

AMENDING THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 WITH RESPECT TO THE RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING BIOLOGICAL AGENTS AND TOXINS, AND TO AMEND TITLE 18, UNITED STATES CODE, WITH RESPECT TO SUCH AGENTS AND TOXINS, TO CLARIFY THE APPLICATION OF CABLE TELEVISION SYSTEM PRIVACY REQUIREMENTS TO NEW CABLE SERVICES, TO STRENGTHEN SECURITY AT CERTAIN NUCLEAR FACILITIES, AND FOR OTHER PURPOSES

---

OCTOBER 9, 2001.—Ordered to be printed

---

Mr. TAUZIN, from the Committee on Energy and Commerce,  
submitted the following

## REPORT

[To accompany H.R. 3016]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3016) to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

### CONTENTS

|   | Page |
|---|------|
| Amendment .....   | 2    |
| Purpose and Summary .....   | 7    |
| Background and Need for Legislation .....                               | 7    |
| Hearings .....  | 8    |
| Committee Consideration .....   | 8    |
| Committee Votes .....   | 8    |
| Committee Oversight Findings .....                                      | 8    |
| Statement of General Performance Goals and Objectives .....             | 8    |
| New Budget Authority, Entitlement Authority, and Tax Expenditures ..... | 8    |

|   |    |
|---|----|
| Committee Cost Estimate .....                               | 9  |
| Congressional Budget Office Estimate .....                  | 9  |
| Federal Mandates Statement .....                            | 9  |
| Advisory Committee Statement .....                          | 9  |
| Constitutional Authority Statement .....                    | 9  |
| Applicability to Legislative Branch .....                   | 9  |
| Section-by-Section Analysis of the Legislation .....        | 9  |
| Changes in Existing Law Made by the Bill, as Reported ..... | 13 |

The amendment is as follows:

Strike all after the enacting clause and insert the following:

## TITLE I—BIOTERRORISM PREVENTION

### SEC. 101. EXPANSION OF BIOLOGICAL WEAPONS STATUTE.

(a) SELECT AGENTS.—

(1) IN GENERAL.—Section 175 of title 18, United States Code, is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following subsection:

“(b) SELECT AGENTS.—

“(1) UNSAFE HANDLING.—

“(A) IN GENERAL.—Whoever possesses, uses, or exercises control over a select agent in a manner constituting reckless disregard for the public health and safety, knowing the select agent to be a biological agent or toxin, shall be fined under this title, imprisoned for not more than one year, or both.

“(B) AGGRAVATED OFFENSE.—Whoever, in the course of a violation of subparagraph (A), causes bodily injury to another shall be fined under this title, or imprisoned for not more than 10 years, or both; except that if death results from such violation, the person committing the violation shall be fined under this title, or imprisoned for any term of years or for life, or both.

“(2) UNREGISTERED FOR POSSESSION.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration under section 511(f) of the Antiterrorism and Effective Death Penalty Act of 1996 shall be fined under this title, or imprisoned for not more than 5 years, or both.

“(3) TRANSFER TO UNREGISTERED PERSON.—Whoever knowingly transfers a select agent to a person who has not obtained a registration under section 511(e) of the Antiterrorism and Effective Death Penalty Act of 1996 shall be fined under this title, or imprisoned for not more than 5 years, or both.

“(4) RESTRICTED PERSONS.—Whoever is a restricted person and knowingly ships or transports a select agent in interstate or foreign commerce, or knowingly receives a select agent so shipped or transported, or knowingly possesses a select agent in or affecting interstate or foreign commerce, shall be fined under this title, or imprisoned for not more than 5 years, or both. The preceding sentence does not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947.”

(2) DEFINITIONS.—Section 175 of title 18, United States Code, as amended by paragraph (1) of this subsection, is amended by amending subsection (c) to read as follows:

“(c) DEFINITIONS.—As used in this section:

“(1) The terms ‘biological agent’ and ‘toxin’ have the meanings given such terms in section 178, except that, for purposes of subsection (b), such terms do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, cultured, collected, or otherwise extracted from its natural source.

“(2) The term ‘bodily injury’ has the meaning given such term in section 1365.

“(3) The term ‘for use as a weapon’ includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system, other than for prophylactic, protective, or other peaceful purposes.

“(4)(A) The term ‘restricted person’ means a person—

“(i) who is described in section 922(g), as such section was in effect on the day before the effective date of this paragraph; or

“(ii) who is an alien, other than an alien lawfully admitted for permanent residence or an alien who under subparagraph (B) is considered not to be a restricted person.

“(B) For purposes of subparagraph (A)(ii):

“(i) An alien is considered not to be a restricted person if the alien is within a category designated under clause (ii) of this subparagraph.

“(ii) The Secretary of Health and Human Services, in consultation with the Attorney General, may designate categories of individuals who have—

“(I) nonimmigrant visas as defined in section 101(a)(26) of the Immigration and Nationality Act; and

“(II) expertise valuable to the United States regarding select agents.

“(5) The term ‘select agent’ means a biological agent or toxin, as defined in paragraph (1), that—

“(A) is on the list that is in effect pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132); and

“(B) has not been exempted from the applicability of regulations under section 511(e) of such Act.”.

(3) EFFECTIVE DATE REGARDING RESTRICTED PERSONS; REGULATIONS.—

(A) EFFECTIVE DATE.—Section 175(b)(4) of title 18, United States Code, as added by subsection (a)(1)(B) of this section, takes effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act.

(B) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall determine whether the Secretary will designate any categories or individuals for purposes of section 175(c)(4)(B) of title 18, United States Code, as added by subsection (a)(1)(B) of this section. If the Secretary determines that one or more such categories will be designated, the Secretary shall promulgate an interim final rule for purposes of such section not later than 60 days after such date of enactment.

(4) CONFORMING AMENDMENT.—Section 175(a) of title 18, United States Code, is amended in the second sentence by striking “under this section” and inserting “under this subsection”.

(b) AMENDMENTS TO ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996.—

(1) POSSESSION AND USE.—

(A) IN GENERAL.—Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(i) by striking subsection (f);

(ii) by redesignating subsection (g) as subsection (i); and

(iii) by inserting after subsection (e) the following subsection:

“(f) POSSESSION AND USE OF LISTED BIOLOGICAL AGENTS AND TOXINS.—

“(1) IN GENERAL.—The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of biological agents and toxins listed pursuant to subsection (d)(1) in order to protect the public health and safety, including safeguards to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose.

“(2) REGISTRATION.—Regulations under paragraph (1) shall provide for registration requirements regarding the possession and use of biological agents and toxins listed pursuant to subsection (d)(1).”.

(B) REGULATIONS.—

(i) DATE CERTAIN FOR PROMULGATION; EFFECTIVE DATE REGARDING CRIMINAL AND CIVIL PENALTIES.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate an interim final rule for carrying out section 511(f) of the Antiterrorism and Effective Death Penalty Act of 1996, as added by subparagraph (A) of this paragraph. Such interim final rule takes effect 60 days after the date on which such rule is promulgated, including for purposes of—

(I) section 175(b)(2) of title 18, United States Code (relating to criminal penalties), as added by subsection (a)(1)(B) of this section; and

(II) section 511(h) of the Antiterrorism and Effective Death Penalty Act of 1996 (relating to civil penalties), as added by paragraph (3) of this subsection.

(ii) SUBMISSION OF REGISTRATION APPLICATIONS.—In the case of a person who, as of the date of the enactment of this Act, is in possession of a biological agent or toxin that is listed pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996, such person shall, in accordance with the interim final rule promulgated under clause (i), submit an application for a registration to possess such agent

or toxin not later than 30 days after the date on which such rule is promulgated.

(2) DISCLOSURES OF INFORMATION.—

(A) IN GENERAL.—Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996, as amended by paragraph (1) of this subsection, is amended by inserting after subsection (f) the following subsection:

“(g) DISCLOSURE OF INFORMATION.—

“(1) IN GENERAL.—Any information in the possession of any Federal agency that identifies a person, or the geographic location of a person, who is registered pursuant to regulations under this section (including regulations promulgated before the effective date of this subsection), and any site-specific information relating to the type, quantity, or identity of a biological agent or toxin listed pursuant to subsection (d)(1) or the site-specific security mechanisms in place to protect such agents and toxins, shall not be disclosed under section 552(a) of title 5, United States Code.

“(2) DISCLOSURES FOR PUBLIC HEALTH AND SAFETY; CONGRESS.—Nothing in this section may be construed as preventing the head of any Federal agency—

“(A) from making disclosures of information described in paragraph (1) for purposes of protecting the public health and safety; or

“(B) from making disclosures of such information to any committee or subcommittee of the Congress with appropriate jurisdiction, upon request.”.

(B) EFFECTIVE DATE.—The effective date for the amendment made by subparagraph (A) shall be the same as the effective date for the final rule issued pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132).

(3) CIVIL PENALTIES.—Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996, as amended by paragraphs (1) and (2) of this subsection, is amended by inserting after subsection (g) the following subsection:

“(h) CIVIL PENALTY.—Any person who violates a regulation under subsection (e) or (f) shall be subject to the United States for a civil penalty in an amount not exceeding \$250,000 in the case of an individual and \$500,000 in the case of any other person.”.

(4) CLARIFICATION OF SCOPE OF SELECT AGENT RULE; TERRORISM; RESPONSIBILITIES OF SECRETARY OF HEALTH AND HUMAN SERVICES.—

(A) IN GENERAL.—Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(i) in each of subsections (d) and (e)—

(I) by inserting “and toxins” after “agents” each place such term appears; and

(II) by inserting “or toxin” after “agent” each place such term appears; and

(ii) in subsection (i) (as redesignated by paragraph (1) of this subsection), in paragraph (1), by striking “the term ‘biological agent’ has” and inserting “the terms ‘biological agent’ and ‘toxin’ have”.

(B) EFFECTIVE DATE.—The effective date for the amendments made by subparagraph (A) shall be as if the amendments had been included in the enactment of section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132).

(5) CONFORMING AMENDMENTS.—Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(A) in subsection (d)(1)(A), by striking “shall, through regulations promulgated under subsection (f),” and inserting “shall by regulation”;

(B) in subsection (e), in the matter preceding paragraph (1), by striking “shall, through regulations promulgated under subsection (f),” and inserting “shall by regulation”;

(C) in subsection (d)—

(i) in the heading for the subsection, by striking “AGENTS” and inserting “AGENTS AND TOXINS”; and

(ii) in the heading for paragraph (1), by striking “AGENTS” and inserting “AGENTS AND TOXINS”; and

(D) in the heading for subsection (e), by striking “AGENTS” and inserting “AGENTS AND TOXINS”.

(c) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services, after consultation with other appropriate Federal agencies, shall submit to the Congress a report that—

(1) describes the extent to which there has been compliance by governmental and private entities with applicable regulations under section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132),

including the extent of compliance before the date of the enactment of this Act, and including the extent of compliance with regulations promulgated after such date of enactment;

(2) describes the future plans of the Secretary for determining compliance with regulations under such section 511 and for taking appropriate enforcement actions; and

(3) provides any recommendations of the Secretary for administrative or legislative initiatives regarding such section 511.

## **TITLE II—CABLE TELEVISION PRIVACY PROVISIONS**

### **SEC. 201. SCOPE OF COMMUNICATIONS ACT PROVISION.**

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended—

(1) in subsection (a)(1)(E), by striking “and (h)” and inserting “and (h)(2)”;

(2) in subsection (a)(2), by striking “, other than subsection (h)”;

(3) in subsection (c)(1), by inserting “and subsection (h)” after “paragraph (2)”;

and

(4) by striking subsection (h) and inserting the following:

“(h)(1) Except as provided in paragraph (2), nothing in this section restricts, impairs, conditions, or otherwise affects the authority of a government entity to obtain personally identifiable information concerning a subscriber from a multichannel video programming distributor or other person pursuant to chapters 119, 121, and 206 of title 18, United States Code.

“(2) A government entity may obtain information collected and maintained by a multichannel video programming distributor or other person concerning the selection of video programming by a subscriber of any multichannel video programming distributor pursuant to a court order only if, in the court proceeding relevant to such court order—

“(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

“(B) the subject of the information is afforded the opportunity to appear and contest such entity’s claim.”.

## **TITLE III—NUCLEAR FACILITY SECURITY**

### **SEC. 301. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES.**

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

“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—

“(1) 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 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; and

“(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of property of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

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 or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) 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 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 of a licensee or certificate holder of the Commission, laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or 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 and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection.”.

**SEC. 302. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.**

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after “custody of the Commission” the following: “or subject to its licensing authority or to certification by the Commission under this Act or any other Act”.

**SEC. 303. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

“a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

“(1) any production facility or utilization facility licensed under this Act;

“(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

“(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;

“(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

“(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility,

shall be fined not more than \$1,000,000 or imprisoned for up to life in prison without parole, or both.”.

**SEC. 304. ASSESSMENT OF VULNERABILITIES.**

The Nuclear Regulatory Commission shall conduct a study to assess the vulnerability of nuclear facilities certified by the Nuclear Regulatory Commission to potential terrorist attacks. The study shall include—

(1) an assessment of the design basis threat;

(2) an assessment of potential vulnerability of various classes of such facilities;

(3) an identification of important protection measures for both the near term and long term;

(4) an assessment of physical, cyber, biochemical, and other terrorist threats; and

(5) recommendations for additional studies, research and development, testing, and protections required to address the threats identified.

An initial report identifying immediate concerns and protection measures shall be transmitted to the Congress not later than 90 days after the date of the enactment of this Act. A final report on the study shall be transmitted to the Congress not later than 270 days after the date of the enactment of this Act.

**SEC. 305. DESIGN BASIS THREAT.**

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding at the end the following new section:

“SEC. 170C. DESIGN BASIS THREAT.—

“a. The Nuclear Regulatory Commission, not later than 60 days after the date of the enactment of this section, after consultation with the Secretary of Defense, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the National Security Advisor, the Director of Homeland Security (or any successor official), and any other appropriate Federal, State, or nongovernmental entities, shall commence a rulemaking to consider changes to the design basis threat for facilities licensed by the Commission under this Act. Within 1 year after the date of

the enactment of this section, the Commission shall issue a final rule revising the design basis threat and associated regulations.

“b. Regulations issued under this section shall take into account—

- “(1) the events of September 11, 2001;
- “(2) the potential for attack on facilities by multiple coordinated teams totaling in the aggregate at least 20 individuals;
- “(3) the potential for assistance in an attack from several persons employed at the facility;
- “(4) the potential for suicide attacks;
- “(5) water-based and air-based threats;
- “(6) the potential use of explosive devices of considerable size and other modern weaponry;
- “(7) the potential for attacks by persons with a sophisticated knowledge of facility operations;
- “(8) the threat of fires, especially fires of long duration; and
- “(9) protection of spent fuel storage pools and dry cask storage, including after reactor closure.

“c. Regulations issued under this section shall establish requirements for licensees relating to construction, operation, security procedures, and emergency response, and shall require conforming amendments to existing licenses.

“d. Regulations issued under this section shall require armed escorts for all spent fuel shipments, capable of repelling attacks by a large number of attackers working as several coordinated teams and using sophisticated techniques and equipment.

“e. (1) Regulations issued under this section shall include the establishment of an Operational Safeguards Response Evaluation program, whose Director shall report directly to the Nuclear Regulatory Commission, which shall ensure that the operational safeguards response of each facility described in paragraph (2) is tested at least once every 2 years to determine whether the design basis threat factors identified in regulations issued under this section have been adequately addressed.

“(2) Facilities subject to testing under paragraph (1) include commercial nuclear powerplants, research reactors, spent fuel storage facilities and associated support facilities and equipment, and any other licensed facility the Nuclear Regulatory Commission considers appropriate.

“f. Regulations issued under this section shall be reviewed and revised as appropriate at least once every 5 years.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:

“Sec. 170C. Design basis threat.”.

## PURPOSE AND SUMMARY

The purpose of H.R. 3016 is to provide the Committee on Energy and Commerce’s immediate legislative response to the terrorist attacks against the United States on September 11, 2001.

## BACKGROUND AND NEED FOR LEGISLATION

In the wake of the terrorist attacks against the United States on September 11, 2001, Chairman W.J. “Billy” Tauzin and Ranking Minority Member John D. Dingell wrote to Executive Branch departments, agencies, and commissions within the Committee’s jurisdiction to determine how the Committee could be of legislative assistance in the fight against terrorism. Among the responses to these September 14, 2001 letters, the Nuclear Regulatory Commission proposed three measures to increase security at certain nuclear facilities in the United States.

The Bush Administration, acting through Attorney General John Ashcroft, transmitted to the Congress an anti-terrorism legislative proposal soon after September 11. This proposal contained two items in the Committee’s jurisdiction: (1) provisions for the possession and transfer of select agents posing a bioterrorism threat and (2) provisions clarifying the scope of law enforcement’s ability to gain access to certain cable communications information.

While H.R. 3016 represents the Committee's immediate anti-terrorism work, the Committee is undergoing a complete evaluation of the matters within its jurisdiction to determine how it can improve the security of the American people and the country's critical infrastructures in the war against terrorism.

#### HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

#### COMMITTEE CONSIDERATION

On Wednesday, October 3, 2001, the Full Committee met in open markup session and favorably ordered reported a Committee Print to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins; a Committee Print to clarify the application of cable television system privacy requirements to new cable services; and a Committee Print to strengthen security at certain nuclear facilities, and for other purposes, all as amended, by voice vote, a quorum being present. The Committee also agreed to a unanimous consent request by Chairman Tauzin to incorporate the three Committee Prints into a bill to be introduced, H.R. 3016, and to allow for this report to be filed on that bill.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3016 reported.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 2587 is to provide the necessary legislative assistance to Departments and agencies of the Federal government in the war on terrorism.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3016, to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes, would result in no



new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE, CONGRESSIONAL BUDGET OFFICE ESTIMATE, AND FEDERAL MANDATES STATEMENT

The Congressional Budget Office estimate required pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives section 402 of the Congressional Budget Act of 1974, and the estimate of Federal mandates required pursuant to section 423 of the Unfunded Mandates Reform Act were requested from the Congressional Budget Office, but were not prepared as of the date of filing of this report. The Congressional Budget Office estimate and accompanying materials will be contained in a supplemental report.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### TITLE I—BIOTERRORISM PREVENTION

##### *Section 101. Expansion of biological weapons statute*

The Bioterrorism Prevention Act of 2001 is the culmination of an investigation begun in 1999 by the Oversight and Investigations Subcommittee deletion into how the Committee could improve the laws designed to control the possession, transfer and use of dangerous biological agents and toxins. This legislation extends the regulatory regime established by Congress five years ago to control transfers of “select agents” to now include controls on persons who knowingly possess them, and creates new criminal penalties for those who possess these agents without registration, or who transfer them to an unregistered person. These new provisions will facilitate convictions of persons involved in possession or transferring of such agents without legitimate purpose because it will not be necessary to prove intent to use the agent as a weapon, as current law requires.

The bill also creates a new criminal provision governing those who handle select agents with reckless disregard for public health and safety deletion. It is not the Committee’s intent to criminalize

regulatory violations committed by regulated companies or other private and governmental entities, or even common negligence. Rather, by requiring reckless disregard to be shown, the Committee intends to create criminal penalties for persons who knowingly engage in conduct that represents an obvious and clear danger to others or to the public health and safety. The bill also provides for increased penalties for those who as a result of reckless handling of select agents cause a bodily injury or death.

The Committee believes that the term “select agent” must be clearly defined on a list maintained and reviewed frequently by the Secretary of Health and Human Services (HHS), and that, at a minimum, possession of all such agents must be reported to the Secretary by those in possession. Nonetheless, the Committee recognizes that some select agents may pose a greater threat to the public health than others. The Secretary will have flexibility to impose different levels of registration, handling, and security requirements on different select agents based on his evaluation of the level of threat to the public.

The Secretary must issue an interim final rule implementing this Act no later than 30 days following the date of enactment. The Committee understands that this is a relatively short time period, but expects HHS will simply modify its current regulatory regime to govern possessors as well as transferors. The primary goal of this Act is to ensure the prompt reporting to the Federal government of all possession of such agents (including by those who were in possession prior to April 15, 1997, the effective date for reporting transfers of select agents), and to effectuate the new criminal provisions relating to unlawful possession. The Committee expects that HHS will further modify its existing regulations to address issues such as physical security, access controls, the credentials and security of personnel, and the reporting of loss or theft of select agents, as appropriate.

The Committee also intends to restrict certain persons from possessing any select agents. By reference, the bill incorporates the list of persons who, on the day before the effective date of the bill, are forbidden to own a handgun for reason of criminal or pathological behavior. It is the Committee’s intent to exclude the non-immigrant exceptions in 922(y) of Title 18, so that those persons would not be exempt from the definition of restricted person in this bill. In general, aliens not lawfully admitted for permanent residence may not possess select agents. However, recognizing the importance of some researchers who may otherwise be banned from working on select agents, the Committee also grants the Secretary authority, in consultation with the Attorney General, to designate categories of aliens or particular individuals who may be admitted to the United States on non-immigrant visas to permit them to work with select agents. This waiver authority was granted so as not to unnecessarily impede collaborative public health activities with foreign governments or universities, or needed research into diseases caused by select agents and vaccines and other treatment regimes. The Committee does not expect the Department to establish a slow or burdensome waiver process, but rather a listing by the Secretary of those categories of foreign aliens that should not be a restricted person. Not later than 30 days after enactment, the Secretary shall determine whether or not any categories of non-im-

migrant aliens will be waived from the restricted persons' category. If so, an interim final rule establishing those categories and any procedure for granting individual waivers will be promulgated within 60 days after enactment. The section concerning restricted persons will go into effect 90 days after enactment of this Act.

It is crucial that all possessors register with HHS and report periodically as may be required under the regulations. At the same time, allowing access to this information under the Freedom of Information Act could provide valuable intelligence to potential terrorists and criminals. Therefore, the disclosure of identifying information concerning possessors, their registered select agents, and security mechanisms for protecting such agents is not required under the Freedom of Information Act, but Federal agencies may disclose this information to protect the public health and safety, as they deem appropriate. In no way does this provision ban the disclosure of necessary information to law enforcement personnel or other emergency responders.

The Committee also has mandated a study due one year after enactment to inform Congress about the compliance with the existing and expanded regulatory regime for control of select agents, and to provide recommendations for administrative and legislative changes to help prevent misuse and illegal use of select agents.

## TITLE II—CABLE TELEVISION PRIVACY PROVISIONS

### *Section 201. Scope of Communications Act provision*

Section 201 clarifies that a governmental entity's access to information collected and maintained by a multichannel video programming distributor, or any other person, relating to the selection of video programming is governed by the provisions of section 631 of the Communications Act of 1934, as amended.

Multichannel video programming distributors (MVPDs) are expanding their service offerings. Many of them now have the capability to provide Internet access as well as telephone service, in addition to traditional video programming. Section 201 clarifies that a governmental entity's access to information collected and maintained by an MVPD, or any other person, relating to the selection of video programming is governed by the provisions of Section 631 of the Communications Act of 1934, as amended. The Committee intends the phrase "information \* \* \* concerning the selection of video programming" to mean information about which video programming service or services a subscriber has purchased. Nothing in this section is intended to interfere with the ability of an MVPD to pursue legal remedies against persons who have engaged in theft of service under Sections 633 or 705, or any other applicable provision of law. Moreover, the phrase "information \* \* \* concerning the selection of video programming" does not include information such as a subscriber's name, address, or the means of payment. "Video programming" is intended to refer to traditional video programming services comparable to broadcast television. See 47 U.S.C. 522 (20), as opposed to the emerging types of video programming services that enable subscribers to communicate with other viewers or subscribers. Moreover, to the extent an MVPD enables its subscribers to communicate with other persons through the provision of telephone service or Internet access service, it must com-

ply with the same laws, found in title 18, governing the interception and disclosure of wire and electronic communications that apply to any other telephone company or Internet service provider. In these instances, Section 631(h) would not apply. In addition, it is the Committee's position that, at this time, streaming video content over the Internet does not meet the definition of video programming. The term "other person" in this subsection refers only to a commercial entity that may not be an MVPD, but has in its possession, information concerning its own subscriber's selection of video programming. Examples of such entities are personal video recording services companies such as TiVo, UltimateTV, and ReplayTV, that collect and maintain information regarding a subscriber's viewing activities.

### TITLE III—NUCLEAR FACILITY SECURITY

#### *Section 301. Carrying of firearms by licensee employees*

Section 301 authorizes guards at certain facilities licensed or certified by the Commission to carry and use weapons where necessary to protect the facilities or prevent the theft of special nuclear materials. This section also permits guards so authorized to carry firearms to make arrests without warrant under certain specified circumstances. The language also prevents guards at such facilities from being prosecuted under State law for the discharge of firearms in the performance of official duties.

Current statute permits such authority only for Department of Energy security forces, although several NRC-licensed or certified facilities also handle and store special nuclear materials. Under current law, guards at these facilities are constrained by the restrictions of State law, which may allow the use of weapons by guards only to protect their own lives or the lives of others, and not to prevent the theft or sabotage of radioactive materials. The section extends the same authorities and protections granted to DOE guards to guards at certain sites licensed or certified by the NRC.

This provision could be a valuable asset in protecting national security assets which could be subject to theft or sabotage. The Committee expects that the NRC, in issuing its regulations to implement this authority, would adopt regulations similar to those promulgated by the U.S. Department of Energy, and would limit its application to employees at those facilities engaged in the protection of property of significance to the common defense and security of the United States or being transported to and from such facilities. Such facilities include, but are not limited to, production facilities licensed by the Commission which utilize special nuclear materials, or gaseous diffusion plants, at which guards must protect significant quantities of radioactive materials and the gaseous diffusion technology utilized to enrich uranium.

#### *Section 302. Unauthorized introduction of dangerous weapons*

Section 302 expands current law authorizing the Commission to regulate the introduction of dangerous weapons onto its own facilities to include facilities licensed or certified by the Commission. This change ensures that the full range of facilities regulated by the Commission are subject to the statutory provisions prohibiting

the introduction of unauthorized weapons or other dangerous instruments, providing an additional measure of security for materials which could be subject to theft or sabotage.

*Section 303. Sabotage of nuclear facilities or fuel*

Section 303 expands current law prohibiting the sabotage or attempted sabotage of nuclear facilities to include nuclear waste treatment and disposal facilities and nuclear fuel fabrication facilities. This section also extends Federal criminal sanctions to the sabotage or attempted sabotage of NRC-licensed or certified facilities during the construction phase when public health and safety may be affected during subsequent facility operation. These changes ensure that the full range of NRC-licensed or certified facilities are covered under the statute's provisions.

This section also increases the limit on fines from \$10,000 to \$1,000,000 for any person who intentionally and willfully destroys or causes damage to nuclear facilities or nuclear fuel, and increases the prison term from a 10 year limit to up to life in prison without parole for the same offense.

*Section 304. Assessment of vulnerabilities*

Section 304 directs the Commission to conduct a study to assess the vulnerability of nuclear facilities to potential terrorist attacks. The study is to include an assessment of the design basis threat, among other things. This section specifies that the Commission submit an initial report and a final report to Congress.

*Section 305. Design basis threat*

Section 305 directs the Commission, after consultation with defense and intelligence agencies, to conduct a rulemaking to consider changes to the design basis threat for facilities licensed by the Commission and, within one year, issue a final rule revising the design basis threat, as well as associated regulations. The Commission is required to consider nine specific criteria (including the events of September 11, 2001) in addition to any other factors it may take into account when issuing regulations pursuant to this section. Regulations issued under this section shall establish requirements for licensees for the construction, operation, security procedures and emergency response of nuclear facilities and shall require conforming changes to existing licenses. The regulations are to be revised as appropriate, but at least once every five years. This section also requires the Commission to promulgate regulations with respect to spent fuel shipments. Finally, the section establishes an Operational Safeguards Response Evaluation program to ensure that specified NRC-licensed facilities are tested once every 2 years.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SECTION 175 OF THE TITLE 18, UNITED STATES CODE

**§ 175. Prohibitions with respect to biological weapons**

(a) **IN GENERAL.**—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this [section] *subsection* committed by or against a national of the United States.

(b) **SELECT AGENTS.**—

(1) **UNSAFE HANDLING.**—

(A) **IN GENERAL.**—Whoever possesses, uses, or exercises control over a select agent in a manner constituting reckless disregard for the public health and safety, knowing the select agent to be a biological agent or toxin, shall be fined under this title, imprisoned for not more than one year, or both.

(B) **AGGRAVATED OFFENSE.**—Whoever, in the course of a violation of subparagraph (A), causes bodily injury to another shall be fined under this title, or imprisoned for not more than 10 years, or both; except that if death results from such violation, the person committing the violation shall be fined under this title, or imprisoned for any term of years or for life, or both.

(2) **UNREGISTERED FOR POSSESSION.**—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration under section 511(f) of the Antiterrorism and Effective Death Penalty Act of 1996 shall be fined under this title, or imprisoned for not more than 5 years, or both.

(3) **TRANSFER TO UNREGISTERED PERSON.**—Whoever knowingly transfers a select agent to a person who has not obtained a registration under section 511(e) of the Antiterrorism and Effective Death Penalty Act of 1996 shall be fined under this title, or imprisoned for not more than 5 years, or both.

(4) **RESTRICTED PERSONS.**—Whoever is a restricted person and knowingly ships or transports a select agent in interstate or foreign commerce, or knowingly receives a select agent so shipped or transported, or knowingly possesses a select agent in or affecting interstate or foreign commerce, shall be fined under this title, or imprisoned for not more than 5 years, or both. The preceding sentence does not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947.

[(b) **DEFINITION.**—For purposes of this section, the term “for use as a weapon” does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.]

(c) **DEFINITIONS.**—As used in this section:

(1) *The terms “biological agent” and “toxin” have the meanings given such terms in section 178, except that, for purposes of subsection (b), such terms do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, cultured, collected, or otherwise extracted from its natural source.*

(2) *The term “bodily injury” has the meaning given such term in section 1365.*

(3) *The term “for use as a weapon” includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system, other than for prophylactic, protective, or other peaceful purposes.*

(4)(A) *The term “restricted person” means a person—*

*(i) who is described in section 922(g), as such section was in effect on the day before the effective date of this paragraph; or*

*(ii) who is an alien, other than an alien lawfully admitted for permanent residence or an alien who under subparagraph (B) is considered not to be a restricted person.*

*(B) For purposes of subparagraph (A)(ii):*

*(i) An alien is considered not to be a restricted person if the alien is within a category designated under clause (ii) of this subparagraph.*

*(ii) The Secretary of Health and Human Services, in consultation with the Attorney General, may designate categories of individuals who have—*

*(I) nonimmigrant visas as defined in section 101(a)(26) of the Immigration and Nationality Act; and*

*(II) expertise valuable to the United States regarding select agents.*

(5) *The term “select agent” means a biological agent or toxin, as defined in paragraph (1), that—*

*(A) is on the list that is in effect pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132); and*

*(B) has not been exempted from the applicability of regulations under section 511(e) of such Act.*

## SECTION 511 OF THE ANTITERRORISM AND EFFECTIVE DEATH PEANLTY ACT OF 1996

### SEC. 511. ENHANCED PENALTIES AND CONTROL OF BIOLOGICAL AGENTS.

(a) \* \* \*

\* \* \* \* \*

(d) REGULATORY CONTROL OF BIOLOGICAL AGENTS AND TOXINS.—

(1) LIST OF BIOLOGICAL AGENTS AND TOXINS.—

(A) IN GENERAL.—The Secretary [shall, through regulations promulgated under subsection (f),] *shall by regulation establish and maintain a list of each biological agent or toxin that has the potential to pose a severe threat to public health and safety.*

(B) CRITERIA.—In determining whether to include an agent *or toxin* on the list under subparagraph (A), the Secretary shall—

(i) consider—

(I) the effect on human health of exposure to the agent *or toxin*;

(II) the degree of contagiousness of the agent *or toxin* and the methods by which the agent *or toxin* is transferred to humans;

(III) the availability and effectiveness of immunizations to prevent and treatments for any illness resulting from infection by the agent *or toxin*; and

(IV) any other criteria that the Secretary considers appropriate; and

(ii) consult with scientific experts representing appropriate professional groups.

\* \* \* \* \*

(e) REGULATION OF TRANSFERS OF LISTED BIOLOGICAL AGENTS AND TOXINS.—The Secretary [shall, through regulations promulgated under subsection (f),] *shall by regulation* provide for—

(1) the establishment and enforcement of safety procedures for the transfer of biological agents *and toxins* listed pursuant to subsection (d)(1), including measures to ensure—

(A) proper training and appropriate skills to handle such agents *and toxins*; and

(B) proper laboratory facilities to contain and dispose of such agents *and toxins*;

(2) safeguards to prevent access to such agents *and toxins* for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent *or toxin* in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

(4) appropriate availability of biological agents *and toxins* for research, education, and other legitimate purposes.

[(f) REGULATIONS.—The Secretary shall carry out this section by issuing—

[(1) proposed rules not later than 60 days after the date of enactment of this Act; and

[(2) final rules not later than 120 days after the date of enactment of this Act.]]

(f) POSSESSION AND USE OF LISTED BIOLOGICAL AGENTS AND TOXINS.—

(1) IN GENERAL.—*The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of biological agents and toxins listed pursuant to subsection (d)(1) in order to protect the public health and safety, including safeguards to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose.*

(2) REGISTRATION.—*Regulations under paragraph (1) shall provide for registration requirements regarding the possession*



and use of biological agents and toxins listed pursuant to subsection (d)(1).

(g) **DISCLOSURE OF INFORMATION.**—

(1) **IN GENERAL.**—Any information in the possession of any Federal agency that identifies a person, or the geographic location of a person, who is registered pursuant to regulations under this section (including regulations promulgated before the effective date of this subsection), and any site-specific information relating to the type, quantity, or identity of a biological agent or toxin listed pursuant to subsection (d)(1) or the site-specific security mechanisms in place to protect such agents and toxins, shall not be disclosed under section 552(a) of title 5, United States Code.

(2) **DISCLOSURES FOR PUBLIC HEALTH AND SAFETY; CONGRESS.**—Nothing in this section may be construed as preventing the head of any Federal agency—

(A) from making disclosures of information described in paragraph (1) for purposes of protecting the public health and safety; or

(B) from making disclosures of such information to any committee or subcommittee of the Congress with appropriate jurisdiction, upon request.

(h) **CIVIL PENALTY.**—Any person who violates a regulation under subsection (e) or (f) shall be subject to the United States for a civil penalty in an amount not exceeding \$250,000 in the case of an individual and \$500,000 in the case of any other person.

[(g)] (i) **DEFINITIONS.**—For purposes of this section—

(1) [the term “biological agent” has] the terms ‘biological agent’ and ‘toxin’ have the same meaning as in section 178 of title 18, United States Code; and

(2) the term “Secretary” means the Secretary of Health and Human Services.

---

## SECTION 631 OF THE COMMUNICATIONS ACT OF 1934

### SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) \* \* \*

\* \* \* \* \*

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and [(h)] (h)(2) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section[, other than subsection (h)]—

(A) \* \* \*

\* \* \* \* \*

(c)(1) Except as provided in paragraph (2) *and subsection (h)*, a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

\* \* \* \* \*

[(h) A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

[(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

[(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.]]

*(h)(1) Except as provided in paragraph (2), nothing in this section restricts, impairs, conditions, or otherwise affects the authority of a government entity to obtain personally identifiable information concerning a subscriber from a multichannel video programming distributor or other person pursuant to chapters 119, 121, and 206 of title 18, United States Code.*

*(2) A government entity may obtain information collected and maintained by a multichannel video programming distributor or other person concerning the selection of video programming by a subscriber of any multichannel video programming distributor pursuant to a court order only if, in the court proceeding relevant to such court order—*

*(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and*

*(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.*

## ATOMIC ENERGY ACT OF 1954

### TABLE OF CONTENTS

#### TITLE I—ATOMIC ENERGY

\* \* \* \* \*

#### CHAPTER 14. GENERAL AUTHORITY

Sec. 161. General provisions.

\* \* \* \* \*

Sec. 170C. Design basis threat.

\* \* \* \* \*

#### CHAPTER 14. GENERAL AUTHORITY

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

a. \* \* \*

\* \* \* \* \*

[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;]

*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—*

*(1) 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 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; and*

*(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of property of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;*

*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 or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) 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 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 of a licensee or certificate holder of the Commission, laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or 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 and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;*

\* \* \* \* \*

**SEC. 170C. DESIGN BASIS THREAT.—**

*a. The Nuclear Regulatory Commission, not later than 60 days after the date of the enactment of this section, after consultation with the Secretary of Defense, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the National Security Advisor, the Director of Homeland Security (or any successor official), and any other appropriate Federal, State, or nongovernmental entities, shall commence a rulemaking to consider changes to the design basis threat for facilities licensed by the Commission under this Act. Within 1 year after the date of the enactment of this section, the Commission shall issue a final rule revising the design basis threat and associated regulations.*

*b. Regulations issued under this section shall take into account—*

- (1) the events of September 11, 2001;*
- (2) the potential for attack on facilities by multiple coordinated teams totaling in the aggregate at least 20 individuals;*
- (3) the potential for assistance in an attack from several persons employed at the facility;*
- (4) the potential for suicide attacks;*
- (5) water-based and air-based threats;*
- (6) the potential use of explosive devices of considerable size and other modern weaponry;*

(7) *the potential for attacks by persons with a sophisticated knowledge of facility operations;*

(8) *the threat of fires, especially fires of long duration; and*

(9) *protection of spent fuel storage pools and dry cask storage, including after reactor closure.*

c. *Regulations issued under this section shall establish requirements for licensees relating to construction, operation, security procedures, and emergency response, and shall require conforming amendments to existing licenses.*

d. *Regulations issued under this section shall require armed escorts for all spent fuel shipments, capable of repelling attacks by a large number of attackers working as several coordinated teams and using sophisticated techniques and equipment.*

e. (1) *Regulations issued under this section shall include the establishment of an Operational Safeguards Response Evaluation program, whose Director shall report directly to the Nuclear Regulatory Commission, which shall ensure that the operational safeguards response of each facility described in paragraph (2) is tested at least once every 2 years to determine whether the design basis threat factors identified in regulations issued under this section have been adequately addressed.*

(2) *Facilities subject to testing under paragraph (1) include commercial nuclear powerplants, research reactors, spent fuel storage facilities and associated support facilities and equipment, and any other licensed facility the Nuclear Regulatory Commission considers appropriate.*

f. *Regulations issued under this section shall be reviewed and revised as appropriate at least once every 5 years.*

\* \* \* \* \*

## CHAPTER 18. ENFORCEMENT

\* \* \* \* \*

### SEC. 229. TRESPASS UPON COMMISSION INSTALLATIONS.—

a. 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 or subject to its licensing authority or to certification by the Commission under this Act or any other Act. Every such regulation of the Commission shall be posted conspicuously at the location involved.

\* \* \* \* \*

### SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

【a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause 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

【(4) any uranium enrichment facility licensed by the Nuclear Regulatory Commission.  
shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.】

*a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—*

*(1) any production facility or utilization facility licensed under this Act;*

*(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;*

*(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;*

*(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or*

*(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility,  
shall be fined not more than \$1,000,000 or imprisoned for up to life in prison without parole, or both.*

\* \* \* \* \*