materials.
Sec. 4453B. Continuation of processing, treatment, and disposition of legacy nuclear materials.
Sec. 4453C. Continuation of processing, treatment, and disposal of legacy nuclear materials.
Sec. 4453D. Continuation of processing, treatment, and disposal of legacy nuclear materials.
Sec. 4454. Limitation on use of funds for decommissioning F-canyon facility.

TITLE XLV—SAFEGUARDS AND SECURITY MATTERS

Subtitle A—Safeguards and Security

- Sec. 4501. Prohibition on international inspections of Department of Energy facilities unless protection of Restricted Data is certified.
Sec. 4502. Restrictions on access to national laboratories by foreign visitors from sensitive countries.

- Sec. 4503. Background investigations of certain personnel at Department of Energy facilities.
- Sec. 4504. Department of Energy counterintelligence polygraph program.
- Sec. 4504A. Counterintelligence polygraph program.
- Sec. 4505. Notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs.
- Sec. 4506. Submittal of annual report on status of security functions at nuclear weapons facilities.
- Sec. 4507. Report on counterintelligence and security practices at national laboratories.
- Sec. 4508. Report on security vulnerabilities of national laboratory computers.

Subtitle B—Classified Information

- Sec. 4521. Review of certain documents before declassification and release.
- Sec. 4522. Protection against inadvertent release of Restricted Data and Formerly Restricted Data.
- Sec. 4523. Supplement to plan for declassification of Restricted Data and Formerly Restricted Data.
- Sec. 4524. Protection of classified information during laboratory-to-laboratory exchanges.
- Sec. 4525. Identification in budget materials of amounts for declassification activities and limitation on expenditures for such activities.

Subtitle C—Emergency Response

- Sec. 4541. Responsibility for Defense Programs Emergency Response Program.

TITLE XLVI—PERSONNEL MATTERS

Subtitle A—Personnel Management

- Sec. 4601. Authority for appointment of certain scientific, engineering, and technical personnel.
- Sec. 4602. Whistleblower protection program.
- Sec. 4603. Employee incentives for employees at closure project facilities.
- Sec. 4604. Department of Energy defense nuclear facilities workforce restructuring plan.
- Sec. 4605. Authority to provide certificate of commendation to Department of Energy and contractor employees for exemplary service in stockpile stewardship and security.

Subtitle B—Education and Training

- Sec. 4621. Executive management training in the Department of Energy.
- Sec. 4622. Stockpile stewardship recruitment and training program.
- Sec. 4623. Fellowship program for development of skills critical to the Department of Energy nuclear weapons complex.

Subtitle C—Worker Safety

- Sec. 4641. Worker protection at nuclear weapons facilities.
- Sec. 4642. Safety oversight and enforcement at defense nuclear facilities.
- Sec. 4643. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances.
- Sec. 4644. Programs for persons who may have been exposed to radiation released from Hanford nuclear reservation.

TITLE XLVII—BUDGET AND FINANCIAL MANAGEMENT MATTERS

Subtitle A—Recurring National Security Authorization Provisions

- Sec. 4701. Definitions.
- Sec. 4702. Reprogramming.
- Sec. 4703. Minor construction projects.
- Sec. 4704. Limits on construction projects.
- Sec. 4705. Fund transfer authority.
- Sec. 4706. Conceptual and construction design.
- Sec. 4707. Authority for emergency planning, design, and construction activities.
- Sec. 4708. Scope of authority to carry out plant projects.
- Sec. 4709. Availability of funds.
- Sec. 4710. Transfer of defense environmental management funds.
- Sec. 4711. Transfer of weapons activities funds.

Sec. 4712. Funds available for all national security programs of the Department of Energy.

Subtitle B—Penalties

Sec. 4721. Restriction on use of funds to pay penalties under environmental laws.
Sec. 4722. Restriction on use of funds to pay penalties under Clean Air Act.

Subtitle C—Other Matters

Sec. 4731. Single request for authorization of appropriations for common defense and security programs.

TITLE XLVIII—ADMINISTRATIVE MATTERS

Subtitle A—Contracts

Sec. 4801. Costs not allowed under covered contracts.
Sec. 4802. Prohibition and report on bonuses to contractors operating defense nuclear facilities.
Sec. 4803. Contractor liability for injury or loss of property arising out of atomic weapons testing programs.

Subtitle B—Research and Development

Sec. 4811. Laboratory-directed research and development programs.
Sec. 4812. Limitations on use of funds for laboratory directed research and development purposes.
Sec. 4812A. Limitation on use of funds for certain research and development purposes.
Sec. 4813. Critical technology partnerships.
Sec. 4814. University-based research collaboration program.

Subtitle C—Facilities Management

Sec. 4831. Transfers of real property at certain Department of Energy facilities.
Sec. 4832. Engineering and manufacturing research, development, and demonstration by plant managers of certain nuclear weapons production plants.
Sec. 4833. Pilot program relating to use of proceeds of disposal or utilization of certain Department of Energy assets.

Subtitle D—Other Matters

Sec. 4851. Semiannual reports on local impact assistance.
Sec. 4852. Payment of costs of operation and maintenance of infrastructure at Nevada Test Site.

SEC. 4002. [50 U.S.C. 2501] DEFINITION.

In this division, the term “congressional defense committees” means—

- (1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and
- (2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

TITLE XLI—ORGANIZATIONAL MATTERS

SEC. 4101. [50 U.S.C. 2511] NAVAL NUCLEAR PROPULSION PROGRAM.

The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program,¹ shall remain in force until changed by law.

SEC. 4102. [50 U.S.C. 2512] MANAGEMENT STRUCTURE FOR NUCLEAR WEAPONS PRODUCTION FACILITIES AND NUCLEAR WEAPONS LABORATORIES.

(a) LIMITATION ON DELEGATION OF AUTHORITY.—(1) The Secretary of Energy, in carrying out national security programs, may

¹The text of the executive order is set out in this volume under Selected Other Matters.

delegate specific management and planning authority over matters relating to site operation of the facilities and laboratories covered by this section only to the Assistant Secretary of Energy for Defense Programs. Such Assistant Secretary may redelegate such authority only to managers of area offices of the Department of Energy located at such facilities and laboratories.

(2) Nothing in this section may be construed as affecting the delegation by the Secretary of Energy of authority relating to reporting, management, and oversight of matters relating to the Department of Energy generally, or safety, environment, and health at such facilities and laboratories.

(b) REQUIREMENT TO CONSULT WITH AREA OFFICES.—The Assistant Secretary of Energy for Defense Programs, in exercising any delegated authority to oversee management of matters relating to site operation of a facility or laboratory, shall exercise such authority only after direct consultation with the manager of the area office of the Department of Energy located at the facility or laboratory.

(c) REQUIREMENT FOR DIRECT COMMUNICATION FROM AREA OFFICES.—The Secretary of Energy, acting through the Assistant Secretary of Energy for Defense Programs, shall require the head of each area office of the Department of Energy located at each facility and laboratory covered by this section to report on matters relating to site operation other than those matters set forth in subsection (a)(2) directly to the Assistant Secretary of Energy for Defense Programs, without obtaining the approval or concurrence of any other official within the Department of Energy.

(d) DEFENSE PROGRAMS REORGANIZATION PLAN AND REPORT.—(1) The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy.

(2) Not later than January 21, 1997, the Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall specifically identify all significant functions performed by the operations offices relating to any of the facilities and laboratories covered by this section and which of those functions could be performed—

(A) by the area offices of the Department of Energy located at the facilities and laboratories covered by this section; or

(B) by the Assistant Secretary of Energy for Defense Programs.

(3) The report also shall address and make recommendations with respect to other internal streamlining and reorganization initiatives that the Department could pursue with respect to military or national security programs.

(e) DEFENSE PROGRAMS MANAGEMENT COUNCIL.—The Secretary of Energy shall establish a council to be known as the “Defense Programs Management Council”. The Council shall advise the Secretary on policy matters, operational concerns, strategic planning, and development of priorities relating to the national security functions of the Department of Energy. The Council shall be composed of the directors of the facilities and laboratories covered by this section and shall report directly to the Assistant Secretary of Energy for Defense Programs.

(f) COVERED SITE OPERATIONS.—For purposes of this section, matters relating to site operation of a facility or laboratory include matters relating to personnel, budget, and procurement in national security programs.

(g) COVERED FACILITIES AND LABORATORIES.—This section applies to the following facilities and laboratories of the Department of Energy:

- (1) The Kansas City Plant, Kansas City, Missouri.
- (2) The Pantex Plant, Amarillo, Texas.
- (3) The Y-12 Plant, Oak Ridge, Tennessee.
- (4) The Savannah River Site, Aiken, South Carolina.
- (5) Los Alamos National Laboratory, Los Alamos, New Mexico.
- (6) Sandia National Laboratories, Albuquerque, New Mexico.
- (7) Lawrence Livermore National Laboratory, Livermore, California.
- (8) The Nevada Test Site, Nevada.

SEC. 4103. [50 U.S.C. 2513] RESTRICTION ON LICENSING REQUIREMENT FOR CERTAIN DEFENSE ACTIVITIES AND FACILITIES.

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.

TITLE XLII—NUCLEAR WEAPONS STOCKPILE MATTERS

Subtitle A—Stockpile Stewardship and Weapons Production

SEC. 4201. [50 U.S.C. 2521] STOCKPILE STEWARDSHIP PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy shall establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification.

(b) PROGRAM ELEMENTS.—The program shall include the following:

- (1) An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the detonation of nuclear weapons.
- (2) An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.
- (3) Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the Na-

tional Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.

(c) AUTHORIZATION OF APPROPRIATIONS.—Of funds authorized to be appropriated to the Secretary of Energy for fiscal year 1994 for weapons activities, \$157,400,000 shall be available for the stewardship program established under subsection (a).

SEC. 4202. [50 U.S.C. 2522] REPORT ON STOCKPILE STEWARDSHIP CRITERIA.

(a) REQUIREMENT FOR CRITERIA.—The Secretary of Energy shall develop clear and specific criteria for judging whether the science-based tools being used by the Department of Energy for determining the safety and reliability of the nuclear weapons stockpile are performing in a manner that will provide an adequate degree of certainty that the stockpile is safe and reliable.

(b) COORDINATION WITH SECRETARY OF DEFENSE.—The Secretary of Energy, in developing the criteria required by subsection (a), shall coordinate with the Secretary of Defense.

(c) REPORT.—Not later than March 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the efforts by the Department of Energy to develop the criteria required by subsection (a). The report shall include—

(1) a description of the information needed to determine that the nuclear weapons stockpile is safe and reliable and the relationship of the science-based tools to the collection of that information; and

(2) a description of the criteria required by subsection (a) to the extent they have been developed as of the date of the submission of the report.

SEC. 4203. [50 U.S.C. 2523] PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE.

(a) PLAN REQUIREMENT.—The Secretary of Energy shall develop and annually update a plan for maintaining the nuclear weapons stockpile. The plan shall cover, at a minimum, stockpile stewardship, stockpile management, and program direction and shall be consistent with the programmatic and technical requirements of the most recent annual Nuclear Weapons Stockpile Memorandum.

(b) PLAN ELEMENTS.—The plan and each update of the plan shall set forth the following:

(1) The number of warheads (including active and inactive warheads) for each warhead type in the nuclear weapons stockpile.

(2) The current age of each warhead type, and any plans for stockpile lifetime extensions and modifications or replacement of each warhead type.

(3) The process by which the Secretary of Energy is assessing the lifetime, and requirements for lifetime extension or replacement, of the nuclear and nonnuclear components of the warheads (including active and inactive warheads) in the nuclear weapons stockpile.

(4) The process used in recertifying the safety, security, and reliability of each warhead type in the nuclear weapons stockpile.

(5) Any concerns which would affect the ability of the Secretary of Energy to recertify the safety, security, or reliability of warheads in the nuclear weapons stockpile (including active and inactive warheads).

(c) ANNUAL SUBMISSION OF PLAN TO CONGRESS.—The Secretary of Energy shall submit to Congress the plan developed under subsection (a) not later than March 15, 1998, and shall submit an updated version of the plan not later than March 15 of each year thereafter. The plan shall be submitted in both classified and unclassified form.

SEC. 4204. [50 U.S.C. 2524] NUCLEAR WEAPONS STOCKPILE LIFE EXTENSION PROGRAM.

(a) PROGRAM REQUIRED.—The Secretary of Energy shall, in consultation with the Secretary of Defense, carry out a program to provide for the extension of the effective life of the weapons in the nuclear weapons stockpile.

(b) ADMINISTRATIVE RESPONSIBILITY FOR PROGRAM.—(1) The program under subsection (a) shall be carried out through the element of the Department of Energy with responsibility for defense programs.

(2) For each budget submitted by the President to Congress under section 1105 of title 31, United States Code, the amounts requested for the program shall be clearly identified in the budget justification materials submitted to Congress in support of that budget.

(c) PROGRAM PLAN.—As part of the program under subsection (a), the Secretary shall develop a long-term plan for the extension of the effective life of the weapons in the nuclear weapons stockpile. The plan shall include the following:

(1) Mechanisms to provide for the remanufacture, refurbishment, and modernization of each weapon design designated by the Secretary for inclusion in the enduring nuclear weapons stockpile as of October 5, 1999.

(2) Mechanisms to expedite the collection of information necessary for carrying out the program, including information relating to the aging of materials and components, new manufacturing techniques, and the replacement or substitution of materials.

(3) Mechanisms to ensure the appropriate assignment of roles and missions for each nuclear weapons laboratory and production plant of the Department, including mechanisms for allocation of workload, mechanisms to ensure the carrying out of appropriate modernization activities, and mechanisms to ensure the retention of skilled personnel.

(4) Mechanisms for allocating funds for activities under the program, including allocations of funds by weapon type and facility.

(5) An identification of the funds needed, in the current fiscal year and in each of the next five fiscal years, to carry out the program.

(d) ANNUAL SUBMITTAL OF PLAN.—(1) The Secretary shall submit to the Committees on Armed Services of the Senate and the

House of Representatives the plan developed under subsection (c) not later than January 1, 2000. The plan shall contain the maximum level of detail practicable.

(2) The Secretary shall submit to the committees referred to in paragraph (1) each year after 2000, at the same time as the submission of the budget for the fiscal year beginning in such year under section 1105 of title 31, United States Code, an update of the plan submitted under paragraph (1). Each update shall contain the same level of detail as the plan submitted under paragraph (1).

(e) GAO ASSESSMENT.—Not later than 30 days after the submission of the plan under subsection (d)(1) or any update of the plan under subsection (d)(2), the Comptroller General shall submit to the committees referred to in subsection (d)(1) an assessment of whether the program can be carried out under the plan or the update (as applicable)—

(1) in the current fiscal year, given the budget for that fiscal year; and

(2) in future fiscal years.

(f) SENSE OF CONGRESS REGARDING FUNDING OF PROGRAM.—It is the sense of Congress that the President should include in each budget for a fiscal year submitted to Congress under section 1105 of title 31, United States Code, sufficient funds to carry out in the fiscal year covered by such budget the activities under the program under subsection (a) that are specified in the most current version of the plan for the program under this section.

SEC. 4205. [50 U.S.C. 2525] ANNUAL ASSESSMENTS AND REPORTS TO THE PRESIDENT AND CONGRESS REGARDING THE CONDITION OF THE UNITED STATES NUCLEAR WEAPONS STOCKPILE.

(a) ANNUAL ASSESSMENTS REQUIRED.—For each nuclear weapon type in the stockpile of the United States, each official specified in subsection (b) on an annual basis shall, to the extent such official is directly responsible for the safety, reliability, performance, or military effectiveness of that nuclear weapon type, complete an assessment of the safety, reliability, performance, or military effectiveness (as the case may be) of that nuclear weapon type.

(b) COVERED OFFICIALS.—The officials referred to in subsection (a) are the following:

(1) The head of each national security laboratory.

(2) The commander of the United States Strategic Command.

(c) USE OF TEAMS OF EXPERTS FOR ASSESSMENTS.—The head of each national security laboratory shall establish and use one or more teams of experts, known as “red teams”, to assist in the assessments required by subsection (a). Each such team shall include experts from both of the other national security laboratories. Each such team for a national security laboratory shall—

(1) review the matters covered by the assessments under subsection (a) performed by the head of that laboratory;

(2) subject such matters to challenge; and

(3) submit the results of such review and challenge, together with the findings and recommendations of such team with respect to such review and challenge, to the head of that laboratory.

(d) REPORT ON ASSESSMENTS.—Not later than December 1 of each year, each official specified in subsection (b) shall submit to the Secretary concerned, and to the Nuclear Weapons Council, a report on the assessments that such official was required by subsection (a) to complete. The report shall include the following:

(1) The results of each such assessment.

(2)(A) Such official's determination as to whether or not one or more underground nuclear tests are necessary to resolve any issues identified in the assessments and, if so—

(i) an identification of the specific underground nuclear tests that are necessary to resolve such issues; and

(ii) a discussion of why options other than an underground nuclear test are not available or would not resolve such issues.

(B) An identification of the specific underground nuclear tests which, while not necessary, might have value in resolving any such issues and a discussion of the anticipated value of conducting such tests.

(C) Such official's determination as to the readiness of the United States to conduct the underground nuclear tests identified under subparagraphs (A)(i) and (B), if directed by the President to do so.

(3) In the case of a report submitted by the head of a national security laboratory—

(A) a concise statement regarding the adequacy of the science-based tools and methods being used to determine the matters covered by the assessments;

(B) a concise statement regarding the adequacy of the tools and methods employed by the manufacturing infrastructure required by section 4212 to identify and fix any inadequacy with respect to the matters covered by the assessments; and

(C) a concise summary of the findings and recommendations of any teams under subsection (c) that relate to the assessments, together with a discussion of those findings and recommendations.

(4) In the case of a report submitted by the Commander of the United States Strategic Command, a discussion of the relative merits of other nuclear weapon types (if any), or compensatory measures (if any) that could be taken, that could enable accomplishment of the missions of the nuclear weapon types to which the assessments relate, should such assessments identify any deficiency with respect to such nuclear weapon types.

(5) An identification and discussion of any matter having an adverse effect on the capability of the official submitting the report to accurately determine the matters covered by the assessments.

(e) SUBMITTALS TO THE PRESIDENT AND CONGRESS.—(1) Not later than March 1 of each year, the Secretary of Defense and the Secretary of Energy shall submit to the President—

(A) each report, without change, submitted to either Secretary under subsection (d) during the preceding year;

(B) any comments that the Secretaries individually or jointly consider appropriate with respect to each such report;

(C) the conclusions that the Secretaries individually or jointly reach as to the safety, reliability, performance, and military effectiveness of the nuclear weapons stockpile of the United States; and

(D) any other information that the Secretaries individually or jointly consider appropriate.

(2) Not later than March 15 of each year, the President shall forward to Congress the matters received by the President under paragraph (1) for that year, together with any comments the President considers appropriate.

(f) CLASSIFIED FORM.—Each submittal under subsection (e) shall be in classified form only, with the classification level required for each portion of such submittal marked appropriately.

(g) DEFINITIONS.—In this section:

(1) The term “national security laboratory” has the meaning given such term in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471).

(2) The term “Secretary concerned” means—

(A) the Secretary of Energy, with respect to matters concerning the Department of Energy; and

(B) the Secretary of Defense, with respect to matters concerning the Department of Defense.

(h) FIRST SUBMISSIONS.—(1) The first submissions made under subsection (d) shall be the submissions required to be made in 2003.

(2) The first submissions made under subsection (e) shall be the submissions required to be made in 2004.

SEC. 4206. [50 U.S.C. 2526] FORM OF CERTIFICATIONS REGARDING THE SAFETY OR RELIABILITY OF THE NUCLEAR WEAPONS STOCKPILE.

Any certification submitted to the President by the Secretary of Defense or the Secretary of Energy regarding confidence in the safety or reliability of a nuclear weapon type in the United States nuclear weapons stockpile shall be submitted in classified form only.

SEC. 4207. [50 U.S.C. 2527] NUCLEAR TEST BAN READINESS PROGRAM.

(a) FINDINGS.—The Congress makes the following findings:

(1) On September 17, 1987, the United States and the Soviet Union announced that they would resume full-scale, stage-by-stage negotiations on issues relating to nuclear testing, including further intermediate limitations on nuclear testing leading to the ultimate objective of a comprehensive nuclear test ban.

(2) It was agreed that the first step in these negotiations would be to reach agreement on verification measures that will make possible the ratification of the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976.

(3) To achieve the agreement on verification measures, the United States and the Soviet Union have agreed to design and conduct a Joint Verification Experiment at the test sites of each country during the summer of 1988.

(4) At the Moscow summit in May 1988, President Reagan and General Secretary Gorbachev reaffirmed their commitment to negotiations on “effective verification measures which will

make it possible to ratify the Threshold Test Ban Treaty of 1974 and Peaceful Nuclear Explosions Treaty of 1976, and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process”.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive ban on nuclear explosives testing is negotiated and ratified within the framework agreed to by the United States and the Soviet Union.

(c) PURPOSES OF PROGRAM.—The purposes of the program under subsection (b) shall be the following:

(1) To assure that the United States maintains a vigorous program of stockpile inspection and non-explosive testing so that, if a low-threshold or comprehensive test ban is entered into, the United States remains able to detect and identify potential problems in stockpile reliability and safety in existing designs of nuclear weapons.

(2) To assure that the specific materials, components, processes, and personnel needed for the remanufacture of existing nuclear weapons or the substitution of alternative nuclear warheads are available to support such remanufacture or substitution if such action becomes necessary in order to satisfy reliability and safety requirements under a low-threshold or comprehensive test ban agreement.

(3) To assure that a vigorous program of research in areas related to nuclear weapons science and engineering is supported so that, if a low-threshold or comprehensive test ban agreement is entered into, the United States is able to maintain a base of technical knowledge about nuclear weapons design and nuclear weapons effects.

(d) CONDUCT OF PROGRAM.—The Secretary of Energy shall carry out the program provided for in subsection (b). The program shall be carried out with the participation of representatives of the Department of Defense, the nuclear weapons production facilities, and the national nuclear weapons laboratories.

(e) ANNUAL REPORT.—The Secretary of Energy shall submit to Congress each year an unclassified report (with a classified annex as necessary) that describes the progress made to the date of the report in achieving the purposes of the program required to be established under subsection (b).

SEC. 4208. [50 U.S.C. 2528] STUDY ON NUCLEAR TEST READINESS POSTURES.

(a) REPORT.—Not later than February 15, 1996, the Secretary of Energy shall submit to Congress a report on the costs, programmatic issues, and other issues associated with sustaining the capability of the Department of Energy—

(1) to conduct an underground nuclear test 6 months after the date on which the President determines that such a test is necessary to ensure the national security of the United States;

(2) to conduct such a test 18 months after such date; and

(3) to conduct such a test 36 months after such date.

(b) BIENNIAL UPDATE REPORT.—(1) Not later than February 15 of each odd-numbered year, the Secretary shall submit to the congressional defense committees a report containing an update of the report required under subsection (a), as updated by any report previously submitted under this paragraph.

(2) Each report under paragraph (1) shall include, as of the date of such report, the following:

(A) A list and description of the workforce skills and capabilities that are essential to carry out underground nuclear tests at the Nevada Test Site.

(B) A list and description of the infrastructure and physical plant that are essential to carry out underground nuclear tests at the Nevada Test Site.

(C) A description of the readiness status of the skills and capabilities described in subparagraph (A) and of the infrastructure and physical plant described in subparagraph (B).

(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

SEC. 4209. [50 U.S.C. 2529] REQUIREMENTS FOR SPECIFIC REQUEST FOR NEW OR MODIFIED NUCLEAR WEAPONS.

(a) REQUIREMENT FOR REQUEST FOR FUNDS FOR DEVELOPMENT.—(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code.

(2) The activities described in this paragraph are as follows:

(A) The conduct, or provision for conduct, of research and development which could lead to the production of a new nuclear weapon by the United States.

(B) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a new nuclear weapon by the United States.

(C) The conduct, or provision for conduct, of research and development which could lead to the production of a modified nuclear weapon by the United States.

(D) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a modified nuclear weapon by the United States.

(b) BUDGET REQUEST FORMAT.—The Secretary shall include in a request for funds under subsection (a) the following:

(1) In the case of funds for activities described in subparagraph (A) or (C) of subsection (a)(2), a single dedicated line item for all such activities for new nuclear weapons or modified nuclear weapons that are in phase 1, 2, or 2A or phase 6.1, 6.2, or 6.2A (as the case may be), or any concept work prior to phase 1 or 6.1 (as the case may be), of the nuclear weapons acquisition process.

(2) In the case of funds for activities described in subparagraph (B) or (D) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapon that is in phase 3 or higher or phase 6.3 or high-

er (as the case may be) of the nuclear weapons acquisition process.

(c) EXCEPTION.—Subsection (a) shall not apply to funds for purposes of conducting, or providing for the conduct of, research and development, or manufacturing and engineering, determined by the Secretary to be necessary—

- (1) for the nuclear weapons life extension program;
- (2) to modify an existing nuclear weapon solely to address safety or reliability concerns; or
- (3) to address proliferation concerns.

(d) DEFINITIONS.—In this section:

(1) The term “life extension program” means the program to repair or replace non-nuclear components, or to modify the pit or canned subassembly, of nuclear weapons that are in the nuclear weapons stockpile on the date of the enactment of this Act in order to assure that such nuclear weapons retain the ability to meet the military requirements applicable to such nuclear weapons when first placed in the nuclear weapons stockpile.

(2) The term “modified nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which—

(A) is in the nuclear weapons stockpile as of the date of the enactment of this Act; and

(B) is being modified in order to meet a military requirement that is other than the military requirements applicable to such nuclear weapon when first placed in the nuclear weapons stockpile.

(3) The term “new nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which is neither—

(A) in the nuclear weapons stockpile on the date of the enactment of this Act; nor

(B) in production as of that date.

SEC. 4210. [50 U.S.C. 2530] LIMITATION ON UNDERGROUND NUCLEAR WEAPONS TESTS.

No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.

SEC. 4211. [50 U.S.C. 2531] TESTING OF NUCLEAR WEAPONS.

(a) IN GENERAL.—Of the funds authorized to be appropriated under section 3101(a)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) for the Department of Energy for fiscal year 1994 for weapons testing, \$211,326,000 shall be available for infrastructure maintenance at the Nevada Test Site, and for maintaining the technical capability to resume underground nuclear testing at the Nevada Test Site.

(b) ATMOSPHERIC TESTING OF NUCLEAR WEAPONS.—None of the funds appropriated pursuant to the National Defense Authorization Act for Fiscal Year 1994 or any other Act for any fiscal year may be available to maintain the capability of the United States to conduct atmospheric testing of a nuclear weapon.

SEC. 4212. [50 U.S.C. 2532] MANUFACTURING INFRASTRUCTURE FOR REFABRICATION AND CERTIFICATION OF NUCLEAR WEAPONS STOCKPILE.

(a) **MANUFACTURING PROGRAM.**—(1) The Secretary of Energy shall carry out a program for purposes of establishing within the Government a manufacturing infrastructure that has the capabilities of meeting the following objectives as specified in the Nuclear Posture Review:

(A) To provide a stockpile surveillance engineering base.

(B) To refabricate and certify weapon components and types in the enduring nuclear weapons stockpile, as necessary.

(C) To fabricate and certify new nuclear warheads, as necessary.

(D) To support nuclear weapons.

(E) To supply sufficient tritium in support of nuclear weapons to ensure an upload hedge in the event circumstances require.

(2) The purpose of the program carried out under paragraph (1) shall also be to develop manufacturing capabilities and capacities necessary to meet the requirements specified in the annual Nuclear Weapons Stockpile Review.

(b) **REQUIRED CAPABILITIES.**—The manufacturing infrastructure established under the program under subsection (a) shall include the following capabilities (modernized to attain the objectives referred to in that subsection):

(1) The weapons assembly capabilities of the Pantex Plant.

(2) The weapon secondary fabrication capabilities of the Y-12 Plant, Oak Ridge, Tennessee.

(3) The capabilities of the Savannah River Site relating to tritium recycling and fissile materials components processing and fabrication.

(4) The non-nuclear component capabilities of the Kansas City Plant.

(c) **NUCLEAR POSTURE REVIEW.**—For purposes of subsection (a), the term “Nuclear Posture Review” means the Department of Defense Nuclear Posture Review as contained in the Report of the Secretary of Defense to the President and the Congress dated February 19, 1995, or subsequent such reports.

(d) **FUNDING.**—Of the funds authorized to be appropriated under section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), \$143,000,000 shall be available for carrying out the program required under this section, of which—

(1) \$35,000,000 shall be available for activities at the Pantex Plant;

(2) \$30,000,000 shall be available for activities at the Y-12 Plant, Oak Ridge, Tennessee;

(3) \$35,000,000 shall be available for activities at the Savannah River Site; and

(4) \$43,000,000 shall be available for activities at the Kansas City Plant.

(e) **PLAN AND REPORT.**—The Secretary shall develop a plan for the implementation of this section. Not later than March 1, 1996, the Secretary shall submit to Congress a report on the obligations

the Secretary has incurred, and plans to incur, during fiscal year 1996 for the program referred to in subsection (a).

SEC. 4213. [50 U.S.C. 2533] REPORTS ON CRITICAL DIFFICULTIES AT NUCLEAR WEAPONS LABORATORIES AND NUCLEAR WEAPONS PRODUCTION PLANTS.

(a) **REPORTS BY HEADS OF LABORATORIES AND PLANTS.**—In the event of a difficulty at a nuclear weapons laboratory or a nuclear weapons production plant that has a significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Assistant Secretary of Energy for Defense Programs a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.

(b) **TRANSMITTAL BY ASSISTANT SECRETARY.**—As soon as practicable after receipt of a report under subsection (a), the Assistant Secretary shall transmit the report (together with the comments of the Assistant Secretary) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.

(c) **REPORTS BY NUCLEAR WEAPONS COUNCIL.**—[Omitted-Amendment]

(d) **INCLUSION OF REPORTS IN ANNUAL STOCKPILE CERTIFICATION.**—Any report submitted pursuant to subsection (a) shall also be included with the decision documents that accompany the annual certification of the safety and reliability of the United States nuclear weapons stockpile which is provided to the President for the year in which such report is submitted.

(e) **DEFINITIONS.**—In this section:

(1) The term “nuclear weapons laboratory” means the following:

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

(2) The term “nuclear weapons production plant” means the following:

- (A) The Pantex Plant, Texas.
- (B) The Savannah River Site, South Carolina.
- (C) The Kansas City Plant, Missouri.
- (D) The Y-12 Plant, Oak Ridge, Tennessee.

Subtitle B—Tritium

SEC. 4231. [50 U.S.C. 2541] TRITIUM PRODUCTION PROGRAM.

(a) **ESTABLISHMENT OF PROGRAM.**—The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons. In carrying out the tritium production program, the Secretary shall—

- (1) complete the tritium supply and recycling environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(2) assess alternative means for tritium production, including production through—

(A) types of new and existing reactors, including multipurpose reactors (such as advanced light water reactors and gas turbine gas-cooled reactors) capable of meeting both the tritium production requirements and the plutonium disposition requirements of the United States for nuclear weapons;

(B) an accelerator; and

(C) multipurpose reactor projects carried out by the private sector and the Government.

(b) FUNDING.—Of funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), not more than \$50,000,000 shall be available for the tritium production program established pursuant to subsection (a).

(c) LOCATION OF TRITIUM PRODUCTION FACILITY.—The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.

(d) COST-BENEFIT ANALYSIS.—(1) The Secretary shall include in the statements referred to in paragraph (2) a comparison of the costs and benefits of carrying out two projects for the separate performance of the tritium production mission of the Department and the plutonium disposition mission of the Department with the costs and benefits of carrying out one multipurpose project for the performance of both such missions.

(2) The statements referred to in paragraph (1) are—

(A) the environmental impact statement referred to in subsection (a)(1);

(B) the plutonium disposition environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(C) assessments related to the environmental impact statements referred to in subparagraphs (A) and (B).

(e) REPORT.—Not later than 45 days after February 10, 1996, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the tritium production program established pursuant to subsection (a). The report shall include a specification of—

(1) the planned expenditures of the Department during fiscal year 1996 for any of the alternative means for tritium production assessed under subsection (a)(2);

(2) the amount of funds required to be expended by the Department, and the program milestones (including feasibility demonstrations) required to be met, during fiscal years 1997 through 2001 to ensure tritium production beginning not later than 2005 that is adequate to meet the tritium requirements of the United States for nuclear weapons; and

(3) the amount of such funds to be expended and such program milestones to be met during such fiscal years to ensure such tritium production beginning not later than 2011.

(f) TRITIUM TARGETS.—Of the funds made available pursuant to subsection (b), not more than \$5,000,000 shall be available for the Idaho National Engineering Laboratory for the test and devel-

opment of nuclear reactor tritium targets for the types of reactors assessed under subsection (a)(2)(A).

SEC. 4232. [50 U.S.C. 2542] TRITIUM RECYCLING.

(a) IN GENERAL.—Except as provided in subsection (b), the following activities shall be carried out at the Savannah River Site, South Carolina:

(1) All tritium recycling for weapons, including tritium re-fitting.

(2) All activities regarding tritium formerly carried out at the Mound Plant, Ohio.

(b) EXCEPTION.—The following activities may be carried out at the Los Alamos National Laboratory, New Mexico:

(1) Research on tritium.

(2) Work on tritium in support of the defense inertial confinement fusion program.

(3) Provision of technical assistance to the Savannah River Site regarding the weapons surveillance program.

SEC. 4233. [50 U.S.C. 2543] TRITIUM PRODUCTION.

(a) NEW TRITIUM PRODUCTION FACILITY.—The Secretary of Energy shall commence planning and design activities and infrastructure development for a new tritium production facility.

(b) IN-REACTOR TESTS.—The Secretary may perform in-reactor tests of tritium target rods as part of the activities carried out under the commercial light water reactor program.

SEC. 4234. [50 U.S.C. 2544] MODERNIZATION AND CONSOLIDATION OF TRITIUM RECYCLING FACILITIES.

(a) IN GENERAL.—The Secretary of Energy shall carry out activities at the Savannah River Site, South Carolina, to—

(1) modernize and consolidate the facilities for recycling tritium from weapons; and

(2) provide a modern tritium extraction facility so as to ensure that such facilities have a capacity to recycle tritium from weapons that is adequate to meet the requirements for tritium for weapons specified in the Nuclear Weapons Stockpile Memorandum.

(b) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201), not more than \$9,000,000 shall be available for activities under subsection (a).

SEC. 4235. [50 U.S.C. 2545] PROCEDURES FOR MEETING TRITIUM PRODUCTION REQUIREMENTS.

(a) PRODUCTION OF NEW TRITIUM.—The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

(b) SUPPORT.—To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.

(c) DESIGN AND ENGINEERING DEVELOPMENT.—The Secretary shall—

(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.

TITLE XLIII—PROLIFERATION MATTERS

SEC. 4301. [50 U.S.C. 2561] INTERNATIONAL COOPERATIVE STOCKPILE STEWARDSHIP.

(a) FUNDING PROHIBITION.—No funds authorized to be appropriated or otherwise available to the Department of Energy for any fiscal year may be obligated or expended to conduct any activities associated with international cooperative stockpile stewardship.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) Activities conducted between the United States and the United Kingdom.

(2) Activities conducted between the United States and France.

(3) Activities carried out under title XIV of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) relating to cooperative threat reduction with states of the former Soviet Union.

SEC. 4302. [50 U.S.C. 2562] NONPROLIFERATION INITIATIVES AND ACTIVITIES.

(a) INITIATIVE FOR PROLIFERATION PREVENTION PROGRAM.—(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.

(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—

(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or

(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.

(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—

(i) is currently involved in activities described in subparagraph (A)(i); or

(ii) was not formerly involved in activities described in subparagraph (A)(ii).

(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.

(B) For purposes of this paragraph, the term “country of proliferation concern” means any country so designated by the Director of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program.

(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:

(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes.

(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.

(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.

(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.

(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.

(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.

(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall—

(A) after such payment, submit a report to the congressional defense committees explaining the particular circumstances making such payment under the Initiatives for Proliferation Prevention program with such funds unavoidable; and

(B) ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program to offset the amount of such payment.

(b) NUCLEAR CITIES INITIATIVE.—(1) No amounts authorized to be appropriated by title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that

Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.

(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.

(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.

(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.

(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of the United States Government that participates in or contributes to the initiative. The report shall describe separately any inter-agency participation in or contribution to the initiative.

(c) REPORT.—(1) Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.

(2) The report shall include the following:

(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the case may be, and means for measuring the achievement of such objectives.

(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.

(C) A list of the institutes and scientists associated with weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—

(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and

(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for

Proliferation Prevention program or the Nuclear Cities Initiative.

(d) **NUCLEAR CITIES INITIATIVE DEFINED.**—For purposes of this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.

SEC. 4303. [50 U.S.C. 2563] ANNUAL REPORT ON STATUS OF NUCLEAR MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM.

(a) **REPORT REQUIRED.**—Not later than January 1 of each year, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the status of efforts during the preceding fiscal year under the Nuclear Materials Protection, Control, and Accounting Program of the Department of Energy to secure weapons-usable nuclear materials in Russia that have been identified as being at risk for theft or diversion.

(b) **CONTENTS.**—Each report under subsection (a) shall include the following:

(1) The number of buildings, including building locations, that received complete and integrated materials protection, control, and accounting systems for nuclear materials described in subsection (a) during the year covered by such report.

(2) The amounts of highly enriched uranium and plutonium in Russia that have been secured under systems described in paragraph (1) as of the date of such report.

(3) The amount of nuclear materials described in subsection (a) that continues to require securing under systems described in paragraph (1) as of the date of such report.

(4) A plan for actions to secure the nuclear materials identified in paragraph (3) under systems described in paragraph (1), including an estimate of the cost of such actions.

(5) The amounts expended through the fiscal year preceding the date of such report to secure nuclear materials described in subsection (a) under systems described in paragraph (1), set forth by total amount and by amount per fiscal year.

(c) **LIMITATION ON USE OF CERTAIN FUNDS.**—(1) No amounts authorized to be appropriated for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act for purposes of the Nuclear Materials Protection, Control, and Accounting Program may be obligated or expended after September 30, 2000, for any project under the program at a site controlled by the Russian Ministry of Atomic Energy (MINATOM) in Russia until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the access policy established with respect to such project, including a certification that the access policy has been implemented.

(2) The access policy with respect to a project under this subsection shall—

(A) permit appropriate determinations by United States officials regarding security requirements, including security upgrades, for the project; and

(B) ensure verification by United States officials that Department of Energy assistance at the project is being used for the purposes intended.

SEC. 4304. [50 U.S.C. 2564] NUCLEAR CITIES INITIATIVE.

(a) **IN GENERAL.**—(1) The Secretary of Energy may, in accordance with the provisions of this section, expand and enhance the activities of the Department of Energy under the Nuclear Cities Initiative.

(2) In this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the joint statement dated July 24, 1998, signed by the Vice President of the United States and the Prime Minister of the Russian Federation and the agreement dated September 22, 1998, between the United States and the Russian Federation.

(b) **FUNDING FOR FISCAL YEAR 2001.**—There is hereby authorized to be appropriated for the Department of Energy for fiscal year 2001 \$30,000,000 for purposes of the Nuclear Cities Initiative.

(c) **LIMITATION PENDING SUBMISSION OF AGREEMENT.**—No amount authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended to provide assistance under the Initiative for more than three nuclear cities in Russia and two serial production facilities in Russia until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of a written agreement between the United States Government and the Government of the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work.

(d) **LIMITATION PENDING IMPLEMENTATION OF PROJECT REVIEW PROCEDURES.**—(1) Not more than \$8,750,000 of the amounts referred to in subsection (b) may be obligated or expended for purposes of the Initiative until the Secretary of Energy establishes and implements project review procedures for projects under the Initiative and submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the project review procedures so established and implemented.

(2) The project review procedures established under paragraph (1) shall ensure that any scientific, technical, or commercial project initiated under the Initiative—

(A) will not enhance the military or weapons of mass destruction capabilities of Russia;

(B) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(C) will be commercially viable; and

(D) will be carried out in conjunction with an appropriate commercial, industrial, or nonprofit entity as partner.

(e) **LIMITATION PENDING CERTIFICATION AND REPORT.**—No amount in excess of \$17,500,000 authorized to be appropriated for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended for purposes of providing assistance under the Initiative until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:

(1) A copy of the written agreement between the United States and the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work within five years of the date of the agreement in exchange for receiving assistance through the Initiative.

(2) A certification by the Secretary—

(A) that project review procedures for all projects under the Initiative have been established and are being implemented; and

(B) that those procedures will ensure that any scientific, technical, or commercial project initiated under the Initiative—

(i) will not enhance the military or weapons of mass destruction capabilities of Russia;

(ii) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(iii) will be commercially viable within three years after the date of the initiation of the project; and

(iv) will be carried out in conjunction with an appropriate commercial, industrial, or other nonprofit entity as partner.

(3) A report setting forth the following:

(A) A description of the project review procedures process.

(B) A list of the projects under the Initiative that have been reviewed under such project review procedures.

(C) A description for each project listed under subparagraph (B) of the purpose, expected life-cycle costs, out-year budget costs, participants, commercial viability, expected time for income generation, and number of Russian jobs created.

(f) **PLAN FOR RESTRUCTURING THE RUSSIAN NUCLEAR COMPLEX.**—(1) The President, acting through the Secretary of Energy, is urged to enter into discussions with the Russian Federation for purposes of the development by the Russian Federation of a plan to restructure the Russian nuclear complex in order to meet changes in the national security requirements of Russia by 2010.

(2) The plan under paragraph (1) should include the following:

(A) Mechanisms to consolidate the nuclear weapons production capacity in Russia to a capacity that is consistent with the obligations of Russia under current and future arms control agreements.

(B) Mechanisms to increase transparency regarding the restructuring of the Russian nuclear complex and weapons-surplus nuclear materials inventories in Russia to the levels of

transparency for such matters in the United States, including the participation of Department of Energy officials with expertise in transparency of such matters.

(C) Measurable milestones that will permit the United States and the Russian Federation to monitor progress under the plan.

(g) ENCOURAGEMENT OF CAREERS IN NONPROLIFERATION.—(1) In carrying out actions under this section, the Secretary of Energy may carry out a program to encourage students in the United States and in the Russian Federation to pursue careers in areas relating to nonproliferation.

(2) Of the amounts made available under the Initiative for fiscal year 2001 in excess of \$17,500,000, up to \$2,000,000 shall be available for purposes of the program under paragraph (1).

(3) The Administrator for Nuclear Security shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives before any funds are expended pursuant to paragraph (2). Any such notification shall include—

(A) an identification of the amount to be expended under paragraph (2) during fiscal year 2001;

(B) the recipients of the funds; and

(C) specific information on the activities that will be conducted using those funds.

(h) DEFINITIONS.—In this section:

(1) The term “nuclear city” means any of the closed nuclear cities within the complex of the Russian Ministry of Atomic Energy as follows:

(A) Sarov (Arzamas–16).

(B) Zarechnyy (Penza–19).

(C) Novoural’sk (Sverdlovsk–44).

(D) Lesnoy (Sverdlovsk–45).

(E) Ozersk (Chelyabinsk–65).

(F) Snezhinsk (Chelyabinsk–70).

(G) Trehgornyy (Zlatoust–36).

(H) Seversk (Tomsk–7).

(I) Zheleznogorsk (Krasnoyarsk–26).

(J) Zelenogorsk (Krasnoyarsk–45).

(2) The term “Russian nuclear complex” means all of the nuclear cities.

(3) The term “serial production facilities” means the facilities in Russia that are located at the following cities:

(A) Avangard.

(B) Lesnoy (Sverdlovsk–45).

(C) Trehgornyy (Zlatoust–36).

(D) Zarechnyy (Penza–19).

SEC. 4305. [50 U.S.C. 2565] AUTHORITY TO CONDUCT PROGRAM RELATING TO FISSILE MATERIALS.

The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.

SEC. 4306. [50 U.S.C. 2566] DISPOSITION OF WEAPONS-USABLE PLUTONIUM AT SAVANNAH RIVER SITE.

(a) PLAN FOR CONSTRUCTION AND OPERATION OF MOX FACILITY.—(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2009, and thereafter, the MOX production objective, and to produce 1 metric ton of mixed-oxide fuel by December 31, 2009; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed-oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1).

(B) Each report under subparagraph (A) for years before 2010 shall include—

(i) an assessment of compliance with the schedules included with the plan under paragraph (2); and

(ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2009.

(C) Each report under subparagraph (A) for years after 2009 shall—

(i) address whether the MOX production objective has been met; and

(ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) Each report under subparagraph (A) for years after 2017 shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

(i) Compliance with such objective.

(ii) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) CORRECTIVE ACTIONS.—(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (a)(2) by 12 months or more, the Secretary shall submit to Congress, not later than August 15 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective by January 1, 2009.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established milestones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2009, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2009 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2009.

(5) If, after January 1, 2009, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to consideration or selection of such option.

(C) Upon submittal of a report under paragraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) CONTINGENT REQUIREMENT FOR REMOVAL OF PLUTONIUM AND MATERIALS FROM SAVANNAH RIVER SITE.—If the MOX production objective is not achieved as of January 1, 2009, the Secretary shall, consistent with the National Environmental Policy Act of 1969 and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2011, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2017, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2017, but not processed by the MOX facility.

(d) ECONOMIC AND IMPACT ASSISTANCE.—(1) If the MOX production objective is not achieved as of January 1, 2011, the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina each year beginning on or after that date through 2016 for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the later of—

(A) the date on which the MOX production objective is achieved in such year; or

(B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If, as of January 1, 2017, the MOX facility has not processed mixed-oxide fuel from defense plutonium and defense plutonium materials in the amount of not less than—

(i) one metric ton, in each of any two consecutive calendar years; and

(ii) three metric tons total,

the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the removal by the Secretary from the State of South Carolina of an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2017, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) If the State of South Carolina obtains an injunction that prohibits the Department from taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) FAILURE TO COMPLETE PLANNED DISPOSITION PROGRAM.—If on July 1 each year beginning in 2020 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for—

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or

(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) REMOVAL OF MIXED-OXIDE FUEL UPON COMPLETION OF OPERATIONS OF MOX FACILITY.—If, one year after the date on which operation of the MOX facility permanently ceases, any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or

(2) a plan for removing such fuel from the State of South Carolina.

(g) DEFINITIONS.—In this section:

(1) MOX PRODUCTION OBJECTIVE.—The term “MOX production objective” means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be

determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX FACILITY.—The term “MOX facility” means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) DEFENSE PLUTONIUM; DEFENSE PLUTONIUM MATERIALS.—The terms “defense plutonium” and “defense plutonium materials” mean weapons-usable plutonium.

SEC. 4306A. [50 U.S.C. 2567] DISPOSITION OF SURPLUS DEFENSE PLUTONIUM AT SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA.

(a) CONSULTATION REQUIRED.—The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) NOTICE REQUIRED.—For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) PLAN FOR DISPOSITION.—The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

(1) A review of each option considered for such disposal.

(2) An identification of the preferred option for such disposal.

(3) With respect to the facilities for such disposal that are required by the Department of Energy’s Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—

(A) a statement of the cost of construction and operation of such facilities;

(B) a schedule for the expeditious construction of such facilities, including milestones; and

(C) a firm schedule for funding the cost of such facilities.

(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) PLAN FOR ALTERNATIVE DISPOSITION.—If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

(e) SUBMISSION OF PLANS.—Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by sub-

section (c) (and the plan prepared under subsection (d), if applicable).

(f) **LIMITATION ON PLUTONIUM SHIPMENTS.**—If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) **ANNUAL REPORT ON FUNDING FOR FISSILE MATERIALS DISPOSITION ACTIVITIES.**—The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.

TITLE XLIV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS

Subtitle A—Environmental Restoration and Waste Management

SEC. 4401. [50 U.S.C. 2581] DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACCOUNT.

(a) **ESTABLISHMENT.**—There is hereby established in the Treasury of the United States for the Department of Energy an account to be known as the “Defense Environmental Restoration and Waste Management Account” (hereafter in this section referred to as the “Account”).

(b) **AMOUNTS IN ACCOUNT.**—All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

SEC. 4402. [50 U.S.C. 2582] REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAM.

(a) **AUTHORITY TO DEVELOP FUTURE USE PLANS.**—The Secretary of Energy may develop future use plans for any defense nu-

clear facility at which environmental restoration and waste management activities are occurring.

(b) **REQUIREMENT TO DEVELOP FUTURE USE PLANS.**—The Secretary shall develop a future use plan for each of the following defense nuclear facilities:

- (1) Hanford Site, Richland, Washington.
- (2) Rocky Flats Plant, Golden, Colorado.
- (3) Savannah River Site, Aiken, South Carolina.
- (4) Idaho National Engineering Laboratory, Idaho.

(c) **CITIZEN ADVISORY BOARD.**—(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.

(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.

(d) **REQUIREMENT TO CONSULT WITH CITIZEN ADVISORY BOARD.**—In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to subsection (c) or a similar advisory board already in existence as of September 23, 1996, for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.

(e) **50-YEAR PLANNING PERIOD.**—A future use plan developed under this section shall cover a period of at least 50 years.

(f) **DEADLINES.**—For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.

(g) **REPORT.**—Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.

(h) **SAVINGS PROVISIONS.**—(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modification to a future use plan with respect to a defense nuclear facility that was developed before September 23, 1996.

(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

SEC. 4403. [50 U.S.C. 2583] INTEGRATED FISSILE MATERIALS MANAGEMENT PLAN.

(a) PLAN.—The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—

(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to achieve budgetary and other efficiencies in the discharge of those responsibilities; and

(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.

(b) SUBMITTAL TO CONGRESS.—The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.

SEC. 4404. [50 U.S.C. 2584] BASELINE ENVIRONMENTAL MANAGEMENT REPORTS.

(a) ANNUAL ENVIRONMENTAL RESTORATION REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) BIENNIAL WASTE MANAGEMENT REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects for waste management, including pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) CONTENTS OF REPORTS.—A report required under subsection (a) or (b) shall be based on compliance with all applicable provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report; and

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment; and

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment.

(d) BIENNIAL STATUS AND VARIANCE REPORTS.—(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activities and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of completion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and estimated expenditures of more than 15 percent or \$10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete

parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) COMPLIANCE TRACKING.—In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy's compliance with relevant Federal and State regulatory milestones.

SEC. 4405. [50 U.S.C. 2585] ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES.

(a) ACCELERATED CLEANUP.—The Secretary of Energy shall accelerate the schedule for environmental restoration and waste management activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.

(b) CONSIDERATION OF FACTORS.—In making a determination under subsection (a), the Secretary shall consider the following:

- (1) The cost savings achievable by the Federal Government.
- (2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 4404 of this Act.
- (3) The potential for reuse of the site.
- (4) The risks that the site poses to local health and safety.
- (5) The proximity of the site to populated areas.

(c) REPORT.—Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).

(d) SAVINGS PROVISION.—Nothing in this section may be construed to affect a specific statutory requirement for a specific environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment.

SEC. 4406. [50 U.S.C. 2586] DEFENSE WASTE CLEANUP TECHNOLOGY PROGRAM.

(a) **ESTABLISHMENT OF PROGRAM.**—The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) **COORDINATION OF RESEARCH ACTIVITIES.**—(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a), the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a).

(c) **REPORT.**—(1) The Secretary shall submit to Congress not later than April 1 each year a report on the research activities of the Department of Energy for the development of technologies referred to in subsection (a). The report shall cover such activities for the fiscal year preceding the fiscal year in which the report is submitted. The Secretary shall include in the report the following:

(A) A description and assessment of each research program being carried out by or for the Department of Energy and the identification of the individual laboratory, contractor, or institution of higher education responsible for the research program.

(B) An assessment of the extent to which (i) there are practical applications of the technologies being researched, and (ii) such technologies will likely facilitate compliance by the Department of Energy with applicable environmental laws and regulations.

(C) An accounting of the funds allocated to each research program and to each laboratory, contractor, or institution of higher education carrying out the research program.

(D) An assessment of the research projects that have been coordinated with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies pursuant to subsection (b).

(2) The first report required by paragraph (1) shall be submitted not later than April 1, 1990.

(d) **DEFINITIONS.**—As used in this section:

(1) The term “defense waste” means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term “inactive defense waste disposal site” means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.

SEC. 4407. [50 U.S.C. 2587] REPORT ON ENVIRONMENTAL RESTORATION EXPENDITURES.

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31, United States Code), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.

SEC. 4408. [50 U.S.C. 2588] PUBLIC PARTICIPATION IN PLANNING FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT AT DEFENSE NUCLEAR FACILITIES.

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.

Subtitle B—Closure of Facilities

SEC. 4421. [50 U.S.C. 2601] PROJECTS TO ACCELERATE CLOSURE ACTIVITIES AT DEFENSE NUCLEAR FACILITIES.

(a) IN GENERAL.—The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) PURPOSE.—The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) ELIGIBLE PROJECTS.—(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.

(d) PROGRAM ADMINISTRATION.—The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) SELECTION OF PROJECTS.—(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.

(f) MULTIYEAR CONTRACTS.—Notwithstanding section 304B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(d)), the Secretary of Energy may enter into multi-year contracts to carry out projects selected under this section for up to 10 program years.

(g) FUNDING.—(1) In the budget submitted to Congress under section 1105(a) of title 31, United States Code, each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated

to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) ANNUAL REPORT.—The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) DURATION OF PROGRAM.—No closure-acceleration project selected under this section may be carried out after September 23, 2011.

(j) SAVINGS PROVISION.—Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

SEC. 4422. [50 U.S.C. 2602] REPORTS IN CONNECTION WITH PERMANENT CLOSURES OF DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES.

(a) TRAINING AND JOB PLACEMENT SERVICES PLAN.—Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the environmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.

(b) CLOSURE REPORT.—Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility, the Secretary of Energy shall submit to Congress a report containing—

(1) a complete survey of environmental problems at the facility;

- (2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and
- (3) a discussion of the proposed cleanup schedule.

Subtitle C—Privatization

SEC. 4431. [50 U.S.C. 2611] DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION PROJECTS.

(a) **AUTHORITY TO ENTER INTO CONTRACTS.**—The Secretary of Energy may, using funds authorized to be appropriated by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) for a project referred to in that section, enter into a contract that—

- (1) is awarded on a competitive basis;
- (2) requires the contractor to construct or acquire any equipment or facilities required to carry out the contract;
- (3) requires the contractor to bear any of the costs of the construction, acquisition, and operation of such equipment or facilities that arise before the commencement of the provision of goods or services under the contract; and
- (4) provides for payment to the contractor under the contract only upon the meeting of performance specifications in the contract.

(b) **NOTICE AND WAIT.**—(1) The Secretary may not enter into a contract under subsection (a), exercise an authorization to proceed with such a contract or extend any contract period for such a contract by more than one year until 30 days after the date on which the Secretary submits to the congressional defense committees a report with respect to the contract.

(2) Except as provided in paragraph (3), a report under paragraph (1) with respect to a contract shall set forth—

- (A) the anticipated costs and fees of the Department under the contract, including the anticipated maximum amount of such costs and fees;
- (B) any performance specifications in the contract;
- (C) the anticipated dates of commencement and completion of the provision of goods or services under the contract;
- (D) the allocation between the Department and the contractor of any financial, regulatory, or environmental obligations under the contract;
- (E) any activities planned or anticipated to be required with respect to the project after completion of the contract;
- (F) the site services or other support to be provided the contractor by the Department under the contract;
- (G) the goods or services to be provided by the Department or contractor under the contract, including any additional obligations to be borne by the Department or contractor with respect to such goods or services;
- (H) if the contract provides for financing of the project by an entity or entities other than the United States, a detailed comparison of the costs of financing the project through such entity or entities with the costs of financing the project by the United States;

- (I) the schedule for the contract;
 - (J) the costs the Department would otherwise have incurred in obtaining the goods or services covered by the contract if the Department had not proposed to obtain the goods or services under this section;
 - (K) an estimate and justification of the cost savings, if any, to be realized through the contract, including the assumptions underlying the estimate;
 - (L) the effect of the contract on any ancillary schedules applicable to the facility concerned, including milestones in site compliance agreements; and
 - (M) the plans for maintaining financial and programmatic accountability for activities under the contract.
- (3) In the case of a contract under subsection (a) at the Hanford Reservation, the report under paragraph (1) shall set forth—
- (A) the matters specified in paragraph (2); and
 - (B) if the contract contemplates two pilot vitrification plants—
 - (i) an analysis of the basis for the selection of each of the plants in lieu of a single pilot vitrification plant; and
 - (ii) a detailed comparison of the costs to the United States of two pilot plants with the costs to the United States of a single pilot plant.
- (c) COST VARIATIONS.—(1)(A) The Secretary may not enter into a contract for a project referred to in subparagraph (B), or obligate funds attributable to the capital portion of the cost of such a contract, whenever the current estimated cost of the project exceeds the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.
- (B) Subparagraph (A) applies to the following:
- (i) A project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85).
 - (ii) A project authorized by section 3103 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2824) for which a contract has not been entered into as of November 18, 1997.
- (2) The Secretary may not obligate funds attributable to the capital portion of the cost of a contract entered into before such date for a project authorized by such section 3103 whenever the current estimated cost of the project equals or exceeds 110 percent of the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.
- (d) USE OF FUNDS FOR TERMINATION OF CONTRACT.—Not later than 15 days before the Secretary obligates funds available for a project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to terminate the contract for the project under subsection (a), the Secretary shall notify the congressional defense committees of the Secretary's intent to obligate the funds for that purpose.
- (e) ANNUAL REPORT ON CONTRACTS.—(1) Not later than February 28 of each year, the Secretary shall submit to the congressional defense committees a report on the activities, if any, carried out under each contract referred to in paragraph (2) during the preceding year. The report shall include an update with respect to

each such contract of the matters specified under subsection (b)(1) as of the date of the report.

(2) A contract referred to in paragraph (1) is the following:

(A) A contract under subsection (a) for a project referred to in that subsection.

(B) A contract under section 3103 of the National Defense Authorization Act for Fiscal Year 1997.

(f) ASSESSMENT OF CONTRACTING WITHOUT SUFFICIENT APPROPRIATIONS.—Not later than 90 days after November 18, 1997, the Secretary shall submit to the congressional defense committees a report assessing whether, and under what circumstances, the Secretary could enter into contracts for defense environmental management privatization projects in the absence of sufficient appropriations to meet obligations under such contracts without thereby violating the provisions of section 1341 of title 31, United States Code.

Subtitle D—Hanford Reservation, Washington

SEC. 4441. [50 U.S.C. 2621] SAFETY MEASURES FOR WASTE TANKS AT HANFORD NUCLEAR RESERVATION.

(a) IDENTIFICATION AND MONITORING OF TANKS.—Not later than February 3, 1991, the Secretary of Energy shall identify which single-shelled or double-shelled high-level nuclear waste tanks at the Hanford Nuclear Reservation, Richland, Washington, may have a serious potential for release of high-level waste due to uncontrolled increases in temperature or pressure. After completing such identification, the Secretary shall determine whether continuous monitoring is being carried out to detect a release or excessive temperature or pressure at each tank so identified. If such monitoring is not being carried out, as soon as practicable the Secretary shall install such monitoring, but only if a type of monitoring that does not itself increase the danger of a release can be installed.

(b) ACTION PLANS.—Not later than March 5, 1991, the Secretary of Energy shall develop action plans to respond to excessive temperature or pressure or a release from any tank identified under subsection (a).

(c) PROHIBITION.—Beginning March 5, 1991, no additional high-level nuclear waste (except for small amounts removed and returned to a tank for analysis) may be added to a tank identified under subsection (a) unless the Secretary determines that no safer alternative than adding such waste to the tank currently exists or that the tank does not pose a serious potential for release of high-level nuclear waste.

(d) REPORT.—Not later than May 5, 1991, the Secretary shall submit to Congress a report on actions taken to promote tank safety, including actions taken pursuant to this section, and the Secretary's timetable for resolving outstanding issues on how to handle the waste in such tanks.

SEC. 4442. [50 U.S.C. 2622] HANFORD WASTE TANK CLEANUP PROGRAM REFORMS.

(a) **ESTABLISHMENT OF OFFICE OF RIVER PROTECTION.**—The Secretary of Energy shall establish an office at the Hanford Reservation, Richland, Washington, to be known as the “Office of River Protection” (in this section referred to as the “Office”).

(b) **MANAGEMENT AND RESPONSIBILITIES OF OFFICE.**—(1) The Office shall be headed by a senior official of the Department of Energy, who shall report to the Assistant Secretary of Energy for Environmental Management.

(2) The head of the Office shall be responsible for managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.

(c) **DEPARTMENT RESPONSIBILITIES.**—The Secretary shall provide the manager of the Office with the resources and personnel necessary to manage the tank waste privatization program at Hanford in an efficient and streamlined manner.

(d) **INTEGRATED MANAGEMENT PLAN.**—Not later than November 29, 2000, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committees on Commerce and on National Security of the House of Representatives an integrated management plan for all aspects of the Hanford Tank Farm operations, including the roles, responsibilities, and reporting relationships of the Office.

(e) **REPORT.**—Not later than 2 years after the commencement of operations of the Office, the Secretary shall submit to the committees referred to in subsection (d) a report describing—

(1) any progress in or resulting from the utilization of the Tank Waste Remediation System; and

(2) any improvements in the management structure of the Department at Hanford with respect to the Tank Waste Remediation System as a result of the Office.

(f) **TERMINATION.**—(1) The Office shall terminate on the later to occur of the following dates:

(A) September 30, 2010.

(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.

(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).

(3) In this subsection, the term “Tri-Party Agreement” means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.

SEC. 4443. [50 U.S.C. 2623] RIVER PROTECTION PROJECT.

The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the “River Protection Project”. Any reference to that project in any law, regulation, map, docu-

ment, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.

SEC. 4444. [50 U.S.C. 2624] FUNDING FOR TERMINATION COSTS OF RIVER PROTECTION PROJECT, RICHLAND, WASHINGTON.

The Secretary of Energy may not use appropriated funds to establish a reserve for the payment of any costs of termination of any contract relating to the River Protection Project, Richland, Washington (as designated by section 4443), that is terminated after October 30, 2000. Such costs may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs, and not otherwise obligated; or

(3) funds appropriated specifically for the payment of such costs.

Subtitle E—Savannah River Site, South Carolina

SEC. 4451. [50 U.S.C. 2631] ACCELERATED SCHEDULE FOR ISOLATING HIGH-LEVEL NUCLEAR WASTE AT THE DEFENSE WASTE PROCESSING FACILITY, SAVANNAH RIVER SITE.

The Secretary of Energy shall accelerate the schedule for the isolation of high-level nuclear waste in glass canisters at the Defense Waste Processing Facility at the Savannah River Site, South Carolina, if the Secretary determines that the acceleration of such schedule—

(1) will achieve long-term cost savings to the Federal Government; and

(2) could accelerate the removal and isolation of high-level nuclear waste from long-term storage tanks at the site.

SEC. 4452. [50 U.S.C. 2632] MULTI-YEAR PLAN FOR CLEAN-UP.

The Secretary of Energy shall develop and implement a multi-year plan for the clean-up of nuclear waste at the Savannah River Site that results, or has resulted, from the following:

(1) Nuclear weapons activities carried out at the site.

(2) The processing, treating, packaging, and disposal of Department of Energy domestic and foreign spent nuclear fuel rods at the site.

SEC. 4453. [50 U.S.C. 2633] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H-canyon facility at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facility.

SEC. 4453A. [50 U.S.C. 2634] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall

provide the technical staff necessary to operate and so maintain such facilities.

SEC. 4453B. [50 U.S.C. 2635] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.

SEC. 4453C. [50 U.S.C. 2636] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site and shall provide technical staff necessary to operate and maintain such facilities at that state of readiness.

SEC. 4453D. [50 U.S.C. 2637] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.

The Secretary shall continue operations and maintain a high state of readiness at the H-canyon facility and the F-canyon facility at the Savannah River Site, and shall provide technical staff necessary to operate and so maintain such facilities, pending the development and implementation of the plan referred to in section 4452.

SEC. 4454. [50 U.S.C. 2638] LIMITATION ON USE OF FUNDS FOR DECOMMISSIONING F-CANYON FACILITY.

No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F-canyon facility at the Savannah River Site until the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board, a report setting forth—

(1) an assessment whether or not all materials present in the F-canyon facility as of the date of the report that required stabilization have been safely stabilized as of that date;

(2) an assessment whether or not the requirements applicable to the F-canyon facility to meet the future needs of the United States for fissile materials disposition can be met through full use of the H-canyon facility at the Savannah River Site; and

(3) if it appears that one or more of the requirements described in paragraph (2) cannot be met through full use of the H-canyon facility—

(A) an identification by the Secretary of each such requirement that cannot be met through full use of the H-canyon facility; and

(B) for each requirement so identified, the reasons why such requirement cannot be met through full use of the H-canyon facility and a description of the alternative capa-

bility for fissile materials disposition that is needed to meet such requirement.

TITLE XLV—SAFEGUARDS AND SECURITY MATTERS

Subtitle A—Safeguards and Security

SEC. 4501. [50 U.S.C. 2651] PROHIBITION ON INTERNATIONAL INSPECTIONS OF DEPARTMENT OF ENERGY FACILITIES UNLESS PROTECTION OF RESTRICTED DATA IS CERTIFIED.

(a) PROHIBITION ON INSPECTIONS.—The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.

(c) RESTRICTED DATA DEFINED.—In this section, the term “restricted data” has the meaning provided by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(b) EXTENSION OF NOTICE-AND-WAIT REQUIREMENT REGARDING PROPOSED COOPERATION AGREEMENTS.—[Omitted-Amendment]

SEC. 4502. [50 U.S.C. 2652] RESTRICTIONS ON ACCESS TO NATIONAL LABORATORIES BY FOREIGN VISITORS FROM SENSITIVE COUNTRIES.

(a) BACKGROUND REVIEW REQUIRED.—The Secretary of Energy may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.

(b) MORATORIUM PENDING CERTIFICATION.—(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.

(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:

(A) January 3, 2000.

(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, of each of the following:

(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.

(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar require-

ments relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.

(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

(c) **WAIVER OF MORATORIUM.**—(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of individuals whose admission to a national laboratory is determined by the Secretary to be in the interest of the national security of the United States.

(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:

(A) A detailed justification for the waiver.

(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.

(C) The Secretary's certification that the admission of that individual or delegation to a national laboratory is in the interest of the national security of the United States.

(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

(d) **EXCEPTION TO MORATORIUM FOR CERTAIN INDIVIDUALS.**—The moratorium under subsection (b) shall not apply to any person who—

(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and

(2) has undergone a background review in accordance with subsection (a).

(e) **EXCEPTION TO MORATORIUM FOR CERTAIN PROGRAMS.**—The moratorium under subsection (b) shall not apply—

(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or

(2) to the materials protection control and accounting program of the Department.

(f) SENSE OF CONGRESS REGARDING BACKGROUND REVIEWS.—It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

(g) DEFINITIONS.—For purposes of this section:

(1) The term “background review”, commonly known as an indices check, means a review of information provided by the Director of Central Intelligence and the Director of the Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

(2) The term “sensitive countries list” means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.

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

(A) Lawrence Livermore National Laboratory, Livermore, California.

(B) Los Alamos National Laboratory, Los Alamos, New Mexico.

(C) Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(4) The term “Restricted Data” has the meaning given that term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

SEC. 4503. [50 U.S.C. 2653] BACKGROUND INVESTIGATIONS OF CERTAIN PERSONNEL AT DEPARTMENT OF ENERGY FACILITIES.

(a) IN GENERAL.—The Secretary of Energy shall ensure that an investigation meeting the requirements of section 145 of the Atomic Energy Act of 1954 (42 U.S.C. 2165) is made for each Department of Energy employee, or contractor employee, at a national laboratory or nuclear weapons production facility who—

(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or

(2) has or may have regular access to a location where Restricted Data is present.

(b) COMPLIANCE.—The Secretary shall have 15 months from October 5, 1999, to meet the requirement in subsection (a).

(c) DEFINITIONS.—In this section, the terms “national laboratory” and “Restricted Data” have the meanings given such terms in section 4502(g).

SEC. 4504. [50 U.S.C. 2654] DEPARTMENT OF ENERGY COUNTERINTELLIGENCE POLYGRAPH PROGRAM.

(a) NEW COUNTERINTELLIGENCE POLYGRAPH PROGRAM REQUIRED.—The Secretary of Energy shall carry out, under regulations prescribed under this section, a new counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.

(b) **AUTHORITIES AND LIMITATIONS.**—(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.

(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rulemaking for the new program.

(c) **REPEAL OF EXISTING POLYGRAPH PROGRAM.**—Effective 30 days after the Secretary submits to the congressional defense committees the Secretary's certification that the final rule for the new counterintelligence polygraph program required by subsection (a) has been fully implemented, section 4504A is repealed.

(d) **REPORT ON FURTHER ENHANCEMENT OF PERSONNEL SECURITY PROGRAM.**—(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.

(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

(e) **POLYGRAPH REVIEW DEFINED.**—In this section, the term "Polygraph Review" means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

SEC. 4504A. [50 U.S.C. 2655] COUNTERINTELLIGENCE POLYGRAPH PROGRAM.

(a) **PROGRAM REQUIRED.**—The Secretary of Energy, acting through the Director of Counterintelligence, shall carry out a counterintelligence polygraph program for the defense-related activities of the Department. The counterintelligence polygraph program shall consist of the administration of counterintelligence polygraph examinations to each covered person who has access to high-risk programs.

(b) **COVERED PERSONS.**—(1) Subject to paragraph (2), for purposes of this section, a covered person is one of the following:

(A) An officer or employee of the Department.

(B) An expert or consultant under contract to the Department.

(C) An officer or employee of a contractor of the Department.

(D) An individual assigned or detailed to the Department.

(E) An applicant for a position in the Department.

(2) A person described in paragraph (1) is a covered person for purposes of this section only if the position of the person, or for which the person is applying, under that paragraph is a position in one of the categories of positions listed in section 709.4(a) of title 10, Code of Federal Regulations.

(c) **HIGH-RISK PROGRAMS.**—For purposes of this section, high-risk programs are the following:

(1) Programs using information known as Sensitive Compartmented Information.

(2) The programs known as Special Access Programs and Personnel Security and Assurance Programs.

(3) Any other program or position category specified in section 709.4(a) of title 10, Code of Federal Regulations.

(d) INITIAL TESTING AND CONSENT.—(1) The Secretary may not permit a covered person to have initial access to any high-risk program unless that person first undergoes a counterintelligence polygraph examination and consents in a signed writing to the counterintelligence polygraph examinations required by this section.

(2) Subject to paragraph (3), the Secretary may, after consultation with appropriate security personnel, waive the applicability of paragraph (1) to a covered person—

(A) if—

(i) the Secretary determines that the waiver is important to the national security interests of the United States;

(ii) the covered person has an active security clearance; and

(iii) the covered person acknowledges in a signed writing that the capacity of the covered person to perform duties under a high-risk program after the expiration of the waiver is conditional upon meeting the requirements of paragraph (1) within the effective period of the waiver;

(B) if another Federal agency certifies to the Secretary that the covered person has completed successfully a full-scope or counterintelligence-scope polygraph examination during the 5-year period ending on the date of the certification; or

(C) if the Secretary determines, after consultation with the covered person and appropriate medical personnel, that the treatment of a medical or psychological condition of the covered person should preclude the administration of the examination.

(3)(A) The Secretary may not commence the exercise of the authority under paragraph (2) to waive the applicability of paragraph (1) to any covered persons until 15 days after the date on which the Secretary submits to the appropriate committees of Congress a report setting forth the criteria to be used by the Secretary for determining when a waiver under paragraph (2)(A) is important to the national security interests of the United States. The criteria shall not include the need to maintain the scientific vitality of the laboratory. The criteria shall include an assessment of counterintelligence risks and programmatic impacts.

(B) Any waiver under paragraph (2)(A) shall be effective for not more than 120 days, and a person who is subject to a waiver under paragraph (2)(A) may not ever be subject to another waiver under paragraph (2)(A).

(C) Any waiver under paragraph (2)(C) shall be effective for the duration of the treatment on which such waiver is based.

(4) The Secretary shall submit to the appropriate committees of Congress on a semi-annual basis a report on any determinations made under paragraph (2)(A) during the 6-month period ending on the date of such report. The report shall include a national security justification for each waiver resulting from such determinations.

(5) In this subsection, the term “appropriate committees of Congress” means the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(6) It is the sense of Congress that the waiver authority in paragraph (2) not be used by the Secretary to exempt from the applicability of paragraph (1) any covered persons in the highest risk categories, such as persons who have access to the most sensitive weapons design information and other highly sensitive programs, including special access programs.

(7) The authority under paragraph (2) to waive the applicability of paragraph (1) to a covered person shall expire on September 30, 2002.

(e) ADDITIONAL TESTING.—The Secretary may not permit a covered person to have continued access to any high-risk program unless that person undergoes a counterintelligence polygraph examination within five years after that person has initial access, and thereafter—

(1) not less frequently than every five years; and

(2) at any time at the direction of the Director of Counterintelligence.

(f) COUNTERINTELLIGENCE POLYGRAPH EXAMINATION.—For purposes of this section, the term “counterintelligence polygraph examination” means a polygraph examination using questions reasonably calculated to obtain counterintelligence information, including questions relating to espionage, sabotage, terrorism, unauthorized disclosure of classified information, deliberate damage to or malicious misuse of a United States Government information or defense system, and unauthorized contact with foreign nationals.

(g) REGULATIONS.—The Secretary shall prescribe any regulations necessary to carry out this section. Those regulations shall include procedures, to be developed in consultation with the Federal Bureau of Investigation, for—

(1) identifying and addressing “false positive” results of polygraph examinations; and

(2) ensuring that adverse personnel actions not be taken against an individual solely by reason of that individual’s physiological reaction to a question in a polygraph examination, unless reasonable efforts are first made to independently determine through alternative means the veracity of that individual’s response to that question.

(h) PLAN FOR EXTENSION OF PROGRAM.—Not later than April 5, 2000, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan on extending the program required by this section. The plan shall provide for the administration of counterintelligence polygraph examinations in accordance with the program to each covered person who has access to—

(1) the programs known as Personnel Assurance Programs; and

(2) the information identified as Sensitive Compartmented Information.

SEC. 4505. [50 U.S.C. 2656] NOTICE TO CONGRESSIONAL COMMITTEES OF CERTAIN SECURITY AND COUNTERINTELLIGENCE FAILURES WITHIN NUCLEAR ENERGY DEFENSE PROGRAMS.

(a) **REQUIRED NOTIFICATION.**—The Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each significant nuclear defense intelligence loss. Any such notification shall be provided only after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.

(b) **SIGNIFICANT NUCLEAR DEFENSE INTELLIGENCE LOSSES.**—In this section, the term “significant nuclear defense intelligence loss” means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.

(c) **MANNER OF NOTIFICATION.**—Notification of a significant nuclear defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.

(d) **PROCEDURES.**—The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(e) **STATUTORY CONSTRUCTION.**—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413) for the President to ensure that the congressional intelligence committees are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.

SEC. 4506. [50 U.S.C. 2657] SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES.

(a) **IN GENERAL.**—Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees the report entitled “Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities”, or any successor report to such report.

(b) REQUIREMENT RELATING TO REPORTS THROUGH FISCAL YEAR 2000.—The Secretary shall include with each report submitted under subsection (a) in fiscal years 1998 through 2000 any comments on such report by the members of the Department of Energy Security Management Board established under section 3161 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2048; 42 U.S.C. 7251 note) that such members consider appropriate.

SEC. 4507. [50 U.S.C. 2658] REPORT ON COUNTERINTELLIGENCE AND SECURITY PRACTICES AT NATIONAL LABORATORIES.

(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).

(b) CONTENT OF REPORT.—The report shall include, with respect to each national laboratory, the following:

(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.

(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.

(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.

(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).

(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.

(c) NATIONAL LABORATORY DEFINED.—In this section, the term “national laboratory” has the meaning given that term in section 4502(g)(3).

SEC. 4508. [50 U.S.C. 2659] REPORT ON SECURITY VULNERABILITIES OF NATIONAL LABORATORY COMPUTERS.

(a) REPORT REQUIRED.—Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.

(b) PREPARATION OF REPORT.—In preparing the report, the National Counterintelligence Policy Board shall establish a so-called “red team” of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.

(c) **SUBMISSION OF REPORT TO SECRETARY OF ENERGY AND TO FBI DIRECTOR.**—Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.

(d) **FORWARDING TO CONGRESSIONAL COMMITTEES.**—Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:

(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e) **FIRST REPORT.**—The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.

(f) **NATIONAL LABORATORY DEFINED.**—In this section, the term “national laboratory” has the meaning given that term in section 4502(g)(3).

Subtitle B—Classified Information

SEC. 4521. [50 U.S.C. 2671] REVIEW OF CERTAIN DOCUMENTS BEFORE DECLASSIFICATION AND RELEASE.

(a) **IN GENERAL.**—The Secretary of Energy shall ensure that, before a document of the Department of Energy that contains national security information is released or declassified, such document is reviewed to determine whether it contains restricted data.

(b) **LIMITATION ON DECLASSIFICATION.**—The Secretary may not implement the automatic declassification provisions of Executive Order 12958 if the Secretary determines that such implementation could result in the automatic declassification and release of documents containing restricted data.

(c) **RESTRICTED DATA DEFINED.**—In this section, the term “restricted data” has the meaning provided by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

SEC. 4522. [50 U.S.C. 2672] PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.

(a) **PLAN FOR PROTECTION AGAINST RELEASE.**—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 12958 (50 U.S.C. 435 note).

(b) **PLAN ELEMENTS.**—The plan under subsection (a) shall include the following:

(1) The actions to be taken in order to ensure that records subject to Executive Order No. 12958 are reviewed on a page-

by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.

(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.

(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.

(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.

(7) The funding, personnel, and other resources required to carry out the plan.

(8) A timetable for implementation of the plan.

(c) LIMITATION ON DECLASSIFICATION OF CERTAIN RECORDS.—(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.

(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.

(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified in the plan pursuant to subsection (b)(1), to be a record that is highly unlikely to contain Restricted Data or Formerly Restricted Data.

(d) SUBMISSION OF PLAN.—The Secretary of Energy shall submit the plan required under subsection (a) to the following:

(1) The Committee on Armed Services of the Senate.

(2) The Committee on Armed Services of the House of Representatives.

(3) The Assistant to the President for National Security Affairs.

(e) SUBMISSION OF REVIEWS.—The Secretary of Energy shall, on a periodic basis, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to sub-

section (b)(4) to the committees and Assistant to the President specified in subsection (d).

(f) **REPORT AND NOTIFICATION REGARDING INADVERTENT RELEASES.**—(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.

(2) Commencing with inadvertent releases discovered on or after October 30, 2000, the Secretary of Energy shall, on a quarterly basis, submit a report to the committees and Assistant to the President specified in subsection (d). The report shall state whether any inadvertent releases described in paragraph (1) occurred during the immediately preceding quarter and, if so, shall identify each such release.

(g) **DEFINITION.**—In this section, the term “Restricted Data” has the meaning given that term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

SEC. 4523. [50 U.S.C. 2673] SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.

(a) **SUPPLEMENT TO PLAN.**—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 4522.

(b) **CONTENTS OF SUPPLEMENT.**—The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 4522) to all records subject to Executive Order No. 12958 that were determined before October 17, 1998, to be suitable for declassification.

(c) **LIMITATION ON DECLASSIFICATION OF RECORDS.**—All records referred to in subsection (b) shall be treated, for purposes of subsection (a) of section 4522, in the same manner as records referred to in subsection (a) of such section.

(d) **SUBMISSION OF SUPPLEMENT.**—The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in subsection (d) of section 4522.

SEC. 4524. [50 U.S.C. 2674] PROTECTION OF CLASSIFIED INFORMATION DURING LABORATORY-TO-LABORATORY EXCHANGES.

(a) **PROVISION OF TRAINING.**—The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.

(b) **COUNTERING OF ESPIONAGE AND INTELLIGENCE-GATHERING ABROAD.**—(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Department contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

SEC. 4525. [50 U.S.C. 2675] IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES.

(a) AMOUNTS FOR DECLASSIFICATION OF RECORDS.—The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.

(b) CERTIFICATION REQUIRED WITH RESPECT TO AUTOMATIC DECLASSIFICATION OF RECORDS.—No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.

(c) REPORT ON AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF ENERGY RECORDS.—Not later than February 1, 2001, the Secretary of Energy shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:

(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.

(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.

(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.

Subtitle C—Emergency Response

SEC. 4541. [50 U.S.C. 2691] RESPONSIBILITY FOR DEFENSE PROGRAMS EMERGENCY RESPONSE PROGRAM.

The Office of Military Applications under the Assistant Secretary of Energy for Defense Programs shall retain responsibility for the Defense Programs Emergency Response Program within the Department of Energy.

TITLE XLVI—PERSONNEL MATTERS

Subtitle A—Personnel Management

SEC. 4601. [50 U.S.C. 2701] AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

(a) **AUTHORITY.**—(1) Notwithstanding any provision of title 5, United States Code, governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

(B) appoint persons to such positions.

(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.

(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.

(b) **OPM REVIEW.**—(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5, United States Code.

(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5, United States Code, or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved; or

(B) cease appointment of persons under such authority.

(c) **TERMINATION.**—(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2004.

(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).

SEC. 4602. [50 U.S.C. 2702] WHISTLEBLOWER PROTECTION PROGRAM.

(a) PROGRAM REQUIRED.—The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

(b) COVERED INDIVIDUALS.—For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

(c) PROTECTED DISCLOSURES.—For purposes of this section, a protected disclosure is a disclosure—

(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;

(2) made to a person or entity specified in subsection (d); and

(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:

(A) A violation of law or Federal regulation.

(B) Gross mismanagement, a gross waste of funds, or abuse of authority.

(C) A false statement to Congress on an issue of material fact.

(d) PERSONS AND ENTITIES TO WHICH DISCLOSURES MAY BE MADE.—A person or entity specified in this subsection is any of the following:

(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.

(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.

(3) The Inspector General of the Department of Energy.

(4) The Federal Bureau of Investigation.

(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

(e) OFFICIAL CAPACITY OF PERSONS TO WHOM INFORMATION IS DISCLOSED.—A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.

(f) ASSISTANCE AND GUIDANCE.—The Secretary, acting through the Inspector General of the Department of Energy, shall provide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.

(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.

(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.

(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

(g) REGULATIONS.—The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

(h) NOTIFICATION TO COVERED INDIVIDUALS.—The Secretary shall notify each covered individual of the following:

(1) The rights of that individual under this section.

(2) The assistance and guidance provided under this section.

(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

(i) COMPLAINT BY COVERED INDIVIDUALS.—If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

(j) INVESTIGATION BY OFFICE OF HEARINGS AND APPEALS.—(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—

(A) determine whether or not the complaint is frivolous; and

(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.

(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—

(A) the individual who submitted the complaint on which the investigation is based;

(B) the contractor concerned, if any; and

(C) the Secretary of Energy.

(k) REMEDIAL ACTION.—(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—

(A) in the case of a Department employee, take appropriate actions to abate the action; or

(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.

(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(l) RELATIONSHIP TO OTHER LAWS.—The protections provided by this section are independent of, and not subject to any limita-

tions that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101-512) or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

(m) ANNUAL REPORT.—(1) Not later than 30 days after the commencement of each fiscal year, the Director shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

(n) IMPLEMENTATION REPORT.—Not later than December 5, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the implementation of the program required by this section.

SEC. 4603. [50 U.S.C. 2703] EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE PROJECT FACILITIES.

(a) AUTHORITY TO PROVIDE INCENTIVES.—Notwithstanding any other provision of law, the Secretary of Energy may provide to any eligible employee of the Department of Energy one or more of the incentives described in subsection (d).

(b) ELIGIBLE EMPLOYEES.—An individual is an eligible employee of the Department of Energy for purposes of this section if the individual—

(1) has worked continuously at a closure facility for at least two years;

(2) is an employee (as that term is defined in section 2105(a) of title 5, United States Code);

(3) has a fully satisfactory or equivalent performance rating during the most recent performance period and is not subject to an adverse notice regarding conduct; and

(4) meets any other requirement or condition under subsection (d) for the incentive which is provided the employee under this section.

(c) CLOSURE FACILITY DEFINED.—For purposes of this section, the term “closure facility” means a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421.

(d) INCENTIVES.—The incentives that the Secretary may provide under this section are the following:

(1) The right to accumulate annual leave provided by section 6303 of title 5, United States Code, for use in succeeding years until it totals not more than 90 days, or not more than 720 hours based on a standard work week, at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, except that—

(A) any annual leave that remains unused when an employee transfers to a position in a department or agency of the Federal Government shall be liquidated upon the transfer by payment to the employee of a lump sum for

leave in excess of 30 days, or in excess of 240 hours based on a standard work week; and

(B) upon separation from service, annual leave accumulated under this paragraph shall be treated as any other accumulated annual leave is treated.

(2) The right to be paid a retention allowance in a lump sum in compliance with paragraphs (1) and (2) of section 5754(b) of title 5, United States Code, if the employee meets the requirements of section 5754(a) of that title, except that the retention allowance may exceed 25 percent, but may not be more than 30 percent, of the employee's rate of basic pay.

(e) AGREEMENT.—An eligible employee of the Department of Energy provided an incentive under this section shall enter into an agreement with the Secretary to remain employed at the closure facility at which the employee is employed as of the date of the agreement until a specific date or for a specific period of time.

(f) VIOLATION OF AGREEMENT.—(1) Except as provided under paragraph (3), an eligible employee of the Department of Energy who violates an agreement under subsection (e), or is dismissed for cause, shall forfeit eligibility for any incentives under this section as of the date of the violation or dismissal, as the case may be.

(2) Except as provided under paragraph (3), an eligible employee of the Department of Energy who is paid a retention allowance under subsection (d)(2) and who violates an agreement under subsection (e), or is dismissed for cause, before the end of the period or date of employment agreed upon under such agreement shall refund to the United States an amount that bears the same ratio to the aggregate amount so paid to or received by the employee as the unserved part of such employment bears to the total period of employment agreed upon under such agreement.

(3) The Secretary may waive the applicability of paragraph (1) or (2) to an employee otherwise covered by such paragraph if the Secretary determines that there is good and sufficient reason for the waiver.

(g) REPORT.—The Secretary shall include in each report on a closure project under section 4421(h) a report on the incentives, if any, provided under this section with respect to the project for the period covered by such report.

(h) AUTHORITY WITH RESPECT TO HEALTH COVERAGE.—[Omitted-Amendment]

(i) AUTHORITY WITH RESPECT TO VOLUNTARY SEPARATIONS.—(1) The Secretary may—

(A) separate from service any employee at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421 who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary) may not participate in a voluntary separation

under paragraph (1)(A) if the Secretary determines that such participation would impair the performance of the mission of the Department of Energy.

(j) **TERMINATION.**—The authority to provide incentives under this section terminates on March 31, 2007.

SEC. 4604. [50 U.S.C. 2704] DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES WORKFORCE RESTRUCTURING PLAN.

(a) **IN GENERAL.**—Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

- (1) the reconfiguration of the defense nuclear facility; and
- (2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) **CONSULTATION.**—(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) **OBJECTIVES.**—In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the workforce at a Department of Energy defense nuclear facility—

(A) should be accomplished so as to minimize social and economic impacts;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

(A) programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101-510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).

(d) IMPLEMENTATION.—The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).

(e) PLAN UPDATES.—Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—

(1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;

(2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) SUBMITTAL TO CONGRESS.—(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.

(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

(g) DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITY DEFINED.—In this section, the term “Department of Energy defense nuclear facility” means—

(1) a production facility or utilization facility (as those terms are defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)) that is under the control or jurisdiction

of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;²

(2) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

(3) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);

(4) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

(5) any facility described in paragraphs (1) through (4) that—

(A) is no longer in operation;

(B) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

(C) was operated for national security purposes.

SEC. 4605. [50 U.S.C. 2705] AUTHORITY TO PROVIDE CERTIFICATE OF COMMENDATION TO DEPARTMENT OF ENERGY AND CONTRACTOR EMPLOYEES FOR EXEMPLARY SERVICE IN STOCKPILE STEWARDSHIP AND SECURITY.

(a) **AUTHORITY TO PRESENT CERTIFICATE OF COMMENDATION.**—The Secretary of Energy may present a certificate of commendation to any current or former employee of the Department of Energy, and any current or former employee of a Department contractor, whose service to the Department in matters relating to stockpile stewardship and security assisted the Department in furthering the national security interests of the United States.

(b) **CERTIFICATE.**—The certificate of commendation presented to a current or former employee under subsection (a) shall include an appropriate citation of the service of the current or former employee described in that subsection, including a citation for dedication, intellect, and sacrifice in furthering the national security interests of the United States by maintaining a strong, safe, and viable United States nuclear deterrent during the Cold War or thereafter.

(c) **DEPARTMENT OF ENERGY DEFINED.**—For purposes of this section, the term “Department of Energy” includes any predecessor agency of the Department of Energy.

²The text of the executive order is set out in this volume under Selected Other Matters.

Subtitle B—Education and Training

SEC. 4621. [50 U.S.C. 2721] EXECUTIVE MANAGEMENT TRAINING IN THE DEPARTMENT OF ENERGY.

(a) ESTABLISHMENT OF TRAINING PROGRAM.—The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.

(b) TRAINING PROVISIONS.—The training program shall at a minimum include instruction in the following areas:

(1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.

(2) Methods of evaluating technical performance.

(3) Federal and State environmental laws and requirements for compliance with such environmental laws, including timely compliance with reporting requirements in such laws.

(4) The establishment of program milestones and methods to evaluate success in meeting such milestones.

(5) Methods for conducting long-range technical and budget planning.

(6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.

SEC. 4622. [50 U.S.C. 2722] STOCKPILE STEWARDSHIP RECRUITMENT AND TRAINING PROGRAM.

(a) CONDUCT OF PROGRAM.—(1) As part of the stockpile stewardship program established pursuant to section 4201, the Secretary of Energy shall conduct a stockpile stewardship recruitment and training program at the Sandia National Laboratories, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

(2) The recruitment and training program shall be conducted in coordination with the Chairman of the Joint Nuclear Weapons Council established by section 179 of title 10, United States Code, and the directors of the laboratories referred to in paragraph (1).

(b) SUPPORT OF DUAL-USE PROGRAMS.—(1) As part of the recruitment and training program, the directors of the laboratories referred to in subsection (a)(1) may employ undergraduate students, graduate students, and postdoctoral fellows to carry out research sponsored by such laboratories for military or nonmilitary dual-use programs related to nuclear weapons stockpile stewardship.

(2) Of the amounts authorized to be appropriated to the Secretary of Energy in section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) for weapons activities for core research and development and allocated by the Secretary for education initiatives, \$5,000,000 shall be available for employing students and fellows to carry out research referred to in paragraph (1). The amount available under this paragraph shall be allocated equally among the laboratories referred to in subsection (a)(1).

(c) ESTABLISHMENT OF RETIREE CORPS.—As part of the training and recruitment program, the Secretary, in coordination with the directors of the laboratories referred to in subsection (a)(1), shall

establish for the laboratories a retiree corps of retired scientists who have expertise in research and development of nuclear weapons. The directors may employ the retired scientists on a part-time basis to provide appropriate assistance on nuclear weapons issues, to contribute relevant information to be archived, and to help to provide training to other scientists.

(d) REPORT.—(1) Not later than February 1, 1995, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demographic trends of the personnel of the laboratories referred to in subsection (a)(1) and on actions taken by the Department of Energy to remedy identified deficiencies in various skill areas.

(2) The report shall be prepared in coordination with the Chairman of the Joint Nuclear Weapons Council and the directors of the laboratories. Information included in the report shall be aggregated and compiled into statistical categories.

(3) The report shall include the following:

(A) An inventory of the weapons-related tasks that the laboratories need to perform to support their nuclear weapons responsibilities.

(B) An inventory of the skills necessary to complete the weapons-related tasks referred to in subparagraph (A).

(C) For each laboratory, the number of scientists needed in each skill area to perform such tasks.

(D) The number of the scientists providing services in each skill area at each laboratory, stated by age.

(E) An assessment of which skill areas are understaffed.

(F) The number of scientists entering the weapons program at each laboratory, and their skill areas.

(G) The number of full-time equivalent personnel with weapon skills, their distribution by skill and, for each such skill, their distribution by age.

(H) The number of scientists retiring from the weapons program in the five-year period ending on the date of the report and the skill areas in which they worked in the year preceding their retirement.

(I) Based on the information contained in subparagraphs (A) through (H), a projection of the skills areas that will become understaffed in the five years following the date of the report.

(J) A statement of alternative actions that may be taken to retain and recruit scientists for the weapons programs at the laboratories in order to preserve a sufficient skill base and to fulfill stockpile stewardship responsibilities.

(K) Any plans of the Secretary to take any of the alternative actions referred to in subparagraph (J).

SEC. 4623. [50 U.S.C. 2723] FELLOWSHIP PROGRAM FOR DEVELOPMENT OF SKILLS CRITICAL TO THE DEPARTMENT OF ENERGY NUCLEAR WEAPONS COMPLEX.

(a) IN GENERAL.—The Secretary of Energy shall conduct a fellowship program for the development of skills critical to the ongoing mission of the Department of Energy nuclear weapons complex. Under the fellowship program, and research assistance to eligible individuals to facilitate the development by such individuals of

skills critical to maintaining the ongoing mission of the Department of Energy nuclear weapons complex.

(b) ELIGIBLE INDIVIDUALS.—Individuals eligible for participation in the fellowship program are United States citizens who are the following:

(1) Students pursuing graduate degrees in fields of science or engineering that are related to nuclear weapons engineering or to the science and technology base of the Department of Energy.

(2) Individuals engaged in postdoctoral studies in such fields.

(c) COVERED FACILITIES.—The Secretary shall carry out the fellowship program at or in connection with the following facilities:

(1) The Kansas City Plant, Kansas City, Missouri.

(2) The Pantex Plant, Amarillo, Texas.

(3) The Y-12 Plant, Oak Ridge, Tennessee.

(4) The Savannah River Site, Aiken, South Carolina.

(5) The Lawrence Livermore National Laboratory, Livermore, California.

(6) The Los Alamos National Laboratory, Los Alamos, New Mexico.

(7) The Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(d) ADMINISTRATION.—The Secretary shall carry out the fellowship program at a facility referred to in subsection (c) through the stockpile manager of the facility.

(e) ALLOCATION OF FUNDS.—The Secretary shall, in consultation with the Assistant Secretary of Energy for Defense Programs, allocate funds available for the fellowship program under subsection (f) among the facilities referred to in subsection (c). The Secretary shall make the allocation after evaluating an assessment by the weapons program director of each such facility of the personnel and critical skills necessary at the facility for carrying out the ongoing mission of the facility.

(f) AGREEMENT.—(1) The Secretary may allow an individual to participate in the program only if the individual signs an agreement described in paragraph (2).

(2) An agreement referred to in paragraph (1) shall be in writing, shall be signed by the participant, and shall include the participant's agreement to serve, after completion of the course of study for which the assistance was provided, as a full-time employee in a position in the Department of Energy for a period of time to be established by the Secretary of Energy of not less than one year, if such a position is offered to the participant.

Subtitle C—Worker Safety

SEC. 4641. [50 U.S.C. 2731] WORKER PROTECTION AT NUCLEAR WEAPONS FACILITIES.

(a) TRAINING GRANT PROGRAM.—(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—

(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emer-

gency response at Department of Energy nuclear weapons facilities; and

(B) to develop curricula for such training and education.

(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—

(i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and

(ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.

(B) The Secretary shall give preference in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a).

(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.

(b) ENFORCEMENT OF EMPLOYEE SAFETY STANDARDS.—(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—

(A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).

(2) Civil penalties assessed under this subsection may not exceed \$5,000 for each day in which a failure referred to in paragraph (1)(B) occurs.

(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(d) DEFINITIONS.—For the purposes of this section, the term “hazardous substance” includes radioactive waste and mixed radioactive and hazardous waste.

(e) FUNDING.—Of the funds authorized to be appropriated pursuant to section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), \$10,000,000 may be used for the purpose of carrying out this section.

SEC. 4642. [50 U.S.C. 2732] SAFETY OVERSIGHT AND ENFORCEMENT AT DEFENSE NUCLEAR FACILITIES.

(a) SAFETY AT DEFENSE NUCLEAR FACILITIES.—The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear

safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include activities relating to—

(A) the assessment of the safety of defense nuclear facilities;

(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;

(C) the provision to the Secretary of oversight reports that—

(i) contain validated technical information; and

(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and

(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);

(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and

(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.

(b) REPORT.—Not later than January 5, 1995, the Secretary shall submit to Congress a report describing the following:

(1) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).

(2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.

(3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:

(A) The Associate Deputy Secretary of Energy for Field Management.

(B) The Assistant Secretary of Energy for Defense Programs.

(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

SEC. 4643. [50 U.S.C. 2733] PROGRAM TO MONITOR DEPARTMENT OF ENERGY WORKERS EXPOSED TO HAZARDOUS AND RADIOACTIVE SUBSTANCES.

(a) IN GENERAL.—The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such

employees to hazardous or radioactive substances during such employment.

(b) IMPLEMENTATION OF PROGRAM.—(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—

(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

(F) ensure that employee participation in the program is voluntary.

(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

(A) The American College of Occupational and Environmental Medicine.

(B) The National Academy of Sciences.

(C) The National Council on Radiation Protection.

(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph

shall be provided in a form that is readily understandable by the employee.

(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

(6) The Secretary shall commence carrying out the program described in this subsection not later than October 23, 1993.

(c) AGREEMENT WITH SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than April 23, 1993, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

(d) DEFINITIONS.—In this section:

(1) The term “Department of Energy defense nuclear facility” has the meaning given that term in section 4604(g).

(2) The term “Department of Energy employee” means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

SEC. 4644. [50 U.S.C. 2734] PROGRAMS FOR PERSONS WHO MAY HAVE BEEN EXPOSED TO RADIATION RELEASED FROM HANFORD NUCLEAR RESERVATION.

(a) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), the Secretary of Energy shall make available \$3,000,000 to the State of Washington, \$1,000,000 to the State of Oregon, and \$1,000,000 to the State of Idaho. Such funds shall be used to develop and implement programs for the benefit of persons who may have been exposed to radiation released from the Department of Energy Hanford Nuclear Reservation (Richland, Washington) between the years 1944 and 1972.

(b) PROGRAMS.—The programs to be developed by the States may include only the following activities:

(1) Preparing and distributing information on the health effects of radiation to health care professionals, and to persons who may have been exposed to radiation.

(2) Developing and implementing mechanisms for referring persons who may have been exposed to radiation to health care professionals with expertise in the health effects of radiation.

(3) Evaluating and, if feasible, implementing, registration and monitoring of persons who may have been exposed to radiation released from the Hanford Nuclear Reservation.

(c) PLAN AND REPORTS.—(1) The States of Washington, Oregon, and Idaho shall jointly develop a single plan for implementing this section.

(2) Not later than May 5, 1991, such States shall submit to the Secretary of Energy and the Congress a copy of the plan developed under paragraph (1).

(3) Not later than May 5, 1992, such States shall submit to the Secretary of Energy and the Congress a single report on the implementation of the plan developed under paragraph (1).

(4) In developing and implementing the plan, such States shall consult with persons carrying out current radiation dose and epide-

miological research programs (including the Hanford Thyroid Disease Study of the Centers for Disease Control and the Hanford Environmental Dose Reconstruction Project of the Department of Energy), and may not cause substantial damage to such research programs.

(d) PROHIBITION ON DISCLOSURE OF EXPOSURE INFORMATION.—

(1) Except as provided in paragraph (2), a person may not disclose to the public the following:

(A) Any information obtained through a program that identifies a person who may have been exposed to radiation released from the Hanford Nuclear Reservation.

(B) Any information obtained through a program that identifies a person participating in any of the programs developed under this section.

(C) The name, address, and telephone number of a person requesting information referred to in subsection (b)(1).

(D) The name, address, and telephone number of a person who has been referred to a health care professional under subsection (b)(2).

(E) The name, address, and telephone number of a person who has been registered and monitored pursuant to subsection (b)(3).

(F) Information that identifies the person from whom information referred to in this paragraph was obtained under a program or any other third party involved with, or identified by, any such information so obtained.

(G) Any other personal or medical information that identifies a person or party referred to in subparagraphs (A) through (F).

(H) Such other information or categories of information as the chief officers of the health departments of the States of Washington, Oregon, and Idaho jointly designate as information covered by this subsection.

(2) Information referred to in paragraph (1) may be disclosed to the public if the person identified by the information, or the legal representative of that person, has consented in writing to the disclosure.

(3) The States of Washington, Oregon, and Idaho shall establish uniform procedures for carrying out this subsection, including procedures governing the following:

(A) The disclosure of information under paragraph (2).

(B) The use of the Hanford Health Information Network database.

(C) The future disposition of the database.

(D) Enforcement of the prohibition provided in paragraph (1) on the disclosure of information described in that paragraph.

TITLE XLVII—BUDGET AND FINANCIAL MANAGEMENT MATTERS

Subtitle A—Recurring National Security Authorization Provisions

SEC. 4701. [50 U.S.C. 2741] DEFINITIONS.

In this subtitle:

(1) The term “DOE national security authorization” means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.

(2) 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.

(3) The term “minor construction threshold” means \$5,000,000.

SEC. 4702. [50 U.S.C. 2742] REPROGRAMMING.

(a) IN GENERAL.—Except as provided in subsection (b) and in sections 4710 and 4711, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

(1) in amounts that exceed, in a fiscal year—

(A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or

(B) \$5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or

(2) which has not been presented to, or requested of, Congress.

(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

(1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and

(2) a period of 30 days has elapsed after the date on which such committees receive the report.

(c) REPORT.—The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

(d) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(e) LIMITATIONS.—

(1) TOTAL AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) PROHIBITED ITEMS.—Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

SEC. 4703. [50 U.S.C. 2743] MINOR CONSTRUCTION PROJECTS.

(a) AUTHORITY.—Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

(b) ANNUAL REPORT.—The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) COST VARIATION REPORTS TO CONGRESSIONAL COMMITTEES.—If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) MINOR CONSTRUCTION PROJECT DEFINED.—In this section, the term “minor construction project” means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

SEC. 4704. [50 U.S.C. 2744] LIMITS ON CONSTRUCTION PROJECTS.

(a) CONSTRUCTION COST CEILING.—Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

(1) the amount authorized for the project; or

(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

(1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and

(2) a period of 30 days has elapsed after the date on which the report is received by the committees.

(c) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(d) EXCEPTION FOR MINOR PROJECTS.—Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

SEC. 4705. [50 U.S.C. 2745] FUND TRANSFER AUTHORITY.

(a) TRANSFER TO OTHER FEDERAL AGENCIES.—The Secretary of Energy may transfer funds authorized to be appropriated to the

Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) **TRANSFER WITHIN DEPARTMENT OF ENERGY.**—

(1) **TRANSFERS PERMITTED.**—Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) **MAXIMUM AMOUNTS.**—Not more than 5 percent of any such authorization may be transferred to another authorization under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) **LIMITATIONS.**—The authority provided by this subsection to transfer authorizations—

(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and

(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) **NOTICE TO CONGRESS.**—The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

SEC. 4706. [50 U.S.C. 2746] CONCEPTUAL AND CONSTRUCTION DESIGN.

(a) **CONCEPTUAL DESIGN.**—

(1) **REQUIREMENT.**—Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

(2) **REQUESTS FOR CONCEPTUAL DESIGN FUNDS.**—If the estimated cost of completing a conceptual design for a construction project exceeds \$3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) **EXCEPTIONS.**—The requirement in paragraph (1) does not apply to a request for funds—

(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

(B) for emergency planning, design, and construction activities under section 4707.

(b) **CONSTRUCTION DESIGN.**—

(1) **AUTHORITY.**—Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering

services) in connection with any proposed construction project if the total estimated cost for such design does not exceed \$600,000.

(2) LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN PROJECTS.—If the total estimated cost for construction design in connection with any construction project exceeds \$600,000, funds for that design must be specifically authorized by law.

SEC. 4707. [50 U.S.C. 2747] AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.

(a) AUTHORITY.—The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) LIMITATION.—The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) SPECIFIC AUTHORITY.—The requirement of section 4706(b)(2) does not apply to emergency planning, design, and construction activities conducted under this section.

SEC. 4708. [50 U.S.C. 2748] SCOPE OF AUTHORITY TO CARRY OUT PLANT PROJECTS.

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

SEC. 4709. [50 U.S.C. 2749] AVAILABILITY OF FUNDS.

(a) IN GENERAL.—Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

(b) EXCEPTION FOR PROGRAM DIRECTION FUNDS.—Amounts appropriated for program direction pursuant to a DOE national security authorization for a fiscal year shall remain available to be obligated only until the end of that fiscal year.

SEC. 4710. [50 U.S.C. 2750] TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.

(a) TRANSFER AUTHORITY FOR DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—

(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) IMPERMISSIBLE USES.—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 4702 shall not apply to transfers of funds pursuant to subsection (a).

(d) NOTIFICATION.—The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) DEFINITIONS.—In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated.

(2) The term “defense environmental management funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.

SEC. 4711. [50 U.S.C. 2751] TRANSFER OF WEAPONS ACTIVITIES FUNDS.

(a) TRANSFER AUTHORITY FOR WEAPONS ACTIVITIES FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) LIMITATIONS.—

(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

- (A) is necessary to address a risk to health, safety, or the environment; or
- (B) will result in cost savings and efficiencies.
- (4) **LIMITATION.**—A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.
- (5) **IMPERMISSIBLE USES.**—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.
- (c) **EXEMPTION FROM REPROGRAMMING REQUIREMENTS.**—The requirements of section 4702 shall not apply to transfers of funds pursuant to subsection (a).
- (d) **NOTIFICATION.**—The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.
- (e) **DEFINITIONS.**—In this section:
- (1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.
- (2) The term “weapons activities funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

SEC. 4712. [50 U.S.C. 2752] FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.

Subject to the provisions of appropriation Acts and section 4702, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

Subtitle B—Penalties

SEC. 4721. [50 U.S.C. 2761] RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER ENVIRONMENTAL LAWS.

- (a) **RESTRICTION.**—Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.
- (b) **EXCEPTION.**—Subsection (a) shall not apply with respect to an environmental requirement if—
- (1) the President fails to request funds for compliance with the environmental requirement; or
- (2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or re-

scinded) and the Secretary of Energy fails to use the funds for such purpose.

SEC. 4722. [50 U.S.C. 2762] RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER CLEAN AIR ACT.

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

Subtitle C—Other Matters

SEC. 4731. [50 U.S.C. 2771] SINGLE REQUEST FOR AUTHORIZATION OF APPROPRIATIONS FOR COMMON DEFENSE AND SECURITY PROGRAMS.

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

TITLE XLVIII—ADMINISTRATIVE MATTERS

Subtitle A—Contracts

SEC. 4801. [50 U.S.C. 2781] COSTS NOT ALLOWED UNDER COVERED CONTRACTS.

(a) **IN GENERAL.**—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded *nolo contendere* to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b)(1) REGULATIONS.—Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:

(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.

(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(c) DEFINITION.—In this section, “covered contract” means a contract for an amount more than \$100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

SEC. 4802. [50 U.S.C. 2782] PROHIBITION AND REPORT ON BONUSES TO CONTRACTORS OPERATING DEFENSE NUCLEAR FACILITIES.

(a) PROHIBITION.—The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor’s compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor’s qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with

respect to contracts entered into, or contract options exercised, after November 29, 1989.

(b) **REPORT ON ROCKY FLATS BONUSES.**—The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than May 29, 1990, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.

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

(d) **REGULATIONS.**—The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.

SEC. 4803. [50 U.S.C. 2783] CONTRACTOR LIABILITY FOR INJURY OR LOSS OF PROPERTY ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS.

(a) **SHORT TITLE.**—This section may be cited as the “Atomic Testing Liability Act”.

(b) **FEDERAL REMEDIES APPLICABLE; EXCLUSIVENESS OF REMEDIES.**—

(1) **REMEDY.**—The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, by the Act of March 9, 1920 (46 U.S.C. App. 741–752), or by the Act of March 3, 1925 (46 U.S.C. App. 781–790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) **EXCLUSIVITY.**—The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(c) **PROCEDURE.**—A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the

Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) **ACTIONS COVERED.**—The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, United States Code, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28, United States Code.

(e) **“CONTRACTOR” DEFINED.**—For purposes of this section, the term “contractor” includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

Subtitle B—Research and Development

SEC. 4811. [50 U.S.C. 2791] LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT PROGRAMS.

(a) **AUTHORITY.**—Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.

(b) **REGULATIONS.**—The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.

(c) **FUNDING.**—Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) **DEFINITION.**—For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

SEC. 4812. [50 U.S.C. 2792] LIMITATIONS ON USE OF FUNDS FOR LABORATORY DIRECTED RESEARCH AND DEVELOPMENT PURPOSES.

(a) **GENERAL LIMITATIONS.**—(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the environmental restoration mission, waste management mission, or materials stabilization mission, as the case may be, of the Department of Energy.

(b) **LIMITATION IN FISCAL YEAR 1998 PENDING SUBMITTAL OF ANNUAL REPORT.**—Not more than 30 percent of the funds authorized to be appropriated or otherwise made available to the Department of Energy in fiscal year 1998 for laboratory directed research and development may be obligated or expended for such research and development until the Secretary of Energy submits to the congressional defense committees the report required by section 4812A(b) in 1998.

(c) **SUBMITTAL DATE FOR ANNUAL REPORT ON LABORATORY DIRECTED RESEARCH AND DEVELOPMENT PROGRAM.**—[Omitted-Amendment]

(d) **ASSESSMENT OF FUNDING LEVEL FOR LABORATORY DIRECTED RESEARCH AND DEVELOPMENT.**—The Secretary shall include in the report submitted under such section 4812A(b)(1) in 1998 an assessment of the funding required to carry out laboratory directed research and development, including a recommendation for the percentage of the funds provided to Government-owned, contractor-operated laboratories for national security activities that should be made available for such research and development under section 4811(c).

(e) **DEFINITION.**—In this section, the term “laboratory directed research and development” has the meaning given that term in section 4811(d).

SEC. 4812A. [50 U.S.C. 2793] LIMITATION ON USE OF FUNDS FOR CERTAIN RESEARCH AND DEVELOPMENT PURPOSES.

(a) **LIMITATION.**—No funds authorized to be appropriated or otherwise made available to the Department of Energy for fiscal year 1997 under section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or coopera-

tive research and development agreement, unless such activities support the national security mission of the Department of Energy.

(b) ANNUAL REPORT.—(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.

(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.

(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.

SEC. 4813. [50 U.S.C. 2794] CRITICAL TECHNOLOGY PARTNERSHIPS.

(a) PARTNERSHIPS.—For the purpose of facilitating the transfer of technology, the Secretary of Energy shall ensure, to the maximum extent practicable, that atomic energy defense activities research on, and development of, any dual-use critical technology is conducted through cooperative research and development agreements, or other arrangements, that involve laboratories of the Department of Energy and other entities.

(b) DEFINITIONS.—In this section:

(1) The term “dual-use critical technology” means a technology—

(A) that is critical to atomic energy defense activities, as determined by the Secretary of Energy;

(B) that has military applications and nonmilitary applications; and

(C) that either—

(i)(I) appears on the list of national critical technologies contained in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)); and

(II) has not been expressly deleted from such list by such a report subsequently submitted to Congress by the President; or

(ii)(I) appears on the list of critical technologies contained in an annual defense critical technologies plan submitted to Congress by the Secretary of Defense pursuant to section 2506 of title 10, United States Code; and

(II) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.

(2) The term “cooperative research and development agreement” has the meaning given that term by section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)).

(3) The term “other entities” means—

(A) firms, or a consortium of firms, that are eligible to participate in a partnership or other arrangement with a laboratory of the Department of Energy, as determined in accordance with applicable law and regulations; or

(B) firms, or a consortium of firms, described in subparagraph (A) in combination with one or more of the following:

(i) Institutions of higher education in the United States.

(ii) Departments and agencies of the Federal Government other than the Department of Energy.

(iii) Agencies of State Governments.

(iv) Any other persons or entities that may be eligible and appropriate, as determined in accordance with applicable laws and regulations.

(4) The term “atomic energy defense activities” does not include activities covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program.³

SEC. 4814. [50 U.S.C. 2795] UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.

(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.

(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.

(b) PROGRAM.—The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.

(c) FUNDING.—Of the funds authorized to be appropriated in title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to the Department of Energy for fiscal year 1998, the Secretary shall make \$5,000,000 available for the establishment and operation of the program under subsection (b).

³The text of the executive order is set out in this volume under Selected Other Matters.

Subtitle C—Facilities Management

SEC. 4831. [50 U.S.C. 2811] TRANSFERS OF REAL PROPERTY AT CERTAIN DEPARTMENT OF ENERGY FACILITIES.

(a) TRANSFER REGULATIONS.—(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) INDEMNIFICATION.—(1) Except as provided in paragraph (3) and subject to subsection (c), in the sale or lease of real property pursuant to the regulations prescribed under subsection (a), the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Secretary has authority to provide indemnification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(c) CONDITIONS.—(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;

(B) furnishes to the Secretary copies of pertinent papers received by the person or entity;

(C) furnishes evidence or proof of the claim;

(D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and

(E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) **AUTHORITY OF SECRETARY OF ENERGY.**—(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1), the Secretary may settle or defend the claim on behalf of that person or entity.

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) **RELATIONSHIP TO OTHER LAW.**—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(f) **DEFINITIONS.**—In this section:

(1) The term “defense nuclear facility” has the meaning provided by the term “Department of Energy defense nuclear facility” in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

(2) The terms “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings provided by section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

SEC. 4832. [50 U.S.C. 2812] ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS.

(a) **AUTHORITY FOR PROGRAMS AT NUCLEAR WEAPONS PRODUCTIONS FACILITIES.**—The Administrator for Nuclear Security shall authorize the head of each nuclear weapons production facility to establish an Engineering and Manufacturing Research, Development, and Demonstration Program under this section.

(b) **PROJECTS AND ACTIVITIES.**—The projects and activities carried out through the program at a nuclear weapons production facility under this section shall support innovative or high-risk design and manufacturing concepts and technologies with potentially high payoff for the nuclear weapons complex. Those projects and activities may include—

(1) replacement of obsolete or aging design and manufacturing technologies;

(2) development of innovative agile manufacturing techniques and processes; and

(3) training, recruitment, or retention of essential personnel in critical engineering and manufacturing disciplines.

(c) **FUNDING.**—The Administrator may authorize the head of each nuclear weapons production facility to obligate up to

\$3,000,000 of funds within the Advanced Design and Production Technologies Campaign available for such facility during fiscal year 2001 to carry out projects and activities of the program under this section at that facility.

(d) **REPORT.**—The Administrator for Nuclear Security shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than September 15, 2001, a report describing, for each nuclear weapons production facility, each project or activity for which funds were obligated under the program, the criteria used in the selection of each such project or activity, the potential benefits of each such project or activity, and the Administrator's recommendation concerning whether the program should be continued.

(e) **DEFINITION.**—For purposes of this section, the term “nuclear weapons production facility” has the meaning given that term in section 3281(2) of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 968; 50 U.S.C. 2471(2)).

SEC. 4833. [50 U.S.C. 2813] PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS.

(a) **PURPOSE.**—The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

(b) **USE OF PROCEEDS TO DEFRAY COSTS.**—(1) Notwithstanding section 3302 of title 31, United States Code, the Secretary may retain from the proceeds of the sale, lease, or disposal of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

- (A) the cost of administering the sale, lease, or disposal;
- (B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and
- (C) any other cost associated with the sale, lease, or disposal.

(c) **COVERED TRANSACTIONS.**—Subsection (b) applies to the following transactions:

(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology

Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are under the jurisdiction of the Defense Environmental Management Program.

(d) **APPLICABILITY OF DISPOSAL AUTHORITY.**—Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40, United States Code, to the disposal of equipment and other personal property covered by this section.

(e) **REPORT.**—Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.

Subtitle D—Other Matters

SEC. 4851. [50 U.S.C. 2821] SEMIANNUAL REPORTS ON LOCAL IMPACT ASSISTANCE.

The Secretary of Energy shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under section 4604(c)(6).

SEC. 4852. [50 U.S.C. 2822] PAYMENT OF COSTS OF OPERATION AND MAINTENANCE OF INFRASTRUCTURE AT NEVADA TEST SITE.

Notwithstanding any other provision of law and effective as of September 30, 1996, the costs associated with operating and maintaining the infrastructure at the Nevada Test Site, Nevada, with respect to any activities initiated at the site after that date by the Department of Defense pursuant to a work-for-others agreement may be paid for from funds authorized to be appropriated to the Department of Energy for activities at the Nevada Test Site.

RADIATION EXPOSURE COMPENSATION ACT

RADIATION EXPOSURE COMPENSATION ACT

Public Law 101-426, as amended (42 U.S.C. 2210 note)

An Act to provide jurisdiction and procedures for claims for compassionate payments for injuries due to exposure to radiation from nuclear testing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Radiation Exposure Compensation Act”.

SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.

(a) FINDINGS.—The Congress finds that—

(1) fallout emitted during the Government’s atmospheric nuclear tests exposed individuals to radiation that is presumed to have generated an excess of cancers among these individuals;

(2) the health of the individuals who were exposed to radiation in these tests was put at risk to serve the national security interests of the United States;

(3) radiation released in underground uranium mines that were providing uranium for the primary use and benefit of the nuclear weapons program of the United States Government exposed miners to large doses of radiation and other airborne hazards in the mine environment that together are presumed to have produced an increased incidence of lung cancer and respiratory diseases among these miners;

(4) the United States should recognize and assume responsibility for the harm done to these individuals; and

(5) the Congress recognizes that the lives and health of uranium miners and of involuntarily” and inserting “individuals who were exposed to radiation were subjected to increased risk of injury and disease to serve the national security interests of the United States.

(b) PURPOSE.—It is the purpose of this Act to establish a procedure to make partial restitution to the individuals described in subsection (a) for the burdens they have borne for the Nation as a whole.

(c) APOLOGY.—The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured.

SEC. 3. TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States, a trust fund to be known as the “Radiation Exposure Compensation Trust Fund” (hereinafter in this Act referred

to as the "Fund"), which shall be administered by the Secretary of the Treasury.

(b) INVESTMENT OF AMOUNTS IN THE FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from any such investment shall be credited to and become a part of the Fund.

(c) AVAILABILITY OF THE FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 6.

(d) TERMINATION.—The Fund shall terminate 22 years after the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000. If all of the amounts in the Fund have not been expended by the end of that 22-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) APPROPRIATION.—

(1) IN GENERAL.—There are appropriated to the Fund, out of any money in the Treasury not otherwise appropriated, for fiscal year 2002 and each fiscal year thereafter through fiscal year 2011, such sums as may be necessary, not to exceed the applicable maximum amount specified in paragraph (2), to carry out the purposes of the Fund.

(2) LIMITATION.—Appropriation of amounts to the Fund pursuant to paragraph (1) is subject to the following maximum amounts:

- (A) For fiscal year 2002, \$172,000,000.
- (B) For fiscal year 2003, \$143,000,000.
- (C) For fiscal year 2004, \$107,000,000.
- (D) For fiscal year 2005, \$65,000,000.
- (E) For fiscal year 2006, \$47,000,000.
- (F) For fiscal year 2007, \$29,000,000.
- (G) For fiscal year 2008, \$29,000,000.
- (H) For fiscal year 2009, \$23,000,000.
- (I) For fiscal year 2010, \$23,000,000.
- (J) For fiscal year 2011, \$17,000,000.

SEC. 4. CLAIMS RELATING TO ATMOSPHERIC NUCLEAR TESTING.

(a) CLAIMS.—

(1) CLAIMS RELATING TO LEUKEMIA.—

(A) IN GENERAL.—An individual described in this subparagraph shall receive an amount specified in subparagraph (B) if the conditions described in subparagraph (C) are met. An individual referred to in the preceding sentence is an individual who—

(i)(I) was physically present in an affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958;

(II) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962; or

(III) participated onsite in a test involving the atmospheric detonation of a nuclear device; and

(ii) submits written documentation that such individual developed leukemia—

(I) after the applicable period of physical presence described in subclause (I) or (II) of clause (i) or onsite participation described in clause (i)(III) (as the case may be); and

(II) more than 2 years after first exposure to fallout.

(B) AMOUNTS.—If the conditions described in subparagraph (C) are met, an individual—

(i) who is described in subclause (I) or (II) of subparagraph (A)(i) shall receive \$50,000; or

(ii) who is described in subclause (III) of subparagraph (A)(i) shall receive \$75,000.

(C) CONDITIONS.—The conditions described in this subparagraph are as follows:

(i) Initial exposure occurred prior to age 21.

(ii) The claim for a payment under subparagraph (B) is filed with the Attorney General by or on behalf of the individual.

(iii) The Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) CLAIMS RELATING TO SPECIFIED DISEASES.—Any individual who—

(A) was physically present in the affected area for a period of at least 2 years during the period beginning on January 21, 1951, and ending on October 31, 1958,

(B) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, or

(C) participated onsite in a test involving the atmospheric detonation of a nuclear device,

and who submits written medical documentation that he or she, after such period of physical presence or such participation (as the case may be), contracted a specified disease, shall receive \$50,000 (in the case of an individual described in subparagraph (A) or (B)) or \$75,000 (in the case of an individual described in subparagraph (C)), if—

(i) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(ii) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(3) CONFORMITY WITH SECTION 6.—Payments under this section may be made only in accordance with section 6.

(4) EXCLUSION.—No payment may be made under this section on any claim of the Government of the Marshall Islands, or of any citizen or national of the Marshall Islands, that is referred to in Article X, Section 1 of the Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of section 177 of the Compact of Free Association (as approved by the Compact of Free Association Act of 1985 (Public Law 99-239)).

(b) DEFINITIONS.—For purposes of this section, the term—

(1) "affected area" means—

(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, Wayne, San Juan, and Piute;

(B) in the State of Nevada, the counties of White Pine, Nye, Lander, Lincoln, Eureka, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71; and

(C) in the State of Arizona, the counties of Coconino, Yavapai, Navajo, Apache, and Gila, and that part of Arizona that is north of the Grand Canyon; and

(2) "specified disease" means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and the onset of the disease was at least 2 years after first exposure, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the: thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (except if cirrhosis or hepatitis B is indicated), or lung.

SEC. 5. CLAIMS RELATING TO URANIUM MINING.

(a) ELIGIBILITY OF INDIVIDUALS.—

(1) IN GENERAL.—An individual shall receive \$100,000 for a claim made under this Act if—

(A) that individual—

(i) was employed in a uranium mine or uranium mill (including any individual who was employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill) located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971; and

(ii)(I) was a miner exposed to 40 or more working level months of radiation or worked for at least 1 year during the period described under clause (i) and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease; or

(II) was a miller or ore transporter who worked for at least 1 year during the period described under clause (i) and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease or renal cancers and other chronic renal disease including nephritis and kidney tubal tissue injury;

(B) the claim for that payment is filed with the Attorney General by or on behalf of that individual; and

(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) INCLUSION OF ADDITIONAL STATES.—Paragraph (1)(A)(i) shall apply to a State, in addition to the States named under such clause, if—

(A) a uranium mine was operated in such State at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(B) the State submits an application to the Department of Justice to include such State; and

(C) the Attorney General makes a determination to include such State.

(3) PAYMENT REQUIREMENT.—Each payment under this section may be made only in accordance with section 6.

(b) DEFINITIONS.—For purposes of this section—

(1) the term “working level month of radiation” means radiation exposure at the level of one working level every work day for a month, or an equivalent exposure over a greater or lesser amount of time;

(2) the term “working level” means the concentration of the short half-life daughters of radon that will release (1.3×10^5) million electron volts of alpha energy per liter of air;

(3) the term “nonmalignant respiratory disease” means fibrosis of the lung, pulmonary fibrosis, corpulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis;

(4) the term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, that is recognized as eligible for special programs and services provided by the United States to Indian tribes because of their status as Indians;

(5) the term “written medical documentation” for purposes of proving a nonmalignant respiratory disease means, in any case in which the claimant is living—

(A)(i) an arterial blood gas study; or

(ii) a written diagnosis by a physician meeting the requirements of subsection (c)(1); and

(B)(i) a chest x-ray administered in accordance with standard techniques and the interpretive reports of a maximum of two National Institute of Occupational Health and Safety certified “B” readers classifying the existence of the nonmalignant respiratory disease of category 1/0 or higher according to a 1989 report of the International Labor Office (known as the “ILO”), or subsequent revisions;

(ii) high resolution computed tomography scans (commonly known as “HRCT scans”) (including computer assisted tomography scans (commonly known as “CAT scans”), magnetic resonance imaging scans (commonly known as “MRI scans”), and positron emission tomography scans (commonly known as “PET scans”)) and interpretive reports of such scans;

(iii) pathology reports of tissue biopsies; or

(iv) pulmonary function tests indicating restrictive lung function, as defined by the American Thoracic Society;

(6) the term “lung cancer”—

(A) means any physiological condition of the lung, trachea, or bronchus that is recognized as lung cancer by the National Cancer Institute; and

(B) includes in situ lung cancers;

(7) the term “uranium mine” means any underground excavation, including “dog holes”, as well as open pit, strip, rim, surface, or other aboveground mines, where uranium ore or vanadium-uranium ore was mined or otherwise extracted; and

(8) the term “uranium mill” includes milling operations involving the processing of uranium ore or vanadium-uranium ore, including both carbonate and acid leach plants.

(c) WRITTEN DOCUMENTATION.—

(1) DIAGNOSIS ALTERNATIVE TO ARTERIAL BLOOD GAS STUDY.—

(A) IN GENERAL.—For purposes of this Act, the written diagnosis and the accompanying interpretive reports described in subsection (b)(5)(A) shall—

(i) be considered to be conclusive; and

(ii) be subject to a fair and random audit procedure established by the Attorney General.

(B) CERTAIN WRITTEN DIAGNOSES.—

(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described under clause (ii) of a nonmalignant pulmonary disease of a claimant that is accompanied by written documentation shall be considered to be conclusive evidence of that disease.

(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

(I) is employed by the Indian Health Service or the Department of Veterans Affairs; or

(II) is a board certified physician; and

(III) has a documented ongoing physician patient relationship with the claimant.

(2) CHEST X-RAYS.—

(A) IN GENERAL.—For purposes of this Act, a chest x-ray and the accompanying interpretive reports described in subsection (b)(5)(B) shall—

(i) be considered to be conclusive; and

(ii) be subject to a fair and random audit procedure established by the Attorney General.

(B) CERTAIN WRITTEN DIAGNOSES.—

(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described in clause (ii) of a nonmalignant pulmonary disease of a claimant that is accompanied by written documentation that meets the definition of that term under subsection (b)(5) shall be considered to be conclusive evidence of that disease.

(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

(I) is employed by—

(aa) the Indian Health Service; or

(bb) the Department of Veterans Affairs;

and

(II) has a documented ongoing physician patient relationship with the claimant.

SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.

(a) **ESTABLISHMENT OF FILING PROCEDURES.**—The Attorney General shall establish procedures whereby individuals may submit claims for payments under this Act. In establishing procedures under this subsection, the Attorney General shall take into account and make allowances for the law, tradition, and customs of Indian tribes (as that term is defined in section 5(b)) and members of Indian tribes, to the maximum extent practicable.

(b) **DETERMINATION OF CLAIMS.**—

(1) **IN GENERAL.**—The Attorney General shall, in accordance with this subsection, determine whether each claim filed under this Act meets the requirements of this Act. All reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.

(2) **CONSULTATION.**—The Attorney General shall—

(A) in consultation with the Surgeon General, establish guidelines for determining what constitutes written medical documentation that an individual contracted leukemia under section 4(a)(1), a specified disease under section 4(a)(2), or other disease specified in section 5;

(B) in consultation with the Director of the National Institute for Occupational Safety and Health, establish guidelines for determining what constitutes documentation that an individual was exposed to the working level months of radiation under section 5; and

(C) in consultation with the Secretary of Defense and the Secretary of Energy, establish guidelines for determining what constitutes documentation that an individual participated onsite in a test involving the atmospheric detonation of a nuclear device under section 4(a)(2)(C).

The Attorney General may consult with the Surgeon General with respect to making determinations pursuant to the guidelines issued under subparagraph (A), with the Director of the National Institute for Occupational Safety and Health with respect to making determinations pursuant to the guidelines issued under subparagraph (B), and with the Secretary of Defense and the Secretary of Energy with respect to making determinations pursuant to the guidelines issued under subparagraph (C).

(c) **PAYMENT OF CLAIMS.**—

(1) **IN GENERAL.**—The Attorney General shall pay, from amounts available in the Fund, claims filed under this Act which the Attorney General determines meet the requirements of this Act.

(2) **OFFSET FOR CERTAIN PAYMENTS.**—(A) A payment to an individual, or to a survivor of that individual, under this section on a claim under subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4 or a claim under section 5 shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of—

(i) exposure to radiation, from atmospheric nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4, or

(ii) exposure to radiation in a uranium mine at any time during the period described in section 5(a).

(B) A payment to an individual, or to a survivor of that individual, under this section on a claim under section 4(a)(2)(C) shall be offset by the amount of—

(i) any payment made pursuant to a final award or settlement on a claim (other than a claim for workers' compensation), against any person, or

(ii) any payment made by the Department of Veterans Affairs,

that is based on injuries incurred by that individual on account of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. The amount of the offset under this subparagraph with respect to payments described in clauses (i) and (ii) shall be the actuarial present value of such payments.

(3) RIGHT OF SUBROGATION.—Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in paragraph (2).

(4) PAYMENTS IN THE CASE OF DECEASED PERSONS.—

(A) IN GENERAL.—In the case of an individual who is deceased at the time of payment under this section, such payment may be made only as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the individual who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

(iv) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii) or parents described in clause (iii), such payment shall be made in equal shares to all grandchildren of the individual who are living at the time of payment.

(v) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii), parents described in clause (iii), or grandchildren described in clause (iv), then such payment shall be made in equal shares to the grandparents of the individual who are living at the time of payment.

(B) INDIVIDUALS WHO ARE SURVIVORS.—If an individual eligible for payment under section 4 or 5 dies before filing a claim under this Act, a survivor of that individual who may receive payment under subparagraph (A) may file a claim for such payment under this Act.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(ii) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(iii) a “parent” includes fathers and mothers through adoption;

(iv) a “grandchild” of an individual is a child of a child of that individual; and

(v) a “grandparent” of an individual is a parent of a parent of that individual.

(D) APPLICATION OF NATIVE AMERICAN LAW.—In determining those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship, such determination shall take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(d) ACTION ON CLAIMS.—

(1) IN GENERAL.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (a) not later than twelve months after the claim is so filed. For purposes of determining when the 12-month period ends, a claim under this Act shall be deemed filed as of the date of its receipt by the Attorney General. In the event of the denial of a claim, the claimant shall be permitted a reasonable period in which to seek administrative review of the denial by the Attorney General. The Attorney General shall make a final determination with respect to any administrative review within 90 days after the receipt of the claimant’s request for such review. In the event the Attorney General fails to render a determination within 12 months after the date of the receipt of such request, the claim shall be deemed awarded as a matter of law and paid.

(2) ADDITIONAL INFORMATION.—The Attorney General may request from any claimant under this Act, or from any individual or entity on behalf of any such claimant, any reasonable additional information or documentation necessary to complete the determination on the claim in accordance with the procedures established under subsection (a).

(3) TREATMENT OF PERIOD ASSOCIATED WITH REQUEST.—

(A) IN GENERAL.—The period described in subparagraph (B) shall not apply to the 12-month limitation under paragraph (1).

(B) PERIOD.—The period described in this subparagraph is the period—

(i) beginning on the date on which the Attorney General makes a request for additional information or documentation under paragraph (2); and

(ii) ending on the date on which the claimant or individual or entity acting on behalf of that claimant submits that information or documentation or informs the Attorney General that it is not possible to provide that information or that the claimant or individual or entity will not provide that information.

(4) PAYMENT WITHIN 6 WEEKS.—The Attorney General shall ensure that an approved claim is paid not later than 6 weeks after the date on which such claim is approved.

(5) NATIVE AMERICAN CONSIDERATIONS.—Any procedures under this subsection shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans.

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—Except as otherwise authorized by law, the acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States, or against any person with respect to that person's performance of a contract with the United States, that arise out of exposure to radiation, from atmospheric nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4, exposure to radiation in a uranium mine, mill, or while employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill at any time during the period described in section 5(a), or exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device.

(f) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any individual.

(g) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

(h) CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(i) USE OF EXISTING RESOURCES.—The Attorney General should use funds and resources available to the Attorney General to carry out his or her functions under this Act.

(j) REGULATORY AUTHORITY.—The Attorney General may issue such regulations as are necessary to carry out this Act.

(k) ISSUANCE OF REGULATIONS, GUIDELINES, AND PROCEDURES.—Regulations, guidelines, and procedures to carry out this Act shall be issued not later than 180 days after the date of the

enactment of this Act. Not later than 180 days after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, the Attorney General shall issue revised regulations to carry out this Act.

(1) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

SEC. 7. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE; CHOICE OF REMEDIES.

(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—No claim cognizable under this Act shall be assignable or transferable.

(b) CHOICE OF REMEDIES.—No individual may receive more than 1 payment under this Act.

SEC. 8. LIMITATIONS ON CLAIMS.

(a) IN GENERAL.—A claim to which this Act applies shall be barred unless the claim is filed within 22 years after the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000.

(b) RESUBMITTAL OF CLAIMS.—After the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000, any claimant who has been denied compensation under this Act may resubmit a claim for consideration by the Attorney General in accordance with this Act not more than three times. Any resubmittal made before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 shall not be applied to the limitation under the preceding sentence.

SEC. 9. ATTORNEY FEES.

(a) GENERAL RULE.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in subsection (b) of a payment made under this Act on such claim.

(b) APPLICABLE PERCENTAGE LIMITATIONS.—The percentage referred to in subsection (a) is—

(1) 2 percent for the filing of an initial claim; and

(2) 10 percent with respect to—

(A) any claim with respect to which a representative has made a contract for services before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000; or

(B) a resubmission of a denied claim.

(c) PENALTY.—Any such representative who violates this section shall be fined not more than \$5,000.

SEC. 10. CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.

A payment made under this Act shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under this Act shall not affect any

claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 11. BUDGET ACT.

No authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year except to such extent or in such amounts as are provided in advance in appropriations Acts.

SEC. 12. REPORT.

(a) **REPORT.**—The Secretary of Health and Human Services shall submit a report on the incidence of radiation related moderate or severe silicosis and pneumoconiosis in uranium miners employed in the uranium mines that are defined in section 5 and are located off of Indian reservations.

(b) **COMPLETION.**—Such report shall be completed not later than September 30, 1992.

SEC. 13. REPEAL.

Section 1631 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1985 (42 U.S.C. 2212) is repealed.

SEC. 14. GAO REPORTS.

(a) **IN GENERAL.**—Not later than 18 months after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, and every 18 months thereafter, the General Accounting Office shall submit a report to Congress containing a detailed accounting of the administration of this Act by the Department of Justice.

(b) **CONTENTS.**—Each report submitted under this section shall include an analysis of—

(1) claims, awards, and administrative costs under this Act; and

(2) the budget of the Department of Justice relating to this Act.

**ENERGY EMPLOYEES OCCUPATIONAL ILLNESS
COMPENSATION PROGRAM ACT OF 2000**

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398, approved Oct. 30, 2000), as amended

TITLE XXXVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

- Sec. 3601. Short title.
- Sec. 3602. Findings; sense of Congress.

Subtitle A—Establishment of Compensation Program and Compensation Fund

- Sec. 3611. Establishment of Energy Employees Occupational Illness Compensation Program.
- Sec. 3612. Establishment of Energy Employees Occupational Illness Compensation Fund.
- Sec. 3613. Legislative proposal.
- Sec. 3614. Authorization of appropriations.

Subtitle B—Program Administration

- Sec. 3621. Definitions for program administration.
- Sec. 3622. Expansion of list of beryllium vendors.
- Sec. 3623. Exposure in the performance of duty.
- Sec. 3624. Advisory Board on Radiation and Worker Health.
- Sec. 3625. Responsibilities of Secretary of Health and Human Services.
- Sec. 3626. Designation of additional members of Special Exposure Cohort.
- Sec. 3627. Separate treatment of chronic silicosis.
- Sec. 3628. Compensation and benefits to be provided.
- Sec. 3629. Medical benefits.
- Sec. 3630. Separate treatment of certain uranium employees.
- Sec. 3631. Assistance for claimants and potential claimants.

Subtitle C—Treatment, Coordination, and Forfeiture of Compensation and Benefits

- Sec. 3641. Offset for certain payments.
- Sec. 3642. Subrogation of the United States.
- Sec. 3643. Payment in full settlement of claims.
- Sec. 3644. Exclusivity of remedy against the United States and against contractors and subcontractors.
- Sec. 3645. Election of remedy for beryllium employees and atomic weapons employees.
- Sec. 3646. Certification of treatment of payments under other laws.
- Sec. 3647. Claims not assignable or transferable; choice of remedies.
- Sec. 3648. Attorney fees.
- Sec. 3649. Certain claims not affected by awards of damages.
- Sec. 3650. Forfeiture of benefits by convicted felons.
- Sec. 3651. Coordination with other Federal radiation compensation laws.

Subtitle D—Assistance in State Workers' Compensation Proceedings

- Sec. 3661. Agreements with States.

SEC. 3601. [42 U.S.C. 7384 note] SHORT TITLE.

This title may be cited as the “Energy Employees Occupational Illness Compensation Program Act of 2000”.

SEC. 3602. [42 U.S.C. 7384] FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.

(2) Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

(3) Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

(4) The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers’ compensation claims and has imposed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers’ compensation coverage for occupational disease.

(5) Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

(6) While linking exposure to occupational hazards with the development of occupational disease is sometimes difficult, scientific evidence supports the conclusion that occupational exposure to dust particles or vapor of beryllium can cause beryllium sensitivity and chronic beryllium disease. Furthermore, studies indicate that 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

(7) Existing information indicates that State workers’ compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites.

(8) To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing

programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(9) On April 12, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with a broad range of work-related illnesses throughout the Department of Energy's nuclear weapons complex.

(10) However, as of October 2, 2000, the Administration has failed to provide Congress with the necessary legislative and budget proposals to enact the promised compensation program.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a program should be established to provide compensation to covered employees;

(2) a fund for payment of such compensation should be established on the books of the Treasury;

(3) payments from that fund should be made only after—

(A) the identification of employees of the Department of Energy (including its predecessor agencies), and of contractors of the Department, who may be members of the group of covered employees;

(B) the establishment of a process to receive and administer claims for compensation for disability or death of covered employees;

(C) the submittal by the President of a legislative proposal for compensation of such employees that includes the estimated annual budget resources for that compensation; and

(D) consideration by the Congress of the legislative proposal submitted by the President; and

(4) payments from that fund should commence not later than fiscal year 2002.

Subtitle A—Establishment of Compensation Program and Compensation Fund

SEC. 3611. [42 U.S.C. 7384d] ESTABLISHMENT OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

(a) PROGRAM ESTABLISHED.—There is hereby established a program to be known as the “Energy Employees Occupational Illness Compensation Program” (in this title referred to as the “compensation program”). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) PURPOSE OF PROGRAM.—The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

(c) ELIGIBILITY FOR COMPENSATION.—The eligibility of covered employees for compensation under the compensation program shall be determined in accordance with the provisions of subtitle B as

may be modified by a law enacted after the date of the submittal of the proposal for legislation required by section 3613.

SEC. 3612. [42 U.S.C. 7384e] ESTABLISHMENT OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND.

(a) **ESTABLISHMENT.**—There is hereby established on the books of the Treasury a fund to be known as the “Energy Employees Occupational Illness Compensation Fund” (in this title referred to as the “compensation fund”).

(b) **AMOUNTS IN COMPENSATION FUND.**—The compensation fund shall consist of the following amounts:

(1) Amounts appropriated to the compensation fund pursuant to the authorization of appropriations in section 3614(b).

(2) Amounts transferred to the compensation fund under subsection (c).

(c) **FINANCING OF COMPENSATION FUND.**—Upon the exhaustion of amounts in the compensation fund attributable to the authorization of appropriations in section 3614(b), the Secretary of the Treasury shall transfer directly to the compensation fund from the General Fund of the Treasury, without further appropriation, such amounts as are further necessary to carry out the compensation program.

(d) **USE OF COMPENSATION FUND.**—Subject to subsection (e), amounts in the compensation fund shall be used to carry out the compensation program.

(e) **ADMINISTRATIVE COSTS NOT PAID FROM COMPENSATION FUND.**—No cost incurred in carrying out the compensation program, or in administering the compensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) **INVESTMENT OF AMOUNTS IN COMPENSATION FUND.**—Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

SEC. 3613. [42 U.S.C. 7384f] LEGISLATIVE PROPOSAL.

(a) **LEGISLATIVE PROPOSAL REQUIRED.**—Not later than March 15, 2001, the President shall submit to Congress a proposal for legislation to implement the compensation program. The proposal for legislation shall include, at a minimum, the specific recommendations (including draft legislation) of the President for the following:

(1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.

(2) Any adjustments or modifications necessary to appropriately administer the compensation program under subtitle B.

(3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.

(4) Whether to expand the class of individuals who are members of the Special Exposure Cohort (as defined in section 3621(14)).

(b) ASSESSMENT OF POTENTIAL COVERED EMPLOYEES AND REQUIRED AMOUNTS.—The President shall include with the proposal for legislation under subsection (a) the following:

(1) An estimate of the number of covered employees that the President determines were exposed in the performance of duty.

(2) An estimate, for each fiscal year of the compensation program, of the amounts to be required for compensation and benefits anticipated to be provided in such fiscal year under the compensation program.

SEC. 3614. [42 U.S.C. 7384g] AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Pursuant to the authorization of appropriations in section 3103(a), \$25,000,000 may be used for purposes of carrying out this title.

(b) COMPENSATION FUND.—There is hereby authorized to be appropriated \$250,000,000 to the Energy Employees Occupational Illness Compensation Fund established by section 3612.

Subtitle B—Program Administration

SEC. 3621. [42 U.S.C. 7384i] DEFINITIONS FOR PROGRAM ADMINISTRATION.

In this title:

(1) The term “covered employee” means any of the following:

(A) A covered beryllium employee.

(B) A covered employee with cancer.

(C) To the extent provided in section 3627, a covered employee with chronic silicosis (as defined in that section).

(2) The term “atomic weapon” has the meaning given that term in section 11 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(d)).

(3) The term “atomic weapons employee” means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(4) The term “atomic weapons employer” means an entity, other than the United States, that—

(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(5) The term “atomic weapons employer facility” means a facility, owned by an atomic weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(6) The term “beryllium vendor” means any of the following:

- (A) Atomics International.
 - (B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.
 - (C) General Atomics.
 - (D) General Electric Company.
 - (E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.
 - (F) Nuclear Materials and Equipment Corporation.
 - (G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.
 - (H) Wyman Gordan, Incorporated.
 - (I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 3622.
- (7) The term “covered beryllium employee” means the following, if and only if the employee is determined to have been exposed to beryllium in the performance of duty in accordance with section 3623(a):
- (A) A current or former employee (as that term is defined in section 8101(1) of title 5, United States Code) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.
 - (B) A current or former employee of—
 - (i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or
 - (ii) any contractor or subcontractor that provided services, including construction and maintenance, at such a facility.
 - (C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.
- (8) The term “covered beryllium illness” means any of the following:
- (A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.
 - (B) Established chronic beryllium disease.
 - (C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).
- (9) The term “covered employee with cancer” means any of the following:
- (A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons

employer facility (in the case of an atomic weapons employee).

(B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (ii), if and only if that individual is determined to have sustained that cancer in the performance of duty in accordance with section 3623(b).

(ii) Clause (i) applies to any of the following:

(I) A Department of Energy employee who contracted that cancer after beginning employment at a Department of Energy facility.

(II) A Department of Energy contractor employee who contracted that cancer after beginning employment at a Department of Energy facility.

(III) An atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility.

(10) The term "Department of Energy" includes the predecessor agencies of the Department of Energy, including the Manhattan Engineering District.

(11) The term "Department of Energy contractor employee" means any of the following:

(A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.

(B) An individual who is or was employed at a Department of Energy facility by—

(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(12) The term "Department of Energy facility" means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(13) The term "established chronic beryllium disease" means chronic beryllium disease as established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with para-

graph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

(i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) any three of the following criteria:

(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(14) The term “member of the Special Exposure Cohort” means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee’s body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Canikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 3626.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 180 days after the date on which the President submits to Congress a report identifying the individuals covered by

the designation and describing the criteria used in designating those individuals.

(15) The term “occupational illness” means a covered beryllium illness, cancer referred to in section 3621(9)(B), specified cancer, or chronic silicosis, as the case may be.

(16) The term “radiation” means ionizing radiation in the form of—

- (A) alpha particles;
- (B) beta particles;
- (C) neutrons;
- (D) gamma rays; or
- (E) accelerated ions or subatomic particles from accelerator machines.

(17) The term “specified cancer” means any of the following:

- (A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).
- (B) Bone cancer.
- (C) Renal cancers.
- (D) Leukemia (other than chronic lymphocytic leukemia), if initial occupation exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.

SEC. 3622. [42 U.S.C. 7384m] EXPANSION OF LIST OF BERYLLIUM VENDORS.

Not later than December 31, 2002, the President may, in consultation with the Secretary of Energy, designate as a beryllium vendor for purposes of section 3621(6) any vendor, processor, or producer of beryllium or related products not previously listed under or designated for purposes of such section 3621(6) if the President finds that such vendor, processor, or producer has been engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy in a manner similar to the entities listed in such section 3621(6).

SEC. 3623. [42 U.S.C. 7384n] EXPOSURE IN THE PERFORMANCE OF DUTY.

(a) BERYLLIUM.—A covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

- (1) employed at a Department of Energy facility; or
- (2) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the Department of Energy;

during a period when beryllium dust, particles, or vapor may have been present at such facility.

(b) CANCER.—An individual with cancer specified in subclause (I), (II), or (III) of section 3621(9)(B)(ii) shall be determined to have sustained that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment

at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c).

(c) GUIDELINES.—(1) For purposes of the compensation program, the President shall by regulation establish guidelines for making the determinations required by subsection (b).

(2) The President shall establish such guidelines after technical review by the Advisory Board on Radiation and Worker Health under section 3624.

(3) Such guidelines shall—

(A) be based on the radiation dose received by the employee (or a group of employees performing similar work) at such facility and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated under section 7(b)(3) of such Act from time to time;

(B) incorporate the methods established under subsection (d); and

(C) take into consideration the type of cancer, past health-related activities (such as smoking), information on the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors.

(d) METHODS FOR RADIATION DOSE RECONSTRUCTIONS.—(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 3621(9) at a facility specified in that subparagraph by each of the following employees:

(A) An employee who was not monitored for exposure to radiation at such facility.

(B) An employee who was monitored inadequately for exposure to radiation at such facility.

(C) An employee whose records of exposure to radiation at such facility are missing or incomplete.

(2) The President shall establish an independent review process using the Advisory Board on Radiation and Worker Health to—

(A) assess the methods established under paragraph (1); and

(B) verify a reasonable sample of the doses established under paragraph (1).

(e) INFORMATION ON RADIATION DOSES) The Secretary of Energy shall provide, to each covered employee with cancer specified in section 3621(9)(B), information specifying the estimated radiation dose of that employee during each employment specified in section 3621(9)(B), whether established by a dosimetry reading, by a method established under subsection (d), or by both a dosimetry reading and such method.

(2) The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses under subsection (d). The

actions taken under this paragraph shall be consistent with the protection of private medical records.

SEC. 3624. [42 U.S.C. 7384o] ADVISORY BOARD ON RADIATION AND WORKER HEALTH.

(a) ESTABLISHMENT.—(1) Not later than 120 days after the date of the enactment of this Act, the President shall establish and appoint an Advisory Board on Radiation and Worker Health (in this section referred to as the “Board”).

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a balance of scientific, medical, and worker perspectives.

(3) The President shall designate a Chair for the Board from among its members.

(b) DUTIES.—The Board shall advise the President on—

(1) the development of guidelines under section 3623(c);

(2) the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and

(3) such other matters related to radiation and worker health in Department of Energy facilities as the President considers appropriate.

(c) STAFF.—(1) The President shall appoint a staff to facilitate the work of the Board. The staff shall be headed by a Director who shall be appointed under subchapter VIII of chapter 33 of title 5, United States Code.

(2) The President may accept as staff of the Board personnel on detail from other Federal agencies. The detail of personnel under this paragraph may be on a nonreimbursable basis.

(d) EXPENSES.—Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 3625. [42 U.S.C. 7384p] RESPONSIBILITIES OF SECRETARY OF HEALTH AND HUMAN SERVICES.

The Secretary of Health and Human Services shall carry out that Secretary's responsibilities with respect to the compensation program with the assistance of the Director of the National Institute for Occupational Safety and Health.

SEC. 3626. [42 U.S.C. 7384q] DESIGNATION OF ADDITIONAL MEMBERS OF SPECIAL EXPOSURE COHORT.

(a) ADVICE ON ADDITIONAL MEMBERS.—(1) The Advisory Board on Radiation and Worker Health under section 3624 shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

(2) The advice of the Advisory Board on Radiation and Worker Health under paragraph (1) shall be based on exposure assessments by radiation health professionals, information provided by

the Department of Energy, and such other information as the Advisory Board considers appropriate.

(3) The President shall request advice under paragraph (1) after consideration of petitions by classes of employees described in that paragraph for such advice. The President shall consider such petitions pursuant to procedures established by the President.

(b) DESIGNATION OF ADDITIONAL MEMBERS.—Subject to the provisions of section 3621(14)(C), the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

(c) ACCESS TO INFORMATION.—The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))).

SEC. 3627. [42 U.S.C. 7384r] SEPARATE TREATMENT OF CHRONIC SILICOSIS.

(a) SENSE OF CONGRESS.—The Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this title to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) CERTIFICATION BY PRESIDENT.—A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 3621(1)) for the purposes of the compensation program required by section 3611 unless the President submits to Congress not later than 180 days after the date of the enactment of this Act the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) EXPOSURE TO SILICA IN THE PERFORMANCE OF DUTY.—A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) COVERED EMPLOYEE WITH CHRONIC SILICOSIS.—For purposes of this title, the term “covered employee with chronic silicosis” means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c).

(e) CHRONIC SILICOSIS.—For purposes of this title, the term “chronic silicosis” means a non-malignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

(B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

SEC. 3628. [42 U.S.C. 7384s] COMPENSATION AND BENEFITS TO BE PROVIDED.

(a) COMPENSATION PROVIDED.—(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee’s occupational illness in the amount of \$150,000.

(2) A covered employee shall, to the extent that employee’s occupational illness is established beryllium sensitivity, receive beryllium sensitivity monitoring under subsection (c) in lieu of compensation under paragraph (1).

(b) MEDICAL BENEFITS.—A covered employee shall receive medical benefits under section 3629 for that employee’s occupational illness.

(c) BERYLLIUM SENSITIVITY MONITORING.—An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

(1) A thorough medical examination to confirm the nature and extent of the individual’s established beryllium sensitivity.

(2) Regular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease.

(d) PAYMENT FROM COMPENSATION FUND.—The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 3612.

(e) PAYMENTS IN THE CASE OF DECEASED PERSONS.—(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee’s occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A);
and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,
then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a “parent” includes fathers and mothers through adoption;

(D) a “grandchild” of an individual is a child of a child of that individual; and

(E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) EFFECTIVE DATE.—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

SEC. 3629. [42 U.S.C. 7384t] MEDICAL BENEFITS.

(a) **MEDICAL BENEFITS PROVIDED.**—The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

(b) **PERSONS FURNISHING BENEFITS.**—(1) These services, appliances, and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the individual's option, by or on the order of physicians and hospitals designated or approved by the President.

(2) The individual may initially select a physician to provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President considers necessary.

(c) **TRANSPORTATION AND EXPENSES.**—The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) **COMMENCEMENT OF BENEFITS.**—An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this title.

(e) **PAYMENT FROM COMPENSATION FUND.**—The benefits provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 3612.

(f) **EFFECTIVE DATE.**—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

SEC. 3630. [42 U.S.C. 7384u] SEPARATE TREATMENT OF CERTAIN URANIUM EMPLOYEES.

(a) **COMPENSATION PROVIDED.**—An individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act (hereinafter in this section referred to as a “covered uranium employee”), or the survivor of that covered uranium employee if the employee is deceased, shall receive compensation under this section in the amount of \$50,000.

(b) **MEDICAL BENEFITS.**—A covered uranium employee shall receive medical benefits under section 3629 for the illness for which that employee received \$100,000 under section 5 of that Act.

(c) **COORDINATION WITH RECA.**—The compensation and benefits provided in subsections (a) and (b) are separate from any compensation or benefits provided under that Act.

(d) **PAYMENT FROM COMPENSATION FUND.**—The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 3612.

(e) **PAYMENTS IN THE CASE OF DECEASED PERSONS.**—(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A);

and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a “parent” includes fathers and mothers through adoption;

(D) a “grandchild” of an individual is a child of a child of that individual; and

(E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) PROCEDURES REQUIRED.—The President shall establish procedures to identify and notify each covered uranium employee, or the survivor of that covered uranium employee if that employee is

deceased, of the availability of compensation and benefits under this section.

(g) EFFECTIVE DATE.—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

SEC. 3631. [42 U.S.C. 7384v] ASSISTANCE FOR CLAIMANTS AND POTENTIAL CLAIMANTS.

(a) ASSISTANCE FOR CLAIMANTS.—The President shall, upon the receipt of a request for assistance from a claimant under the compensation program, provide assistance to the claimant in connection with the claim, including—

(1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(2) such other assistance as may be required to develop facts pertinent to the claim.

(b) ASSISTANCE FOR POTENTIAL CLAIMANTS.—The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

(1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;

(2) provide such covered employees and other potential claimants with information and other support necessary for making claims, including—

(A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and

(3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) INFORMATION FROM BERYLLIUM VENDORS AND OTHER CONTRACTORS.—As part of the assistance program provided under subsections (a) and (b), and as permitted by law, the Secretary of Energy shall, upon the request of the President, require a beryllium vendor or other Department of Energy contractor or subcontractor to provide information relevant to a claim or potential claim under the compensation program to the President.

Subtitle C—Treatment, Coordination, and Forfeiture of Compensation and Benefits

SEC. 3641. [42 U.S.C. 7385] OFFSET FOR CERTAIN PAYMENTS.

A payment of compensation to an individual, or to a survivor of that individual, under subtitle B shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of the exposure of a covered beryllium employee, covered employee with cancer, covered employee with chronic silicosis (as de-

fined in section 3627), or covered uranium employee (as defined in section 3630), while so employed, to beryllium, radiation, silica, or radiation, respectively.

SEC. 3642. [42 U.S.C. 7385a] SUBROGATION OF THE UNITED STATES.

Upon payment of compensation under subtitle B, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 3641.

SEC. 3643. [42 U.S.C. 7385b] PAYMENT IN FULL SETTLEMENT OF CLAIMS.

The acceptance by an individual of payment of compensation under subtitle B with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 3641.

SEC. 3644. [42 U.S.C. 7385c] EXCLUSIVITY OF REMEDY AGAINST THE UNITED STATES AND AGAINST CONTRACTORS AND SUBCONTRACTORS.

(a) IN GENERAL.—The liability of the United States or an instrumentality of the United States under this title with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

(1) of—

(A) the United States;

(B) any instrumentality of the United States;

(C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);

(D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee's legal representative, spouse, dependents, survivors and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them;

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) **APPLICABILITY.**—This section applies to all cases filed on or after the date of the enactment of this Act.

(c) **WORKERS' COMPENSATION.**—This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

SEC. 3645. [42 U.S.C. 7385d] ELECTION OF REMEDY FOR BERYLLIUM EMPLOYEES AND ATOMIC WEAPONS EMPLOYEES.

(a) **EFFECT OF TORT CASES FILED BEFORE ENACTMENT OF ORIGINAL LAW.**—(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) before October 30, 2000, such individual shall be eligible for compensation and benefits under subtitle B.

(2) If such tort case remained pending as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) **EFFECT OF TORT CASES FILED BETWEEN ENACTMENT OF ORIGINAL LAW AND ENACTMENT OF 2001 AMENDMENTS.**—(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) during the period beginning on October 30, 2000, and ending on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by subtitle B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 3623.

(c) **EFFECT OF TORT CASES FILED AFTER ENACTMENT OF 2001 AMENDMENTS.**—(1) If an otherwise eligible individual files a tort case specified in subsection (d) after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by subtitle B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 3623.

(d) COVERED TORT CASES.—A tort case specified in this subsection is a tort case alleging a claim referred to in section 3643 against a beryllium vendor or atomic weapons employer.

(e) WORKERS' COMPENSATION.—This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

SEC. 3646. [42 U.S.C. 7385e] CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.

Compensation or benefits provided to an individual under subtitle B—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

SEC. 3647. [42 U.S.C. 7385f] CLAIMS NOT ASSIGNABLE OR TRANSFERABLE; CHOICE OF REMEDIES.

(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—No claim cognizable under subtitle B shall be assignable or transferable.

(b) CHOICE OF REMEDIES.—No individual may receive more than one payment of compensation under subtitle B.

SEC. 3648. [42 U.S.C. 7385g] ATTORNEY FEES.

(a) GENERAL RULE.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under subtitle B, more than that percentage specified in subsection (b) of a payment made under subtitle B on such claim.

(b) APPLICABLE PERCENTAGE LIMITATIONS.—The percentage referred to in subsection (a) is—

(1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) INAPPLICABILITY TO OTHER SERVICES.—This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) PENALTY.—Any such representative who violates this section shall be fined not more than \$5,000.

SEC. 3649. [42 U.S.C. 7385h] CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.

A payment under subtitle B shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under subtitle B shall not affect any

claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 3650. [42 U.S.C. 7385i] FORFEITURE OF BENEFITS BY CONVICTED FELONS.

(a) **FORFEITURE OF COMPENSATION.**—Any individual convicted of a violation of section 1920 of title 18, United States Code, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under subtitle B or under any other Federal or State workers' compensation law, shall forfeit (as of the date of such conviction) any entitlement to any compensation or benefit under subtitle B such individual would otherwise be awarded for any injury, illness or death covered by subtitle B for which the time of injury was on or before the date of the conviction.

(b) **FORMATION.**—Notwithstanding section 552a of title 5, United States Code, or any other Federal or State law, an agency of the United States, a State, or a political subdivision of a State shall make available to the President, upon written request from the President and if the President requires the information to carry out this section, the names and Social Security account numbers of individuals confined, for conviction of a felony, in a jail, prison, or other penal institution or correctional facility under the jurisdiction of that agency.

SEC. 3651. [42 U.S.C. 7385j] COORDINATION WITH OTHER FEDERAL RADIATION COMPENSATION LAWS.

Except in accordance with section 3630, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of title 38, United States Code.

Subtitle D—Assistance in State Workers' Compensation Proceedings

SEC. 3661. [42 U.S.C. 7385o] AGREEMENTS WITH STATES.

(a) **AGREEMENTS AUTHORIZED.**—The Secretary of Energy (hereinafter in this section referred to as the "Secretary") may enter into agreements with the chief executive officer of a State to provide assistance to a Department of Energy contractor employee in filing a claim under the appropriate State workers' compensation system.

(b) **PROCEDURE.**—Pursuant to agreements under subsection (a), the Secretary may—

(1) establish procedures under which an individual may submit an application for review and assistance under this section; and

(2) review an application submitted under this section and determine whether the applicant submitted reasonable evidence that—

(A) the application was filed by or on behalf of a Department of Energy contractor employee or employee's estate; and

(B) the illness or death of the Department of Energy contractor employee may have been related to employment at a Department of Energy facility.

(c) SUBMITTAL OF APPLICATIONS TO PANELS.—If provided in an agreement under subsection (a), and if the Secretary determines that the applicant submitted reasonable evidence under subsection (b)(2), the Secretary shall submit the application to a physicians panel established under subsection (d). The Secretary shall assist the employee in obtaining additional evidence within the control of the Department of Energy and relevant to the panel's deliberations.

(d) COMPOSITION AND OPERATION OF PANELS.—(1) The Secretary shall inform the Secretary of Health and Human Services of the number of physicians panels the Secretary has determined to be appropriate to administer this section, the number of physicians needed for each panel, and the area of jurisdiction of each panel. The Secretary may determine to have only one panel.

(2)(A) The Secretary of Health and Human Services shall appoint panel members with experience and competency in diagnosing occupational illnesses under section 3109 of title 5, United States Code.

(B) Each member of a panel shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) the member is engaged in the work of a panel.

(3) A panel shall review an application submitted to it by the Secretary and determine, under guidelines established by the Secretary, by regulation, whether the illness or death that is the subject of the application arose out of and in the course of employment by the Department of Energy and exposure to a toxic substance at a Department of Energy facility.

(4) At the request of a panel, the Secretary and a contractor who employed a Department of Energy contractor employee shall provide additional information relevant to the panel's deliberations. A panel may consult specialists in relevant fields as it determines necessary.

(5) Once a panel has made a determination under paragraph (3), it shall report to the Secretary its determination and the basis for the determination.

(6) A panel established under this subsection shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(e) ASSISTANCE.—If provided in an agreement under subsection (a)—

(1) the Secretary shall review a panel's determination made under subsection (d), information the panel considered in reaching its determination, any relevant new information not reasonably available at the time of the panel's deliberations, and the basis for the panel's determination;

(2) as a result of the review under paragraph (1), the Secretary shall accept the panel's determination in the absence of significant evidence to the contrary; and

(3) if the panel has made a positive determination under subsection (d) and the Secretary accepts the determination under paragraph (2), or the panel has made a negative determination under subsection (d) and the Secretary finds significant evidence to the contrary—

(A) the Secretary shall assist the applicant to file a claim under the appropriate State workers' compensation system based on the health condition that was the subject of the determination;

(B) the Secretary thereafter—

(i) may not contest such claim;

(ii) may not contest an award made regarding such claim; and

(iii) may, to the extent permitted by law, direct the Department of Energy contractor who employed the applicant not to contest such claim or such award, unless the Secretary finds significant new evidence to justify such contest; and

(C) any costs of contesting a claim or an award regarding the claim incurred by the contractor who employed the Department of Energy contractor employee who is the subject of the claim shall not be an allowable cost under a Department of Energy contract.

(f) INFORMATION.—At the request of the Secretary, a contractor who employed a Department of Energy contractor employee shall make available to the Secretary and the employee information relevant to deliberations under this section.

(g) GAO REPORT.—Not later than February 1, 2002, the Comptroller General shall submit to Congress a report on the implementation by the Department of Energy of the provisions of this section and of the effectiveness of the program under this section in assisting Department of Energy contractor employees in obtaining compensation for occupational illness.

SELECTED OTHER MATTERS

ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

National Defense Authorization Act for Fiscal Year 1992 and 1993

(Public Law 102-190, approved Dec. 5, 1991)

SEC. 3132. [42 U.S.C. 7274e] SCHOLARSHIP AND FELLOWSHIP PROGRAM FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT.

(a) **ESTABLISHMENT.**—The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the “Marilyn Lloyd Scholarship and Fellowship Program”.

(b) **ELIGIBILITY.**—To be eligible to participate in the scholarship and fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965);

(2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;

(3) sign an agreement described in subsection (c);

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet such other requirements as the Secretary prescribes.

(c) **AGREEMENT.**—An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary’s agreement to provide the participant with educational assistance for a specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant’s agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program

of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) REPAYMENT.—(1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c), or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c); or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

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

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

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program 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 applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.

(f) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(g) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) REPORT TO CONGRESS.—Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

(i) FUNDING.—Of the funds authorized to be appropriated pursuant to section 3101(9)(B), \$1,000,000 may be used for the purpose of carrying out this section.

MISSILE DEFENSE PROGRAMS

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

SEC. 3132. [10 U.S.C. 2431 note] ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND MISSILE DEFENSE AGENCY.

(a) JOINTLY FUNDED PROJECTS.—The Secretary of Energy and the Secretary of Defense shall modify the memorandum of understanding for the use of the national laboratories for ballistic missile defense programs, entered into under section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034; 10 U.S.C. 2431 note), to provide for jointly funded projects.

(b) REQUIREMENTS FOR PROJECTS.—The projects referred to in subsection (a) shall—

(1) be carried out by the National Nuclear Security Administration and the Missile Defense Agency; and

(2) contribute to sustaining—

(A) the expertise necessary for the viability of such laboratories; and

(B) the capabilities required to sustain the nuclear stockpile.

(c) PARTICIPATION BY NNSA IN CERTAIN MDA ACTIVITIES.—The Administrator for Nuclear Security and the Director of the Missile Defense Agency shall implement mechanisms that increase the cooperative relationship between those organizations. Those mechanisms may include participation by personnel of the National Nuclear Security Administration in the following activities of the Missile Defense Agency:

(1) Peer reviews of technical efforts.

(2) Activities of so-called “red teams”.

National Defense Authorization Act for Fiscal Year 1998

(Public Law 105-85, approved Nov. 18, 1997)

SEC. 3131. [10 U.S.C. 2431 note] MEMORANDUM OF UNDERSTANDING FOR USE OF NATIONAL LABORATORIES FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) **MEMORANDUM OF UNDERSTANDING.**—The Secretary of Energy and the Secretary of Defense shall enter into a memorandum of understanding for the purpose of improving and facilitating the use by the Secretary of Defense of the expertise of the national laboratories for the ballistic missile defense programs of the Department of Defense.

(b) **ASSISTANCE.**—The memorandum of understanding shall provide that the Secretary of Defense shall request such assistance with respect to the ballistic missile defense programs of the Department of Defense as the Secretary of Defense and the Secretary of Energy determine can be provided through the technical skills and experience of the national laboratories, using such financial arrangements as the Secretaries determine are appropriate.

(c) **ACTIVITIES.**—The memorandum of understanding shall provide that the national laboratories shall carry out those activities necessary to respond to requests for assistance from the Secretary of Defense referred to in subsection (b). Such activities may include the identification of technical modifications and test techniques, the analysis of physics problems, the consolidation of range and test activities, and the analysis and simulation of theater missile defense deployment problems.

(d) **NATIONAL LABORATORIES.**—For purposes of this section, the national laboratories are—

- (1) the Lawrence Livermore National Laboratory, Livermore, California;
- (2) the Los Alamos National Laboratory, Los Alamos, New Mexico; and
- (3) the Sandia National Laboratories, Albuquerque, New Mexico.

EXPORT CONTROL MATTERS

National Defense Authorization Act for Fiscal Year 1998

(Public Law 105-85, approved Nov. 18, 1997)

SEC. 3157. [50 U.S.C. App. 2404 note] REPORTS ON ADVANCED SUPER-COMPUTER SALES TO CERTAIN FOREIGN NATIONS.

(a) **REPORTS.**—The Secretary of Energy shall require that any company that is a participant in the Accelerated Strategic Computing Initiative (ASCI) program of the Department of Energy report to the Secretary and to the Secretary of Defense each sale by that company to a country designated as a Tier III country of a computer capable of operating at a speed in excess of 2,000 millions theoretical operations per second (MTOPS). The report shall include a description of the following with respect to each such sale:

- (1) The anticipated end-use of the computer sold.
- (2) The software included with the computer.

(3) Any arrangement under the terms of the sale regarding—

- (A) upgrading the computer;
- (B) servicing the computer; or
- (C) furnishing spare parts for the computer.

(b) COVERED COUNTRIES.—For purposes of this section, the countries designated as Tier III countries are the countries listed as “computer tier 3” eligible countries in part 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997 (or any successor list).

(c) QUARTERLY SUBMISSION OF REPORTS.—The Secretary of Energy shall require that reports under subsection (a) be submitted quarterly.

(d) ANNUAL REPORT.—The Secretary of Energy shall submit to Congress an annual report containing all information received under subsection (a) during the preceding year. The first annual report shall be submitted not later than July 1, 1998.

(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for the purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

EXECUTIVE ORDERS

Naval Nuclear Propulsion Program

Ex. Ord. No. 12344, February 1, 1982 (42 U.S.C. 7158 note), provides:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

SECTION 1. The Naval Nuclear Propulsion Program is an integrated program carried out by two organizational units, one in the Department of Energy and the other in the Department of the Navy.

SEC. 2. Both organizational units shall be headed by the same individual so that the activities of each may continue in practice under common management. This individual shall direct the Naval Nuclear Propulsion Program in both departments. The director shall be qualified by reason of technical background and experience in naval nuclear propulsion. The director may be either a civilian or an officer of the United States Navy, active or retired.

SEC. 3. The Secretary of the Navy (through the Secretary of Defense) and the Secretary of Energy shall obtain the approval of the President to appoint the director of the Naval Nuclear Propulsion Program for their respective Departments. The director shall be appointed to serve a term of eight years, except that the Secretary of Energy and the Secretary of the Navy may, with mutual

concurrence, terminate or extend the term of the respective appointments.

SEC. 4. An officer of the United States Navy appointed as director shall be nominated for the grade of Admiral. A civilian serving as director shall be compensated at a rate to be specified at the time of appointment.

SEC. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by Section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval nuclear propulsion functions of the Department of Energy, including:

(a) direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expended Core Facility and naval reactor prototype plants;

(b) research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto;

(c) the safety of reactors and associated naval (naval) nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public;

(d) training, including training conducted at the naval prototype reactors of the Department of Energy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of personnel who supervise, operate, or maintain naval nuclear propulsion plants; and

(e) administration of the Naval Nuclear Propulsion Program including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics and fiscal management.

SEC. 6. Within the Department of Energy, the director shall report to the Secretary of Energy, through the Assistant Secretary assigned nuclear energy functions and shall serve as a Deputy Assistant Secretary. The director shall have direct access to the Secretary of Energy and other senior officials in the Department of Energy concerning naval nuclear propulsion matters, and to all other personnel who supervise, operate or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

SEC. 7. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility to supervise all technical aspects of the Navy's nuclear propulsion work, including:

(a) research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nu-

clear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto; and

(b) training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of Government personnel who supervise, operate, or maintain naval nuclear propulsion plants.

SEC. 8. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility within the Navy for:

(a) the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.

(b) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

SEC. 9. In addition to any other organizational assignments within the Department of the Navy, the director shall report directly to the Chief of Naval Operations. The director shall have direct access to the Secretary of the Navy and other senior officials in the Department of the Navy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities.

SEC. 10. This Order is effective on February 1, 1982.