Calendar No. 372

108TH CONGRESS, *1st Session* | SENATE | REPORT 108–190

NUCLEAR INFRASTRUCTURE SECURITY ACT

NOVEMBER 6, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 1043]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1043) to provide for the security of commercial nuclear power plants and facilities designated by the Nuclear Regulatory Commission, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

The Atomic Energy Act of 1954 assigned to the Atomic Energy Commission responsibility for protecting public health and safety from the hazards of radiation produced through nuclear technology. The Energy Reorganization Act of 1974 abolished the Atomic Energy Commission and created a new agency, the Nuclear Regulatory Commission (NRC or Commission), to take over its regulatory functions.

The Senate Committee on Environment and Public Works has jurisdiction over the nonmilitary environmental regulation and control of atomic energy. This includes both legislative and oversight authority pertaining to the operations of the NRC.

Among the responsibilities entrusted to the Nuclear Regulatory Commission are regulation of the nation's commercial nuclear power plants, along with most other civilian uses of radioactive materials. The mission of the NRC is to conduct an effective regu-

latory program that promotes the safe use of nuclear energy and materials, in a manner that protects the public health and safety and the human environment, and promotes the common defense and security.

As stated in the Atomic Energy Act:

> " . . . 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 . . ."

As of January 2003, there were just over 100 commercial nuclear power reactors licensed to operate by the NRC in 31 States. Additionally, NRC has regulatory responsibility over seven fuel fabrication and production facilities; two gaseous diffusion uranium enrichment facilities; and 14 other facilities that possess significant quantities of special nuclear material (other than reactors) or process source material (other than uranium enrichment facilities). The NRC also administers approximately 5,000 licenses for medical, academic and industrial uses of nuclear materials; and has agreements under which States will administer approximately 16,000 additional such licenses.

While prevention of accidents necessarily remains a key component of nuclear safety, the events of September 11, 2001 bring a new urgency to the need to deter and protect against attacks at our nation's nuclear facilities, and against attempted theft of radioactive materials.

Following the events of September 11th, the NRC took immediate action to respond to heightened threat levels and concerns. It undertook intensive consultation with other Federal entities, including the FBI, the Office of Homeland Security (and subsequently the Department of Homeland Security), the Department of Defense, the Federal Aviation Administration and others to evaluate general and specific threats to NRC licensed facilities, and to coordinate planning and responsive actions. The NRC has consulted with Governors regarding the deployment of State assets, including the National Guard. It has issued a series of Orders to licensees to enhance security at nuclear facilities. The NRC is also in the process of conducting what it describes as a comprehensive review of NRC policies and regulations relating to safeguards and security.

In the past 18 months, the Commission has issue new security measures to all 104 commercial nuclear power reactors, including orders for: Interim Safeguards and Security (Feb. 25, 2002); Access Authorization (Jan. 7, 2003); Design Basis Threat (April 29, 2003); Training Enhancements (April 29, 2003); and Fitness for Duty (April 29, 2003). The Commission has also issued security orders for the decommissioning power reactors, fuel cycle facilities, spent fuel facilities, the possession/shipment of spent fuel, and for irradiators possessing byproduct material in sealed sources.

The committee has worked closely with the NRC to monitor changing circumstances and to oversee activities of the NRC and its licensees. The committee has also worked closely with Department of Homeland Security (DHS) since its inception. DHS has an extensive role in the both the security of infrastructure facilities

and emergency preparedness and response. The committee has had jurisdiction over the Federal Emergency Management Agency (FEMA) and its emergency prepared and response authority (through the Robert T. Stafford Act) since the agencies inception and continues its jurisdictional role over these matters which have been incorporated into the Department of Homeland. The committee will continue to work with the agencies to ensure that all actions necessary to protect the public are taken in a timely and thorough manner.

OBJECTIVES OF THE LEGISLATION

The Nuclear Security Infrastructure Act of 2003 (NISA) is an important step in ensuring protection of the public against potential terrorist activities against commercial nuclear facilities or potential theft of nuclear materials. While the NRC has voluntarily undertaken a number of actions, these have been ad hoc responses to emergency events. The purpose of this legislation is to codify those actions necessary to protect against attack on our nation's nuclear reactors and against theft or terrorist use of radioactive materials, such as for so-called 'dirty bombs.'

The legislation gives clear and permanent direction to the NRC and its licensees, and DHS. NISA will assure the American public that these nuclear facilities are as safe as they can reasonably be, and will clearly signal to would-be terrorists that our nuclear facilities are heavily protected, hardened structures that will make neither easy, nor desirable, targets.

The committee has worked closely with the NRC and DHS to develop this legislation. It is worth noting that last Congress the committee unanimously reported S. 1746 (the Nuclear Security Act of 2002), which serves as the basis for NISA. The committee has taken extensive testimony on the issues involved and has worked with industry, public interest groups, private security guards employed at nuclear facilities, and members of the public. This legislation represents a carefully considered, bipartisan response to the threat of U.S. nuclear resources being employed as weapons of destruction.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the Act may be cited as the "Nuclear Infrastructure Security Act of 2003."

Sec. 2. Definitions

This section amends section 11 of the Atomic Energy Act to provide for the definition of "designated nuclear facilities' and "private security force."

Sec.3. Designated Nuclear Facility Security

Section 3 (a) amends Chapter 14 of the Atomic Energy Act by adding a new section 170C, "Protection of Designated Nuclear Facilities."

New subsection 170C(a) provides definitions for "Certificate Holders," Federal Security Coordinator," "Design Basis Threat" and "Licensee."

New subsection 170C(b) requires the Nuclear Regulatory Commission to establish, by regulation, classes of designated nuclear facilities. Paragraph (b)(2) requires the Commission to classify the following designated nuclear facilities: commercial power plants, independent spent fuel storage installation, decommissioned nuclear power plants, fuel processing facilities, and any other facility that the Commission determines should be classified as a designated nuclear facility. This subsection (paragraph 3) also establishes factors that the Commission shall consider when determining whether to classify a facility as a designated nuclear facility.

The committee notes that this legislation makes various requirements of "designated nuclear facilities." As defined in this legislation, the Commission is to establish classes of designated facilities, including: commercial nuclear power plants; independent spent fuel storage installations; decommissioned nuclear power plants; fuel processing facilities; gaseous diffusion facilities; and other facilities that the Commission determines should receive a classification. The committee recognizes that the risks posed by and the security concerns affecting these classes of facilities differ, and it may not make sense for the Commission to apply all of the requirements of this legislation to each class of designated nuclear facilities uniformly. The committee expects the Commission to apply the provisions of the legislation to a class of facility only when it determined to be appropriate by the Commission.

New subsection 170C(c) requires the Commission and the Secretary of Homeland Security, in consultation with other agencies and State and local government, as appropriate to conduct a comprehensive security examination. Paragraph (c)(1) sets out in detail the matters to be examined. These are: potential threats to designated nuclear facilities; classification of threats as those types of threats falling under the responsibility of either the Federal Government, State or local governments, or those threats which should be the responsibility of the licensee or certificate holder; national security response capability, including the identification of obligations and authorities for protection of areas, identifying those responsible for carrying out those obligations, and the coordination between the Federal, State and local agencies, the Commission and licensee or certificate holders of designated nuclear facilities, for protection in the event of a terrorist threat or attack; coordination of security efforts; adequacy of planning, including emergency planning zones, coordination and security plans; the system of threat levels used to categorize threats; hiring and training standards for members of private security forces; coordination of Federal resources to expedite and improve the process of conducting background checks; the establishment of a program to provide technical assistance and training to the National Guard and law enforcement; and options for protecting spent fuel storage.

Paragraph (c)(2) requires the examination to be completed not later than 1 year after enactment with a report (including recommendations and findings) required under (c)(3) to be submitted

to the Congress and the President (classified and unclassified form) not later than 180 days following the completion of the examination.

New subsection 170C(d) requires that not later than 180 days after completion of the report required in (c)(3), the Commission revise the design basis threat as it determines appropriate based on findings of the security examination. Paragraph (d)(2) provides the Commission the discretion to determine what classes of designated nuclear facilities will be subject to a revised design basis threat. Paragraph (d)(3) requires the Commission to ensure the protection of information in accordance with chapter 12, section 181 and any other applicable law and of classified national security information. Subparagraph (d)(3)(B) provides that nothing in this section supercedes any law governing the disclosure of classified or safeguards information.

The Commission recently issued orders that revise the Design Basis Threats against which licensees must protect the covered facility. This section directs the Commission to make any needed changes to its Design Basis Threats through rulemaking within 18 months after enactment of the legislation. The purpose of this requirement is to ensure that the public has the opportunity to comment on the content of the Design Basis Threats. The committee recognizes that the specifics of the Design Basis Threats include information that is either classified or considered to be safeguards information under section 147 of the Atomic Energy Act. The committee recognizes that the specifics of the Design Basis Threats will be either classified national security information or safeguards information. This sensitive information would be of value to potential terrorists and cannot be made available to the public. The committee therefore expects the Commission to propose changes in its regulations in a manner that does not reveal any sensitive information. The Commission is to invite public comment on the changes in its security regulations, and to respond to the comments, to the extent practicable. In light of the need for the Commission to protect sensitive information, the committee recognizes that the Commission will not be able to respond to comments to the extent that this would require the agency to describe the specifics of the Design Basis Threats or to explain whether specifics proposed by the public were or were not adopted. Even with these limitations, the committee believes that it would be useful for the public to be able to provide its views to the Commission. The Commission is directed to consider carefully the public comments in establishing its Design Basis Threats.

Subparagraph (d)(3)(C) requires the Commission to submit to Congress, not later than 60 days after the effective date of the regulation required by this subsection, a report (classified and unclassified) describing any classified, safeguards or other information that the Commission considered in promulgating the regulation, but did not make available to the public due to the sensitive nature of the information. This subparagraph also requires the Commission to submit to Congress a report (classified and unclassified) identifying any orders or instructions issued under the regulation required by this subsection that were not made available to the public due to the classified content or safeguards content. The

Commission is required to submit to Congress, not less than every 6 months, a report (classified and unclassified) identifying any orders issued under the regulations required by this subsection that were not made public due to national security concerns.

New subsection 170C(e) requires the Commission to establish a system for the determination of threat levels for classes of designated nuclear facilities, as determined by the Commission, and other materials designated by the Commission not later than 150 days after completion of the report required in (c)(3).

New subsection 170C(f) requires the Commission to ensure that designated nuclear facilities revise their security plans to be consistent with any revised Design Basis Threat and to submit the plan to the Commission for review. The Commission is required to ensure that any necessary changes to the security and security plans are made not later than 18 months after completion of the review.

New subsection 170C(g) requires the Commission and the Department of Homeland Security, in consultation with other Federal, State, and local government agencies, to review and update for onsite and offsite emergency response plans and preparedness for response to an emergency involving a designated nuclear facility. The Commission shall promulgate regulations to implement this subsection no later than 180 days after completion of the report issued under (c)(3). The Commission and the Department shall ensure that these requirements: 1) are adequate to protect public health and safety; 2) provide reasonable assurance that the plans can and will be implemented; and 3) provide reasonable assurance that adequate protective measures can and will be taken in the event of such an emergency. This subsection, in paragraphs (2) and (3), sets out in detail what the updated requirements shall provide for, as well as factors to be addressed in the updated requirements. Paragraph (4) of this subsection ensures stakeholder involvement in the process. Not later than 60 days after the date on which the regulations (required in 170C(g)(5)) become effective, the Commission, in coordination with the Department, is required to begin reviewing onsite and offsite emergency response plans and preparedness capability. The Commission shall submit to Congress a report (classified and unclassified) describing the results of each review. Reviews are to be conducted on a schedule based on the relative vulnerability of a facility and the proximity of the facility to high population density areas.

New subsection 170C(h) requires the Commission to review and update, as appropriate, the access and training standards for employees of a designated facility. This subsection also requires the Commission to establish qualifications and procedures, in addition to fingerprinting for criminal history record, to ensure that no individual who presents a threat to national security is employed at a designated nuclear facility.

New subsection 170C(i) requires the Commission to assign a Federal security coordinator to each regional office of the Commission and sets out the responsibilities of the Federal security coordinator. This subsection also provides the Commission discretion to assign an additional Federal security coordinator to a Commission office on the site of a designated nuclear facility. The Governor of a State

that contains a designated nuclear facility may request the assignment of an additional Federal security coordinator to 1 or more designated nuclear facilities in that State. While the committee intends for the Commission to give substantial weight to the views of the Governor, the decision on whether security would be enhanced by the employment of an additional Federal security coordinator will be that of the Commission.)

New subsection 170C(j) requires the President to identify the national security support capability to protect designated nuclear facilities against terrorist threats and attacks. The national security support capability shall use capabilities of such Federal, State and local agencies identified in security examination report required under subsection (c)(3).

The committee recognizes the need to ensure a coordinated Federal, State and local capability exists to prevent and respond to terrorist incidents involving a sensitive nuclear facility. This capability should exist to assist the private security force in preventing and responding to a terrorist attack. The committee expects that this capability will be met with existing Federal, State and local resources including the State and local law enforcement and emergency response personnel, the National Guard, and other appropriate Federal, State and local agencies. New subparagraph 170C(j)(3) directs the Secretary to establish this capability and ensure that there is proper coordination among Federal, State and local agencies and private security personnel.

New subparagraph 170C(j)(4) requires the President to establish, consistent with the finding of the security examination, a program to provide training and technical assistance for National Guard, State and local law enforcement who have security responsibilities for pre-to threats. The President may provide grants to assist as appropriate. The intention of this section is to ensure that all who have security responsibilities are properly trained and equipped to deal with a threat/act at a nuclear facility.

New subsection 170C(k) is a savings clause to ensure that nothing in the section supercedes any law governing the disclosure of classified or safeguards information.

Section 3(b) amends Section 149 of the Atomic Energy Act. This section expands the classes of persons subject to the fingerprinting requirements of section 149 of the Atomic Energy Act of 1954.

New subsections (a)(1)(A)&(B) provides for fingerprinting to be conducted by (A) any licensee, certificate holder, or applicant for a license or certificate to operate a utilization facility under section 103 or 104(b), and (B) any licensee or applicant for a license to possess or use radioactive material or other property (including intellectual property, such as standard reactor designs subject to certification under 10 C.F.R. Part 52, or property that can be reverse engineered to develop components significant to nuclear activities) subject to Commission regulation that the Commission determines to be of such significance to the public health and safety or common defense and security as to warrant fingerprinting and background checks. As is the case under current law, the person required to conduct the fingerprinting would bear the cost of the identification and records checks.

Persons required to conduct fingerprinting would be required to fingerprint each individual permitted to have unescorted access to the facility, radioactive material, or other property (including property such as standard reactor designs subject to certification under 10 C.F.R. Part 52, or property that can be reverse engineered to develop components significant to nuclear activities) subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or common defense and security as to warrant fingerprinting and background checks. The extension of section 149 to possession or use of radioactive material is not proposed for the purpose of covering individuals engaged in the transportation of nuclear material, who are already subject to criminal history record checks under statutes administered by the Department of Homeland Security and the Department of Transportation. It is not the committee's intent for the Commission to duplicate the efforts of other Federal agencies.

Fingerprints obtained would be submitted to the U.S. Attorney General, through the Commission, for identification and criminal history records checks. The Attorney General may provide the results of any search to the Commission. As is also the case under current law, the Commission would be authorized to provide the results of the identification and criminal history records checks (other than information that a Government agency has determined should not be made available to a licensee, certificate holder, or applicant) to the person who conducted the fingerprinting. A decision would then be made whether to provide unescorted access, or access to safeguards information, to the individual who was the subject of the background check.

New subsection 149(d) would allow the fingerprinting requirements of section 149 to be satisfied by use of other biometric methods used for identification that have been approved by the Attorney General. This will permit use of technologically advanced biometric methods for identification of individuals to satisfy the requirements of section 149.

The committee also encourages the Commission and its licensees to implement identity authentication and verification systems similar to those currently utilized by other Federal agencies in order to screen employees, contractors and visitors to nuclear facilities. Such systems should rely upon domestic and global data sources and be compatible with other government programs requiring identity authentication like U.S. VISIT, Computer Assisted Passenger Prescreening System (CAPPS) II, and e-government programs

Sec. 4. Office of Nuclear Security and Incident Response

This section amends Title II of the Energy Reorganization Act of 1974 by adding a new section 212, which establishes an Office of Nuclear Security and Incident Response. This new section is intended to codify action taken by the Commission in April, 2002, (creating the office by administrative action) and to provide the equivalent statutory status as other Commission offices. It is the committee's intent for this office to coordinate closely with the Department of Homeland Security in order to enhance the effectiveness of both the Commission and the Department. It is also the

committee's intent that this office not duplicate efforts of the Department.

New subsections 212(a) and 212(b) provide definitions for the new section and establish the Office of Nuclear Security and Incident Response.

New subsection 212(c) provides for the appointment of a Director to head the office, and specifies the duties of the Director.

New subsection 212(d) requires the Commission to establish a security response evaluation program in order to assess the ability of each designated nuclear facility to defend against threats in accordance to the security plan. This subsection requires the evaluations to include force-on-force exercises that simulate the security threats consistent with the design basis threat applicable to the facility. It is the committee's expectation that those who carry out the force-on-force exercises will be well qualified with backgrounds that include knowledge of special forces operations and nuclear facilities. The frequency of these evaluations is set at every 3 years, and allows the Commission to suspend these activities in times of heightened threat levels. The Commission is required to establish performance criteria for judging the security response evaluations. This subsection also sets out corrective action measures if a facility does not satisfy the performance criteria and does not correct any defects, but does not limit any current enforcement authority of the Commission.

New subsection 212(e) requires the Commission, in coordination with Department of Homeland Security, and, as appropriate, in consultation with other Federal, State, and local response agencies and stakeholders, to observe and evaluate emergency response exercises to order to assess the ability of the onsite and offsite emergency response plans to protect public health and safety and to provide reasonable assurance that adequate protective measures can and will be taken to respond to a range of scenarios. Such evaluations are to take place not less than once every 2 years.

It is the committee's intent that the Commission, in cooperation with the Department of Homeland Security and other appropriate Federal and State agencies, will determine the criteria by which these scenarios are created and evaluated, given reasonable risk assessment and the potential impact on the public. In the case of spontaneous and shadow evacuations, population distributions within the emergency planning zone and shadow areas should be reviewed to support evacuation time estimate studies. Off-site emergency response organizations should use this data to determine appropriate evacuation routes, traffic control points and to identify public entities in need of assistance and transportation. Plans should be modified as appropriate. It is not the intent of the committee to require that facilities and offsite organizations exercise and demonstrate shadow and spontaneous evacuations, but to assure that appropriate consideration has been given to these factors and that the plan has been revised to address them.

The Commission, in coordination with Department of Homeland Security, and, as appropriate, in consultation with other Federal, State, and local response agencies and stakeholders, may observe and evaluate exercises more frequently than is required in

212(e)(1) at designated nuclear facilities located in high population density areas.

New paragraph 212(e)(6)(A) requires the Commission, in coordination with the Secretary of Homeland Security, to notify licensees or certificate holders, the Governor of any States that may be affected, and any other appropriate Federal, State or local agencies or stakeholders of any weakness or deficiencies identified as the result of an evaluation. If any such weakness or deficiency is not promptly corrected, the Commission is required to take appropriate action under section 107 or other enforcement authorities available to the Commission.

The Commission and the Secretary of Homeland Security are required to submit to the President and Congress annually a report (classified and unclassified) describing the results of each exercise evaluated in the previous year, and each revision of an emergency response plan or emergency preparedness capabilities made in accordance with paragraph (6).

Sec 5. Guarding of Nuclear Facilities Equipment and Material

The purpose of this section is to provide licensees and certificate holders under title I of the Atomic Energy Act of 1954 and their employees and contractors the ability to possess the weapons they need to effectively protect facilities, equipment, and radioactive materials.

The Gun Control Act (GCA), at 18 U.S.C. §922(o), prohibits the transfer or possession of a machinegun not lawfully possessed prior to May 19, 1986. This section amends section 922(o) to allow licensees and certificate holders and their contractors to possess otherwise prohibited machineguns for use in the protection of facilities, equipment, and radioactive materials. This language is similar to existing exceptions to the prohibition on possession of semiautomatic assault weapons and large capacity ammunition devices found in sections 922(v) and (w) for licensees under title I of the Atomic Energy Act of 1954, and their employees and contractors. Adding this language to section 922(o) to create a similar exception is consistent with the two existing exceptions in the GCA. Additionally, this section provides an exemption in order for the importation of a firearm or ammunition to be authorized by the Attorney General if it is being imported or brought in for transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an onsite physical protection system and security organization required by Federal law.

In order to provide adequate security when nuclear materials are being transported, this section amends section 922(a)(4) to dispense with the advance notice requirement for purposes of licensee or certificate-holder authorized training or transportation of nuclear materials or equipment. This section also allows for the transportation and possession of firearms for purposes of establishing and maintaining an onsite physical protection system and security organization required by Federal law and for purposes of licensee or certificate-holder-authorized training and transportation of nuclear materials or equipment, irrespective of State or local laws.

Sec. 6. Sensitive Radioactive Material Security

This section amends Chapter 14 of the Atomic Energy Act of 1954 to add a new section 170D at the end. New subsection 170D(a) defines the terms 'sensitive radioactive material' and 'security threat.' Subsection 170D(b) requires the Commission to evaluate the security of sensitive radioactive material against security threats and recommend administrative and legislative actions. In doing so, the Commission is required to consult with the Secretary of Homeland Security, Secretary of Energy, Director of the CIA, Director of the FBI, Director of the Customs Service, and the Administrator of the EPA. The committee is aware that there are a broad range of radioactive materials in public use and not all present a significant threat to public health. As such, this subsection requires the Commission to take actions, as appropriate, to identify and categorize those materials that should be classified as sensitive radioactive material. The committee expects that the development of improved security recommendations under this section will be based on this categorization, providing the greatest security to those categories of sensitive radiological material which present the greatest threat.

New subsection 170D(c) requires periodic reports to the President and Congress describing administrative and legislative actions recommended by the task force.

New subsection 170D(d) requires the NRC to take such actions as are appropriate to revise the system for licensing radioactive materials and to ensure that States have entered into appropriate agreements establishing compatible programs.

Sec. 7. Treatment of Accelerator-Produced & Other Radioactive Material as Byproduct Material

This section extends current Commission regulatory authority under the Atomic Energy Act with respect to specifically defined radioactive materials, to include discrete sources of radium–226, certain hazardous discrete sources of naturally occurring radioactive material (NORM), or accelerator-produced radioactive material that are produced, extracted, or converted for use in commercial, medical, or research activities. NRC is required to issue final regulations establishing requirements for the acquisition, possession, transfer, use, or disposal of the material by the effective date (4 years after enactment).

Sec. 8. Unauthorized Introduction of Dangerous Weapons

This section expands section 229a of the Atomic Energy Act to include facilities, installations or real property subject to the licensing or certification authority of the Commission. This would allow Commission to apply the provisions of section 229a to NRC licensed or certified activities, thereby allowing the Commission to prohibit a person who has not obtained prior authorization from carrying, transporting, or otherwise introducing or causing to be introduced any weapon, explosive, or other dangerous instrumentality into any facility, installation or real property regulated or subject to certification by the Commission.

Sec. 9. Sabotage of Nuclear Facilities or Fuel

This section amends section 236a of the Atomic Energy Act of 1954 to expand existing Federal criminal sanctions for sabotage or attempted sabotage of production or utilization facilities to include sabotage or attempted sabotage during the construction stage of those facilities, if the damage could affect public health and safety during facility operation. This section also expands the sanctions to include sabotage or attempted sabotage of operating fuel fabrication facilities.

Sec. 10. Evaluation of Adequacy of Enforcement Provisions

This section requires the Attorney General and the NRC to submit to Congress a report that assesses the adequacy of the criminal enforcement provisions in Chapter 18 of the Atomic Energy Act

Sec. 11. Protection of Whistleblowers

This section amends section 212(a) of the Energy Reorganization Act of 1974 to extend whistleblower protection to Commission contractors and subcontractors.

Sec. 12. Technical and Conforming Amendment

This section provides technical and conforming amendments.

Sec. 13. Authorization of Appropriations

The Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) provides that the "aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year." This section exempts from fees, costs associated with specific homeland security functions. The cost of fingerprinting and background checks and the costs of conducting security inspections will continue to be included in those charges.

The committee assumes that the annual charge collected from licensees pursuant to the Omnibus Budget Reconciliation Act will continue to fund appropriations for the NRC's regulation of routine operation of nuclear facilities and those security measures not exempted by this provision.

LEGISLATIVE HISTORY

On May 12, 2003, Senator Inhofe introduced S. 1043, which was referred to the Committee on Environment and Public Works. While no hearings were held during the 108th Congress on this legislation, the committee held a hearing on during the 107th Congress on the subject of nuclear security on June 5, 2002 and conducted a classified hearing on June 20, 2002. On May 15, 2003, the committee ordered S. 1043 to be reported favorably with an amendment in the nature of a substitute.

HEARINGS

No hearings were held in the 108th Congress on this bill. During the 107th Congress, the Committee on Environment and Public Works held a hearing on infrastructure security on November 1,

2001, receiving testimony from Hon. Michael Brown, Deputy Director, Federal Emergency Management Agency; Hon. Joe Moravec, Commissioner, Public Building Service, General Services Administration; Dr. David Sampson, Assistant Secretary for Economic Development, Economic Development Administration, U.S. Department of Commerce; Dr. Richard Meserve, Chairman, Nuclear Regulatory Commission; Herbert Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration; and Marianne L. Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency.

On June 5, 2002, the Committee on Environment and Public Works held a hearing to receive testimony on S. 1586, a bill to amend the Atomic Energy Act of 1954 to authorize the carrying of firearms by employees of licensees, and for other purposes, and S. 1746, a bill to amend the Atomic Energy Act of 1954 to strengthen security at sensitive nuclear facilities. For this hearing the witnesses were Hon. Edward J. Markey, U.S. Representative from Massaschusetts; Hon. Richard A. Meserve, Chairman, Chairman, Nuclear Regulatory Commission; David Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Washington, DC; Jack Skolds, Chief Nuclear Officer, Excelon Corp., Washington, DC; Danielle Brian, Executive Director, Project on Government Oversight, Washington, DC; Donna J. Hastie, Emergency Planning Consultant, Marrietta, GA; and Irwin Redlener, M.D., F.A.A.P., President, Children's Health Fund, New York, NY.

On June 20, 2002, the Committee on Environment and Public Works held a classified hearing on nuclear security, receiving testimony from Federal Government witnesses.

ROLLCALL VOTES

On May 15, 2003, the Committee on Environment and Public Works met to consider S. 1043, the Nuclear Infrastructure Security Act. An amendment in the nature of a substitute to the bill was offered by the chairman and agreed to by voice vote. Final passage of the measure and a motion to report the bill to the Senate as amended was agreed by voice vote.

REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1043 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 1043 would require States and private individuals to pay fees to the Nuclear Regulatory Commission to cover increased costs for security at nuclear facilities. According to the Congressional Budget Office, costs to States and individuals cannot be predicted with certainty, but that they probably would not exceed the annual threshold for intergovermental or private-sector mandates, as provided by UMRA.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 14, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1043, the Nuclear Infrastructure Security Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

S. 1043, Nuclear Infrastructure Security Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on May 15, 2003

Summary

S. 1043 would establish several new security programs designed to protect the nation's nuclear infrastructure. Those programs would include appointing Federal security coordinators for designated nuclear facilities, enhanced systems to manage the security of sensitive radioactive materials, additional requirements for security and emergency-response plans at designated nuclear facilities, and additional training and grant funding for the National Guard and State and local authorities to improve security efforts at nuclear facilities.

Based on information from the Nuclear Regulatory Commission (NRC), CBO estimates that implementing S. 1043 would have a gross cost of $253 million over the 2004–2008 period. Although the NRC currently has the authority to offset a substantial portion of its annual appropriation with fees charged to the facilities it regulates, S. 1043 would require that only the cost of security inspections be offset through annual fees. Accounting for such collections, CBO estimates that implementing S. 1043 would result in a net cost of $235 million over the 2004–2008 period, assuming appropriation of the necessary amounts.

In addition, enacting S. 1043 would increase revenues by establishing new criminal penalties for the sabotage of nuclear facilities and by allowing certain facilities regulated by the NRC to import weapons subject to a transfer tax. CBO estimates that those penalties and transfer taxes would increase revenues by less than

$500,000 a year. Subsequent direct spending of criminal penalties also would be less than $500,000 per year.

S. 1043 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by increasing NRC fees and requiring new security procedures at certain nuclear facilities. Because several of the mandates are dependent upon future actions of the NRC for which information currently is not available, CBO cannot determine the aggregate cost of all mandates contained in the bill nor whether the costs to the private sector would exceed the annual threshold for private-sector mandates ($117 million in 2003, adjusted annually for inflation). CBO estimates, however, that the costs to public entities would be small and would not exceed the intergovernmental threshold ($59 million in 2003, adjusted annually for inflation).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 1043 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[1]					
Federal Security Coordinators:					
Estimated Authorization Level	0	20	21	21	22
Estimated Outlays	0	14	19	21	22
Security of Sensitive Radioactive Materials:					
Estimated Authorization Level	12	12	12	12	13
Estimated Outlays	8	11	12	12	13
Security and Emergency-Response Plans:					
Estimated Authorization Level	10	10	13	15	9
Estimated Outlays	7	9	12	14	11
National Guard and Law Enforcement Training:					
Estimated Authorization Level	11	11	11	11	11
Estimated Outlays	8	10	11	11	11
Rulemakings, Evaluations, and Reports:					
Estimated Authorization Level	6	4	6	2	1
Estimated Outlays	4	3	5	3	2
Gross Changes in NRC Costs Under S. 1043:					
Estimated Authorization Level	39	57	63	61	56
Estimated Outlays	27	47	59	61	59
Offsetting Collections for Security-Response Evaluations[2]:					
Estimated Authorization Level	–6	–6	–2	–2	–2
Estimated Outlays	–6	–6	–2	–2	–2
Net Changes in NRC Spending Under S. 1043:					
Estimated Authorization Level	33	51	61	59	54
Estimated Outlays	21	41	57	59	57

NOTE: Details may not sum to totals because of rounding.

[1] S. 1043 also would affect revenues and direct spending but by less than $500,000.

[2] Under current law, collections are authorized at declining percentages of the NRC's budget (92 percent in 2004, 90 percent in 2005, and 33 percent after 2005). To estimate the net cost of S. 1043, those collection percentages were applied to the estimated cost of security inspection programs as required by S. 1043.

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2004, that the necessary amounts will

be appropriated for each year, and that outlays will occur at historical rates for similar programs.

Spending Subject to Appropriation

S. 1043 would establish several new security and emergency-response programs to be implemented at the nation's nuclear facilities. Based on information from the NRC, CBO assumes that 66 commercial nuclear sites in 31 States would meet the bill's definition of a "designated nuclear facility" and thus would be subject to the requirements of the bill. In addition, the bill would require new registration and tracking procedures for radioactive material, new nuclear security and emergency planning procedures, and it would establish a training and grant program for the National Guard and State and local law enforcement personnel to improve security at nuclear facilities.

In 2003, the NRC received a gross appropriation of $574 million. The agency is authorized to collect fees from the nuclear industry to offset a significant portion of its budget; CBO estimates that NRC will have net spending of $74 million in 2003. After the provisions of S. 1043 are fully implemented, CBO estimates that NRC's new responsibilities would cost around $60 million a year (in addition to its net spending under current law), subject to appropriation of the necessary amounts.

Based on information from the NRC, CBO estimates that implementing S. 1043 would have a gross cost of $253 million over the 2004–2008 period. Although the NRC has the authority under current law to offset a substantial portion of its annual appropriation with fees charged to the facilities it regulates, S. 1043 would require that only the cost of security inspections be offset through such fees. Accounting for such collections, CBO estimates that implementing S. 1043 would result in a net cost of $235 million over the 2004–2008 period, assuming appropriation of the necessary amounts.

Federal Security Coordinators. S. 1043 would require that the NRC hire and train security coordinators to be stationed in each of the NRC's four regions. Under the bill, the Governor of a State may request a security coordinator for each of the nuclear facilities located in that State. For this estimate, we assume that all 31 affected Governors would make such requests and that all 66 sites designated under the bill would have individual security coordinators in addition to the regional coordinators.

Overall, we estimate that implementing this program would require the NRC to hire and train about 85 personnel at a cost of about $14 million per year and that the program would start in 2005. We expect that the NRC would spend about $6 million per year on training, travel, and equipment for those security coordinators. Overall, CBO estimates that implementing this program would cost $76 million over the 2005–2008 period.

Security of Sensitive Radioactive Material. S. 1043 would require the NRC to improve the security requirements for sensitive radioactive materials. Such improvements would include revising licensing and classification systems, establishing a tracking system, and increasing evaluation and inspection of safeguard measures. Currently, the NRC spends about $1 million per year to regulate cer-

tain radioactive material used for industrial purposes. S. 1043 would significantly expand that program to include a wide variety of radioactive materials.

Based on information from the NRC, we estimate that this expanded program would require additional appropriations of $12 million per year over the next 5 years. Funds would be used for establishing new computer systems, hiring of additional staff, and auditing sites with radioactive materials. Overall, we estimate that implementation of this program would result in outlays of $56 million over the 2004–2008 period.

Security-and Emergency-Response Plans. S. 1043 would require the NRC to evaluate the emergency-response plans for each of the 66 designated nuclear facilities in the United States. Based on information from the NRC, CBO estimates that those evaluations would cost an average of about $11 million per year, or $53 million over the 2004–2008 period for additional staff, equipment, training, and consulting services. We expect that the new evaluation program would be offset by fees charged to the NRC's licensees, thus we estimate that net outlays for those provisions would be $35 million over the next 5 years.

Emergency-Response Planning. S. 1043 would require the NRC to review and update the regulations for preparing emergency-response plans at designated nuclear facilities. After such regulations are updated, the NRC would be required to review each plan for compliance and report to the Congress. We estimate that it would cost the NRC about $1 million to review and promulgate new rules for emergency-response plans over the 2004–2005 period and that reviewing the plans after new rules are issued would cost about $8 million over the 2006–2008 period.

In addition to requiring upgrades to emergency plans, S. 1043 would require the NRC to observe and evaluate emergency-response exercises and report to the Congress. Based on information from the NRC, we expect that the agency would hire additional staff to establish evaluation criteria to observe emergency-response exercises. We estimate that activity would cost about $9 million over the 2004–2008 period for additional staff, support, training, and travel.

Security-Response Evaluations. S. 1043 would require the NRC to establish a security-response-evaluation program that would simulate the threats that nuclear facilities must be able to defend against. At least once every 3 years, an evaluation would be required at each designated nuclear facility. We expect that the NRC would use contractors to conduct mock exercises, known as force-on-force. Overall, we estimate that the NRC would spend about $7 million per year to staff and support a program office and contract for such exercises. CBO estimates that the program would have a gross cost of about $35 million over the 2004–2008 period. Based on information from the NRC, however, we expect that the cost of this program would be offset by fees charged to the NRC's licensees. Such fees are charged annually in declining percentages of the budget authority for the NRC's programs. Accounting for such fees, we estimate that implementing this provision would result in net outlays of $17 million over the 2004–2008 period.

National Guard and Law Enforcement Training. S. 1043 would establish a new program to provide technical assistance and training for the National Guard and State and local law enforcement agencies to respond to threats against the nation's nuclear facilities. Under this program, the NRC would provide training at each of the designated 66 facilities four times a year at a cost of about $125,000 a year—at an estimated total cost of $8 million per year. In addition, we estimate that the 31 States with designated nuclear facilities would each receive grants of $100,000 per year for technical assistance and training. Assuming appropriation of the necessary amounts, we estimate that implementing those training and assistance programs would require appropriations of about $11 million a year, which would result in outlays of $51 million over the 2004–2008 period.

Rulemakings, Evaluations, and Reports. The bill would require the NRC to prepare several reports for the Congress on nuclear security issues and conduct reviews of security matters at the nation's nuclear facilities. CBO has estimated the cost of those additional efforts based on information from the NRC. Specifically, the bill would require:

- An examination of the security requirements for the nation's nuclear infrastructure at an estimated cost of $4 million over the 2004–2005 period;
- An update to rules on design-basis threat or the threat that designated nuclear facilities must be able to defend against at an estimated cost of $2 million over the 2004–2006 period;
- An evaluation of each designated nuclear facility's plan to defend against the updated design-basis threat at an estimated cost of $3.5 million in 2006;
- New rules regarding the handling of accelerator-produced and by-product radioactive material at an estimated cost of $1.5 million per year over the 2005–2007 period;
- A review and update of employee security standards at the nation's nuclear facilities at an estimated cost of $4 million over the 2004–2008 period;
- A report on the adequacy of criminal penalties under the Atomic Energy Act at an estimated cost of $500,000 in 2004; and
- A system to determine threat levels for the nation's nuclear infrastructure at an estimated cost of $300,000 over the 2005–2006 period;

Overall, we would expect that such evaluations, rulemakings, and reports to the Congress have a cost of $19 million over the 2004–2008 period for additional staff, support, and consulting services.

Direct Spending and Revenues

Enacting S. 1043 would increase revenues by establishing new criminal penalties for the sabotage of a wide range of nuclear facilities and fuel and allow certain facilities regulated by the NRC to import weapons subject to a transfer tax. CBO estimates that those penalties and transfer taxes would increase revenues by less than $500,000 a year. Subsequent direct spending of penalties collected for violation of the criminal code would also be less than $500,000 per year.

Intergovernmental and Private-Sector Impact

S. 1043 would impose both intergovernmental and private-sector mandates as defined in UMRA by:

- Effectively increasing the annual fees collected from NRC licensees to cover the costs of security inspections by the NRC;
- Effectively increasing fees collected from licensees to pay for fingerprint checks by increasing the number of individuals requiring background checks; and
- Requiring new security standards and procedures at designated nuclear facilities.

Because several of the mandates are dependent upon future actions of the NRC for which information currently is not available, CBO cannot determine the aggregate cost of all mandates contained in the bill nor whether the costs to private-sector entities would exceed the annual threshold for private-sector mandates ($117 million in 2003, adjusted annually for inflation). CBO estimates, however, that the costs to public entities would be small and would not exceed the intergovernmental threshold ($59 million in 2003, adjusted annually for inflation).

S. 1043 would require the NRC to conduct security inspections at licensed facilities. In addition, the bill would require fingerprinting of additional individuals connected with nuclear facilities as part of criminal background checks done through the U.S. Attorney General's Office. The bill would permit the NRC to offset the costs of the security inspections with an increase in annual license fees. (Under current law, the NRC collects annual fees from its licensees, both public and private, to offset a major portion of its general fund appropriation.) The cost of the government background checks would be borne directly by licensees. Those increased costs would be both a private-sector and an intergovernmental mandate under UMRA. Based on information from the NRC, CBO estimates that the additional annual fees they would collect would total $1 million for publicly owned licensees (which represent approximately 5 percent of all affected licensees) and $17 million for private licensees over the 2004–2008 period. The increased fees for background checks would be small.

In addition, S. 1043 would require the NRC to promulgate rules concerning:

- Security requirements of sensitive radioactive materials;
- Threats that designated nuclear facilities must protect against;
- Security plans, emergency-response plans, and preparedness for the facilities;
- Involvement of appropriate local governments, employers, and interested groups in the emergency-planning process;
- Access and training standards for employees of the facilities; and
- Handling of certain radioactive materials.

Complying with these new rules would constitute a mandate as defined in UMRA, although the extent of those mandates would be based upon future actions of the NRC. At this time, the NRC cannot indicate the scope of the rules to be issued, and accordingly, CBO cannot determine the cost of compliance.

Estimate Prepared By: Federal Costs: Lisa Cash Driskill; Impact on State, Local, and Tribal Governments: Gregory Waring; Impact on the Private Sector: Paige Piper/Bach.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES TO EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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:

ATOMIC ENERGY ACT OF 1954

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,

* * * * * * *

TITLE I—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

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CHAPTER 14. GENERAL AUTHORITY

Sec. 161. General provisions.

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Sec. 170B. Uranium supply.
Sec. 170C. Protection of designated nuclear facilities.
Sec. 170D. Sensitive radioactive material security.

* * * * * * *

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.

* * * * * * *

e. The term "byproduct material" [means (1) any radioactive] *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] material;

(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.] *content; and*

(3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph, for use in a commercial, medical, or research activity; or

(B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph, for use in a commercial, medical, or research activity; and

(4) any discrete source of naturally occurring radioactive material, other than source material that—

(A) the Nuclear Regulatory Commission determines (after consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency), would pose a threat similar to that posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after the date of enactment of this paragraph, is extracted or converted after extraction, for use in a commercial, medical, or research activity.

* * * * * * *

[jj.**]** *ii.* 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.

jj. DESIGNATED NUCLEAR FACILITY.—The term "designated nuclear facility" means a facility that the Commission classifies as a designated nuclear facility under section 170C(b).

kk. PRIVATE SECURITY FORCE.—The term "private security force", with respect to a designated nuclear facility, means personnel hired or contracted by the licensee or certificate holder of the designated nuclear facility to provide security at the designated nuclear facility.

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—[1]

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 li-

[1] This section is commonly referred to as the Price-Anderson Act.

cense, 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 required 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 avail-

able 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 [LICENSES] *LICENCEES* BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2002, 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 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 August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

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 August 1, 2002, 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,[2] 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 1988.[2]

(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 indemnified 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,[1] 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 Depart-

[2] The date of enactment was Aug. 20, 1988.
[1] The date of enactment was Aug. 20, 1988.

ment 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 protec-

tion 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 Commisison [1], 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 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 6 [1] of this subsection.

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

[1] So in original. Probably should be "Commission".
[1] So in original. Probably should be "(6)".

(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 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 facil-

ity 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)[1] 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,[2] 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 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,

[1] So in original. Probably should be "l.".
[2] The date of enactment was Aug. 20, 1988.

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. [1]

(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 insur-

[1] The date of enactment was Aug. 20, 1988.

ance 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. [1]

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 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

[1] So in original. Probably should be a comma.

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)[1] 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,[1] 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 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;

[1] The date of enactment was Aug. 20, 1988.

(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 AWARDING 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 fol-

lowing the date of the enactment of the Price-Anderson Amendments Act of 1988, 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 arrangement; 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,[1] but in no event later than 120 days after such date.

[42 U.S.C. 2210a]

SEC. 170B. URANIUM SUPPLY.—

[1] The date of enactment was Nov. 6, 1978.

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[1] 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).

[1] So in original. Probably should be "of".

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.

SEC. 170C. PROTECTION OF DESIGNATED NUCLEAR FACILITIES.

(a) DEFINITIONS.—In this section:

(1) CERTIFICATE HOLDER.—The term "certificate holder" means the holder of a certificate of compliance issued by the Commission under this Act.

(2) FEDERAL SECURITY COORDINATOR.—The term "Federal security coordinator" means a Federal security coordinator as assigned under this Act.

(3) DESIGN BASIS THREAT.—The term "design basis threat" means the threat components or capability of an adversary against which a nuclear facility is responsible for defending under regulations, orders, or other directives of the Commission.

(4) LICENSEE.—The term "licensee,' means the holder of a license issued by the Commission.

(b) CLASSES OF DESIGNATED NUCLEAR FACILITY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Commission shall, by regulation, establish classes of designated nuclear facility.

(2) CLASSIFICATION.—The Commission shall classify facilities licensed by the Commission or issued a certificate by the Commission, including—

(A) commercial nuclear power plants;

(B) independent spent fuel storage installations;

(C) decommissioned nuclear power plants;

(D) fuel processing facilities;

(E) gaseous diffusion facilities; and

(F) any other facility that the Commission determines should be classified as a designated nuclear facility.

(3) FACTORS.—In determining whether to classify a facility as a designated nuclear facility, the Commission shall consider—

(A) the nature or type of facility;

(B) the nature or type of potential radiological release from the facility; and

(C) other factors relating to protecting public health and safety, the environment, and the common defense and security.

(c) SECURITY EXAMINATION.—

(1) IN GENERAL.—The Commission and the Secretary of Homeland Security, in consultation with other agencies and State and local governments as appropriate, shall examine—

(A) potential threats to nuclear facilities, as appropriate, including consideration of—

(i) threats comparable to the events of September 11, 2001;

(ii) cyber threats, chemical threats, and biological threats;

(iii) attacks on nuclear facilities by multiple coordinated teams of a large number of individuals;

(iv) attacks by several persons, including persons employed at the nuclear facility, some of whom may have sophisticated knowledge of the operations of the nuclear facility;

(v) attacks by individuals willing to commit suicide to carry out the attacks;

(vi) intrusions originating from water or from the air; and

(vii) fire, especially fire of a long duration;

(B) classification of threats against nuclear facilities, as appropriate, as—

(i) a type of threat falling under the responsibilities of the Federal Government, including an act by an enemy of the United States, whether a foreign government or any other person;

(ii) a type of threat falling under the responsibility of a State or local government; or

(iii) a type of threat the defense against which should be the responsibility of a licensee or certificate holder;

(C) the national security response capability, including—

(i) identification of the obligations and authorities of the United States for protection of areas (including waterways, ports, roadways, airspace, or facilities in the vicinity of a nuclear facility) in the event of a ter-

rorist threat or a terrorist attack against a nuclear facility, as appropriate;

(ii) identification of the Federal, State, and local agencies responsible for carrying out the obligations and authorities of the United States identified under clause (i); and

(iii) coordination between the Federal, State and local agencies identified under clause (ii), the Commission, and licensees or certificate holders of nuclear facilities, for protection of nuclear facilities and adjacent areas in the event of a terrorist threat or a terrorist attack;

(D) coordination of Federal, State, and local security efforts to protect against terrorist or other criminal attacks at nuclear facilities, as appropriate;

(E) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility, including—

(i) matters relating to the adequacy of emergency planning zones;

(ii) matters relating to the adequacy and coordination of Federal, State, and local emergency planning and other measures; and

(iii) matters relating to the adequacy of security plans for those nuclear facilities;

(F) the system of threat levels, consistent with the Homeland Security Advisory System, used to categorize the threats pertinent to nuclear facilities, as appropriate, including—

(i) procedures to ensure coordinated Federal, State, and local responses to changing threat levels for those nuclear facilities;

(ii) monitoring of threats against those nuclear facilities; and

(iii) procedures to notify licensees and certificate holders of those nuclear facilities of changes in threat levels;

(H) the hiring and training standards for members of private security forces at nuclear facilities, as appropriate;

(I) the coordination of Federal resources to expedite and improve the process of conducting background checks under section 149;

(J) the establishment by the Secretary of Homeland Security of a program to provide technical assistance and training for the National Guard, State law enforcement agencies, and local law enforcement agencies to respond, as appropriate, to threats against nuclear facilities, as appropriate, including recommendations for the establishment of a grant program to assist State and local governments in carrying out any recommendations under paragraph (3); and

(K) options for protecting spent fuel storage areas, such as dry cask storage, and associated infrastructure.

(2) COMPLETION.—The Commission and the Secretary of Homeland Security shall complete the security examination under paragraph (1) not later than 1 year after the date of enactment of this section.

(3) REPORT.—Not later than 180 days after completion of the security examination under paragraph (1), the Commission and the Secretary of Homeland Security shall submit to the President and Congress, in classified and unclassified form, a report with recommendations and findings.

(d) REVISION OF DESIGN BASIS THREATS.—

(1) IN GENERAL.—Not later than 180 days after completion of the report under subsection (c)(3), the Commission shall by regulation revise the design basis threats promulgated before the date of enactment of this section as the Commission determines to be appropriate based on the security examination.

(2) APPLICABILITY.—A revised design basis threat under paragraph (1) shall apply to such classes of designated nuclear facility as the Commission determines to be appropriate.

(3) PROTECTION OF SAFEGUARDS INFORMATION.—

(A) IN GENERAL.—In promulgating any regulations under this subsection, the Commission shall ensure protection of information in accordance with chapter 12, section 181, and any other applicable law.

(B) EFFECT OF SECTION.—Nothing in this section supersedes any law governing the disclosure of classified information or safeguards information.

(C) REPORTS TO CONGRESS ON WITHHELD INFORMATION.—

(i) REPORT.—Not later than 60 days after the effective date of the regulations required by this subsection, the Commission shall submit to Congress a report, in classified and unclassified form, describing any classified information, safeguards information, or other information that the Commission considered in promulgating the regulations but did not make available to the public because of the sensitive nature of the information.

(ii) ORDERS TO LICENSEES OR CERTIFICATE HOLDERS.—Periodically, but not less than once every 6 months, the Commission shall submit to Congress a report, in classified and unclassified form, identifying any orders or instructions to operators, licensees, or certificate holders issued under the regulations required by this subsection that were not made public because of their classified content, safeguards content, or sensitive content.

(e) THREAT LEVELS.—Not later than 150 days after the date of submission of the report under subsection (c)(3), the Commission shall establish a system for the determination of threat levels pertinent to—

(1) such classes of designated nuclear facility as the Commission determines to be appropriate; and

(2) materials subject to this Act as designated by the Commission.

(f) SECURITY PLANS.—

(1) IN GENERAL.—Pursuant to any action taken by the Commission under subsection (d)(1) to revise a design basis threat, not later than 30 days after the revised design basis threat under subsection (d) becomes effective, the Commission shall require each licensee or certificate holder of a designated nuclear facility that is subject to the revised design basis threat to—

(A) revise the security plan of that designated nuclear facility to ensure that that designated nuclear facility protects against the appropriate design basis threats; and

(B) submit the security plan to the Commission for review.

(2) REVIEW SCHEDULE.—The Commission shall establish a priority schedule for conducting reviews of security plans based on—

(A) the proximity of the designated nuclear facility to large population areas; and

(B) other critical factors identified by the Commission.

(3) UPGRADES TO SECURITY.—The Commission shall ensure that the licensee or certificate holder of each designated nuclear facility that is subject to the revised design basis threat makes any changes to security and the security plan required from the Commission review on a schedule established by the Commission, but not to exceed 18 months after completion of the review.

(g) EMERGENCY RESPONSE PLANS AND PREPAREDNESS.—

(1) IN GENERAL.—The Commission and the Secretary of Homeland Security, in consultation with other Federal, State, and local government agencies, as appropriate, shall review and update the requirements in effect on the date of enactment of this section for on-site and off-site emergency response plans and preparedness for response to an emergency involving a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate to ensure that the requirements—

(A) are adequate to protect public health and safety;

(B) provide reasonable assurance that the plans can and will be implemented; and

(C) provide reasonable assurance that adequate protective measures can and will be taken in the event of such an emergency.

(2) REQUIREMENTS.—At a minimum, the updated requirements applicable to a designated nuclear facility under paragraph (1) shall provide for—

(A) the establishment of, clear definition of, assignment of, and assurance of the ability to carry out, responsibilities of emergency response organizations and personnel among the licensee or certificate holder, State and local organizations, and other supporting organizations;

(B) methods and procedures for the clear and prompt notification of State and local response organizations and the public by the licensee or certificate holder;

(C) methods and procedures for prompt communication and coordination among emergency response organizations and personnel and the public;

(D) dissemination of information to the public, including pre-emergency education on a periodic basis and in the event of an actual emergency;

(E) adequate emergency facilities and equipment at and around the designated nuclear facility;

(F) the use of appropriate methods, systems, and equipment for assessing and monitoring actual and potential impacts of an emergency, including a radiological emergency;

(G) a range of protective actions for the public, including appropriate evacuation and sheltering and the prophylactic use of potassium iodide;

(H) means for controlling radiological exposures and other hazardous exposures;

(I) appropriate medical services;

(J) recovery and reentry plans; and

(K) radiological emergency response training.

(3) FACTORS.—The updated requirements under paragraph (1) shall address relevant factors, including—

(A) population density, topography, land characteristics, access routes, and jurisdictional boundaries;

(B) unique aspects of an emergency resulting from a terrorist attack;

(C) available technology and technical innovations; and

(D) other factors, as determined by the Commission or the Secretary of Homeland Security.

(4) STAKEHOLDER INVOLVEMENT.—In updating requirements under paragraph (1), the Commission and the Secretary of Homeland Security shall include requirements for appropriate stakeholder involvement in the planning and exercise process, including the involvement of—

(A) local governments;

(B) large employers;

(C) facilities such as schools, hospitals, nursing homes, and prisons;

(D) advocacy groups; and

(E) other interested groups and individuals near a designated nuclear facility.

(5) REGULATIONS.—

(A) IN GENERAL.—The Commission and the Secretary of Homeland Security shall promulgate regulations implementing this subsection not later than 180 days following the completion of the report under subsection (c)(3).

(B) EFFECTIVE DATE.—The regulations shall take effect not later than 90 days after the date of promulgation.

(6) REVIEWS.—

(A) IN GENERAL.—Not later than 60 days after the effective date of the regulations under paragraph (5), the Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local government agencies, shall begin reviewing on-site and off-site emergency response plans and preparedness capabilities for compliance with the regulations.

(B) REVIEW SCHEDULE.—The Commission, in coordination with the Secretary of Homeland Security, shall establish a priority schedule for conducting reviews of emergency response plans and preparedness capabilities under subparagraph (A) based on the relative vulnerability of the designated nuclear facilities that are subject to the regulations and the proximity of the designated nuclear facilities to high population density areas.

(C) REPORT.—The Commission, in coordination with the Secretary of Homeland Security, shall submit to Congress a report, in classified and unclassified form, describing the results of each review conducted under subparagraph (A).

(7) EFFECT OF SUBSECTION.—Nothing in this subsection limits the authority of the Commission or the Secretary of Homeland Security to take other actions for protection of the public health and safety, the environment, or the common defense and security under any other authority of the Commission or the Secretary of Homeland Security.

(h) EMPLOYEE SECURITY.—

(1) REVIEW.—Not later than 180 days after the date of enactment of this section, the Commission shall review and update as appropriate the access and training standards for employees of nuclear facilities.

(2) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Commission shall establish qualifications and procedures, in addition to fingerprinting for criminal history record checks conducted under section 149, to ensure that no individual who presents a threat to national security is employed at a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate.

(i) FEDERAL SECURITY COORDINATORS.—

(1) REGIONAL OFFICES.—Not later than 18 months after the date of enactment of this section, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—

(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against a designated nuclear facility in such classes of designated nuclear facilities as the Commission determines to be appropriate;

(B) ensuring that a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate maintains security consistent with the security plan in accordance with the appropriate threat level; and

(C) assisting in the coordination of security measures among—

(i) the private security force at a designated nuclear facility in such classes of designated nuclear fa-

cilities as the Commission determines to be appropriate; and

(ii) Federal, State, and local authorities, as appropriate.

(3) ADDITIONAL FEDERAL SECURITY COORDINATORS.—

(A) IN GENERAL.—The Commission may assign an additional Federal security coordinator, as the Commission considers appropriate, to a Commission office on the site of a designated nuclear facility.

(B) REQUEST BY GOVERNOR.—The Governor of any State that contains a designated nuclear facility may request the assignment of an additional Federal security coordinator to 1 or more designated nuclear facilities in that State.

(j) NATIONAL SECURITY CAPABILITY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the President shall identify the national security support capability to protect designated nuclear facilities against terrorist threats and attacks.

(2) ELEMENTS.—The national security support capability shall use capabilities of such Federal agencies identified in the report under subsection (c)(3), or of other Federal, State, and local agencies, as the President determines to be appropriate.

(3) CAPABILITIES.—

(A) IN GENERAL.—The national security support capability shall provide assistance to the private security force at each designated nuclear facility in such classes of designated nuclear facilities as the Commission determines to be appropriate, appropriate State and local agencies including emergency response and law enforcement agencies, and where appropriate, the National Guard, in accordance with the obligations and authorities of the United States, as identified in the report to Congress required under subsection (c)(3).

(B) COORDINATION.—The President shall ensure that effective coordination exists between Federal agencies, the Commission, and State and local governments in planning and deployment for prevention, deterrence, and response to actual or potential terrorist attacks against such classes of designated nuclear facility as the Commission considers appropriate.

(4) TRAINING PROGRAM.—

(A) IN GENERAL.—The President shall establish a program to provide technical assistance and training to Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies in responding to threats against a designated nuclear facility.

(B) GRANTS.—The President may provide grants to State and local governments to assist in carrying out subparagraph (A).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(k) CLASSIFIED INFORMATION.—Nothing in this section supersedes any law governing the disclosure of classified information or safeguards information.".

(b) *FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—Section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) is amended—*

(1) in subsection a.—

(A) by striking "a. The Nuclear" and all that follows through "section 147." and inserting the following:

a. IN GENERAL.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—The Commission shall require—

(i) each licensee, certificate holder, or applicant for a license or certificate to operate a utilization facility under section 103 or 104(b); and

(ii) each licensee or applicant for a license to possess or use radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks;

to fingerprint each individual described in subparagraph (B).

(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

(II) radioactive material or other property identified by the Commission under subparagraph (A)(ii); or

(ii) is permitted access to safeguards information under section 147.";

(B) by striking "All fingerprints" and inserting the following:

(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints";

(C) by striking "The costs" and inserting the following;

(3) COSTS.—The costs";

(D) by striking "Notwithstanding" and inserting the following:

(4) PROVISION TO LICENSEE, CERTIFICATE HOLDER, OR APPLICANT.—Notwithstanding"; and

(E) by striking "licensee or applicant" each place it appears and inserting "licensee, certificate holder, or applicant for a license or certificate";

(2) by redesignating subsection d. as subsection e.; and

(3) by inserting after subsection c. the following:

d. USE OF OTHER BIOMETRIC METHODS.—Any requirement for a person to conduct fingerprinting under this section may be satisfied by using any other biometric method for identification approved for use by the Attorney General.

SEC. 170D. SENSITIVE RADIOACTIVE MATERIAL SECURITY.

(a) DEFINITIONS.—In this section:

(1) SENSITIVE RADIOACTIVE MATERIAL.—

(A) IN GENERAL.—The term 'sensitive radioactive material' means—

(i) a material—

(I) that is a source material, by-product material, or special nuclear material; or

(II) that is any other radioactive material (regardless of whether the material is or has been licensed or otherwise regulated under this Act) produced or made radioactive before or after the date of enactment of this section; and

(ii) that is in such a form or quantity or concentration that the Commission determines should be classified as 'sensitive radioactive material' that warrants improved security and protection against loss, theft, or sabotage.

(B) EXCLUSION.—The term 'sensitive radioactive material' does not include nuclear fuel or spent nuclear fuel.

(2) SECURITY THREAT.—The term 'security threat' means—

(A) a threat of sabotage or theft of sensitive radioactive material;

(B) a threat of use of sensitive radioactive material in a radiological dispersal device; and

(C) any other threat of terrorist or other criminal activity involving sensitive radioactive material that could harm the health or safety of the public due primarily to radiological properties of the sensitive radioactive material, as determined by the Commission.

(b) DUTIES.—

(1) IN GENERAL.—The Commission, in consultation with Secretary of Homeland Security, Secretary of Energy, Director of Central Intelligence, Director of the Federal Bureau of Investigation, Director of the Customs Service, and Administrator of the Environmental Protection Agency, shall—

(A) evaluate the security of sensitive radioactive material against security threats; and

(B) recommend administrative and legislative actions to be taken to provide an acceptable level of security against security threats.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the Commission shall consider actions, as appropriate to—

(A) determine the radioactive materials that should be classified as sensitive radioactive materials;

(B) develop a classification system for sensitive radioactive materials that—

(i) is based on the potential for use by terrorists of sensitive radioactive material and the extent of the threat to public health and safety posed by that potential; and

(ii) takes into account—

(I) radioactivity levels of sensitive radioactive material;

(II) the dispersibility of sensitive radioactive material;

(III) the chemical and material form of sensitive radioactive material;

(IV) the need to maintain access by physicians and other medical professionals to sensitive radioactive material and pharmaceuticals containing sensitive radioactive material for use in connection with medical diagnosis or treatment; and

(V) other appropriate factors;

(C) develop a national system for recovery of sensitive radioactive material that is lost or stolen, taking into account the classification system established under subparagraph (B);

(D) provide for the storage of sensitive radioactive material that is not currently in use in a safe and secure manner;

(E) develop a national tracking system for sensitive radioactive material, taking into account the classification system established under subparagraph (B);

(F) develop methods to ensure the return or proper disposal of sensitive radioactive material;

(G) consider export controls on sensitive radioactive materials so that, to the extent feasible, exports from the United States of sensitive radioactive materials are made to foreign recipients that are willing and able to control the sensitive radioactive materials in a manner that is inimical to the common defense and security of the United States; and

(H) establish procedures to improve the security of sensitive radioactive material in use, transportation, and storage.

(3) PROCEDURES TO IMPROVE SECURITY.—The procedures to improve the security of sensitive radioactive material under paragraph (2)(H) may include—

(A) periodic audits or inspections by the Commission to ensure that sensitive radioactive material is properly secured and can be fully accounted for;

(B) evaluation by the Commission of security measures taken by persons that possess sensitive radioactive material;

(C) imposition of increased fines for violations of regulations relating to security and safety measures applicable to persons that possess sensitive radioactive material;

(D) conduct of background checks on individuals with access to sensitive radioactive material;

(E) measures to ensure the physical security of facilities in which sensitive radioactive material is stored; and

(F) screening of shipments of sensitive radioactive material to facilities that are particularly at risk for sabotage to ensure that the shipments do not contain explosives.

(c) REPORT.—Not later than 1 year after the date of enactment of this section, and not less frequently than once every 3 years thereafter, the Commission shall submit to the President and Congress a report in unclassified form (with a classified annex, if necessary)

describing the administrative and legislative actions recommended under subsection (b)(1).

(d) ADMINISTRATIVE ACTION.—Not later than 60 days after the date of submission of the report under subsection (c), the Commission shall take such actions as are appropriate to—

(1) revise the system for licensing sensitive radioactive materials; and

(2) delegate the authority of the Commission to implement regulatory programs and requirements to States that enter into agreements with the Commission to perform inspections and other functions on a cooperative basis as the Commission considers appropriate.

* * * * * * *

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) byproduct materials (as defined in section 11e. (3));

(4) byproduct materials (as defined in section 11e. (4));

[(3)**]** *(5)* source materials;

[(4)**]** *(6)*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 protect 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 com-

plied 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 nonradiological 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.

* * * * * * *

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

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.

* * * * * * *

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**]** *or who attempts or conspires* to destroy or cause physical damage to—

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

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

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

(4) any uranium enrichment [facility licensed] *uranium conversion 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 construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;

shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

b. Any person who intentionally and willfully causes or attempts to cause 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, shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

[PUBLIC LAW 93-438, AS AMENDED]

ENERGY REORGANIZATION ACT OF 1974

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TITLE II—NUCLEAR REGULATORY COMMISSION

Sec. 201. (a) * * *

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OFFICE OF REACTOR REGULATION

Sec. 203. (a) There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 209, and who shall serve at the pleasure of and be removable by the Commission.

(b) Subject to the provisions of this Act, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:

(1) Principal [licensing and regulation] *licensing, regulation, and, except as otherwise provided under section 212, carrying out safety reviews, safeguards, and physical security of* involving all facilities and materials licensed under the Atomic Energy Act of 1954, as amended, associated with the construction and operation of nuclear reactors licensed under the authority of the Atomic Energy Act of 1954, as amended;

(2) Review the safety [and safeguards] of all such facilities, materials, and activities, and such review functions shall include but not be limited to—

* * * * * * *

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS

Sec. 204. (a) There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 209, and who shall serve at the pleasure and be removed by the Commission.

(1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended, associated with the processing, transport, and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.

(2) Review safety [and safeguards] of all such facilities, and materials licensed under the Atomic Energy Act of 1954[, as amended, and such review shall include, but not be limited to—

[(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and ohter nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

[(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

[(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this Act and promptly transmitted to the Congress by the Commission.] *(42 U.S.C. 2011 et seq.)*

* * * * * * *

Sec. 211. Employee protection

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954(42 U.S.C. 2011 et seq.);
(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
(C) testified before Congress or at any Federal or State proceeding regarding any provision(or proposed provision) of this chapter or the Atomic Energy Act of 1954;
(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
(E) testified or is about to testify in any such proceeding or;
(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term "employer" includes—
(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954(42 U.S.C. 2021);
(B) an applicant for a license from the Commission or such an agreement State;
(C) a contractor or subcontractor of such a licensee or applicant; **[**and**]**
(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954(42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344**[**.**]**; *and*
(E) a contractor or subcontractor of the Commission.

(b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection(a) of this section may, within 180 days after such violation occurs, file(or have any person file on his behalf) a complaint with the Secretary of Labor(in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.

(2)(A) Upon receipt of a complaint filed under paragraph(1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant(and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary

and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph(B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph(B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph(1), the Secretary determines that a violation of subsection(a) of this section has occurred, the Secretary shall order the person who committed such violation to(i) take affirmative action to abate the violation, and(ii) reinstate the complainant to his former position together with the compensation(including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses(including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph(1), and shall not conduct the investigation required under paragraph(2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs(A) through (F) of subsection(a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph(A), no investigation required under paragraph(2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection(a) of this section has occurred only if the complainant has demonstrated that any behavior described in subparagraphs(A) through(F) of subsection(a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph(2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection(b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly oc-

curred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph(1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction

Whenever a person has failed to comply with an order issued under subsection(b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action

(1) Any person on whose behalf an order was issued under paragraph(2) of subsection(b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation(including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violations

Subsection(a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended(42 U.S.C. 2011 et seq.).

(h) Nonpreemption

This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) Posting requirement

The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j) Investigation of allegations

(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of—

(A) the filing of a complaint under subsection(b)(1) of this section arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection(a) of this section has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

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SEC. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE.

(a) DEFINITIONS.—In this section:

(1) CERTIFICATE HOLDER.—The term "certificate holder" has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

(2) DESIGNATED NUCLEAR FACILITY.—The term "designated nuclear facility" has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(3) DIRECTOR.—The term "Director" means the Director of Nuclear Security and Incident Response appointed under subsection (c) to head the Office.

(4) LICENSEE.—The term "licensee" has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

(5) OFFICE.—The term "Office" means the Office of Nuclear Security and Incident Response established by subsection (b).

(b) ESTABLISHMENT OF OFFICE.—There is established in the Commission the Office of Nuclear Security and Incident Response.

(c) DIRECTOR.—

(1) APPOINTMENT.—The Commission may appoint and remove from office a Director of Nuclear Security and Incident Response.

(2) DUTIES.—

(A) IN GENERAL.—The Director shall perform such functions as the Commission delegates to the Director.

(B) FUNCTIONS.—The functions delegated to the Director may include—

(i) carrying out security, safeguards, and incident responses relating to—

(I) any facility subject to the jurisdiction of the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(II) any property subject to the jurisdiction of the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) that—

(aa) is significant to the common defense and security; or

(bb) is being transported to or from a facility described in clause (i); and

(III) any other activity of a licensee or certificate holder, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), that is significant to the common defense and security;

(ii) for a facility or material licensed or certified under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)—

(I) developing contingency plans for dealing with threats, thefts, and sabotage; and

(II) monitoring, reviewing, and evaluating security and safeguards;

(iii) recommending upgrades to internal accounting systems for special nuclear and other materials licensed or certified under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

(iv) developing and recommending standards and amendments to the standards of the Commission relating to the duties described in clauses (i) through (iii); and

(E) carrying out such other duties of the Commission regarding safeguards and physical security functions and incident response functions as the Commission determines to be appropriate.

(3) CONSULTATION.—In carrying out the duties under paragraph (2), the Director shall, to the extent practicable, consult and coordinate with other Federal agencies.

(d) SECURITY RESPONSE EVALUATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Commission shall establish a security response evaluation program to assess the ability of each designated nuclear facility that is part of a class of designated nuclear facilities that the Commission considers appropriate to defend against threats in accordance with the security plan for the designated nuclear facility.

(2) FREQUENCY OF EVALUATIONS.—Not less than once every 3 years, the Commission shall conduct and document security response evaluations at each designated nuclear facility that is part of a class of designated nuclear facilities that the Commission considers appropriate to assess the ability of the private security force of the designated nuclear facility to defend against applicable design basis threats.

(3) SECURITY EXEMPTION.—The Commission may suspend activities under this section if the Commission determines that the security response evaluations would compromise security at any designated nuclear facility in accordance with a heightened threat level.

(4) ACTIVITIES.—The security response evaluation shall include force-on-force exercises that simulate the security threats consistent with the design basis threats applicable to the designated nuclear facility.

(5) PERFORMANCE CRITERIA.—The Commission shall establish performance criteria for judging the security response evaluations.

(6) CORRECTIVE ACTION.—

(A) IN GENERAL.—When any of the performance criteria established under paragraph (5) are not satisfied—

(i) the licensee or certificate holder shall promptly correct any defects in performance identified by the Commission in the security response evaluation; and

(ii) the Commission shall conduct an additional security response evaluation within 9 months to confirm that the licensee or certificate holder satisfies the performance criteria established under paragraph (5).

(B) 2 CONSECUTIVE FAILURES TO SATISFY PERFORMANCE CRITERIA.—

(i) IN GENERAL.—If a designated nuclear facility fails to satisfy the performance criteria established under paragraph (5) in 2 consecutive security response evaluations, the Commission shall issue an order specifying the corrective actions that must be taken by the licensee or certificate holder of the designated nuclear facility.

(ii) FAILURE TO TAKE CORRECTIVE ACTION.—If the licensee or certificate holder of a designated nuclear facility does not take the corrective action specified by the Commission within 30 days after the date of issuance of an order under clause (i), the Commission shall assess a civil penalty under section 234 of the Atomic Energy Act of 1954 (42 U.S.C. 2282).

(C) EFFECT.—Nothing in this paragraph limits any enforcement authority of the Commission to take action in response to deficiencies identified through security evaluations.

(7) REPORTS.—Not less often than once every year, the Commission shall submit to Congress and the President a report, in classified form and unclassified form, that describes the results of each security response evaluation under this paragraph for the previous year.

(e) EMERGENCY RESPONSE EXERCISES.—

(1) IN GENERAL.—Not less than once every 2 years, the Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local response agencies and stakeholders, shall observe and evaluate emergency response exercises to determine whether—

(A) on-site and off-site emergency response plans for, and capabilities for response to an emergency involving, each designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate are adequate to protect public health and safety; and

(B) there is reasonable assurance that—

(i) those plans and capabilities can and will be implemented; and

(ii) adequate protective measures can and will be taken in the event of an emergency.

(2) ASSESSMENT OF ABILITY TO RESPOND.—Exercises under paragraph (1) shall assess the ability of Federal, State, and local emergency response agencies and emergency response personnel of a licensee or certificate holder to respond adequately to an emergency involving the designated nuclear facility.

(3) HIGH POPULATION DENSITY AREAS.—The Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local agencies and stakeholders, may observe and evaluate exercises more frequently at designated nuclear facilities located in high population density areas.

(4) PERFORMANCE-BASED APPROACH.—The Commission, in cooperation with the Secretary of Homeland Security, shall promptly establish performance criteria for use in evaluating the results of the exercises under paragraph (1), including criteria relating to—

(A) response times and capabilities;

(B) coordination and communication among response personnel and organizations;

(C) emergency equipment, public notification systems, and communications networks;

(D) feasible evacuation of individuals; and

(E) other matters determined by the Commission or the Secretary of Homeland Security.

(5) SCENARIOS.—The evaluations under paragraph (1) shall assess the ability of the emergency response plans to protect public health and safety and provide reasonable assurance that adequate protective measures can and will be taken in responding to a broad range of accident scenarios, including—

(A) fast-breaking events that occur with little or no warning;

(B) radiological releases of significant magnitude;

(C) significant spontaneous evacuations;

(D) significant shadow evacuations;

(E) terrorist attacks; and

(F) other scenarios determined by the Commission or the Secretary of Homeland Security.

(6) DEFICIENCIES.—

(A) NOTIFICATION.—The Commission, in coordination with the Secretary of Homeland Security, shall promptly notify licensees or certificate holders, the Governor of any State that may be affected, and any other appropriate Federal, State, or local agencies or stakeholders of any weaknesses or deficiencies in an emergency response plan or in emergency preparedness capabilities identified as the result of an evaluation under paragraph (1).

(B) FAILURE TO CORRECT.—If weaknesses or deficiencies in emergency response plans or in preparedness capabilities are not promptly corrected, the Commission shall take appropriate action under section 107 or other enforcement authorities available to the Commission to—

(i) ensure adequate protection of public health and safety; and

(ii) provide reasonable assurance that plans can and will be implemented and that adequate protective measures can and will be taken in the event of an emergency.

(7) REPORT.—Not less than once annually, the Commission and the Secretary of Homeland Security shall submit to the President and Congress a report, in classified and unclassified form, that describes—

(A) the results of each exercise evaluated in the previous year; and

(B) each revision of an emergency response plan or emergency preparedness capabilities made under paragraph (6) in the previous year that is substantive in nature.

(8) MAINTENANCE.—The Commission shall take such action as is necessary to ensure that adequate emergency response plans and capabilities are maintained during the intervals between exercises.

(9) EFFECT OF SUBSECTION.—Nothing in this subsection limits the authority of the Commission or the Secretary of Homeland Security to take other actions for protection of the public health and safety, the environment, or the common defense and security under any other authority of the Commission or the Secretary of Homeland Security.

(f) EFFECT.—Nothing in this section limits any authority of the Secretary of Energy relating to the security and safeguarding of special nuclear materials, high-level radioactive waste, and nuclear facilities resulting from all activities under the jurisdiction of the Secretary.

UNITED STATES CODE

TITLE 11—BANKRUPTCY

* * * * * * *

Section 523. Exceptions to Discharge

(a) * * *

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(f) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Notwithstanding any other provision of this title—

(1) any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee, former licensee, or any other person to comply with a regulation or order of the Nuclear Regulatory Commission governing the decontamination and decommissioning of a nuclear power reactor licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, other than a claim resulting from an activity undertaken to satisfy that responsibility, until the decontamination and decommissioning of the nuclear power reactor is completed to the satisfaction of the Nuclear Regulatory Commission;

(2) obligations of licensees, former licensees, or any other person to use funds or other assets to satisfy a responsibility described in paragraph (1) may not be rejected, avoided, or discharged in any proceeding under this title or in any liquidation, reorganization, receivership, or other insolvency proceeding under Federal or State law; and

(3) private insurance premiums and standard deferred premiums held and maintained in accordance with section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, until the indemnification agreement executed in

accordance with section 170c. of that Act (42 U.S.C. 2210(c)) is terminated.

UNITED STATES CODE

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * * * *

Section 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that -

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall

not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, ⟦or licensed collector⟧ *licensed collector, or a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or an employee or contractor of such a licensee or certificate holder, that holds the license or certificate for the purpose of establishing and maintaining an on-site physical protection system and security organization required by Federal law or for the purpose of licensee-authorized or certificate holder-authorized training or transportation of nuclear material or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.),* to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to -

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the manufacture of such ammunition for the purpose of exportation; and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary; and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically au-

thorized by the Secretary consistent with public safety and necessity; and

* * * * * * *

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; [or]

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect[.]; *or*

(C) a transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of the licensee or certificate holder on-site for such purposes or off-site for purposes of licensee-authorized or certificate holder-authorized training or transportation of nuclear materials or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

* * * * * * *

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine. The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

(4) Paragraph (1) shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee *or certificate holder* under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized *or certificate holder-authorized* training or transportation of nuclear materials *or equipment;*

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

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Sec. 925. Exceptions: Relief from disabilities

(a)(1) * * *

* * * * * * *

(d) The Secretary shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1)*(A)* is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10; *or*

(B) is being imported or brought in for transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1986 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

* * * * * * *

Sec. 926A. Interstate transportation of firearms

[Notwithstanding]

(a) IN GENERAL.—Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

(b) LICENSEES AND CERTIFICATE HOLDERS OF THE NUCLEAR REGULATORY COMMISSION.—Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision of a State, a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or an employee or contractor of such a licensee or certificate holder, that is not otherwise prohibited by this chapter from transporting, shipping, receiving, or possessing a firearm shall be entitled to transport and possess a firearm for purposes of establishing and maintaining an onsite physical protection system and security organization required by Federal law, and for purposes of licensee-authorized or certificate holder-authorized training or transportation of nuclear material or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

UNITED STATES CODE

TITLE 26—INTERNAL REVENUE CODE

CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

SUBCHAPTER B—GENERAL PROVISIONS AND EXEMPTIONS

PART I—GENERAL PROVISIONS

* * * * * * *

Sec. 5844. Importation

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is—

(1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; [or]

(2) being imported or brought in for scientific or research purposes; [or]

(3) being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample

by a registered importer or registered dealer; except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm**[**.**]**; *or*

(4) a machinegun or short-barreled shotgun being imported or brought in for transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law;

UNITED STATES CODE

TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 23—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

DIVISION A—ATOMIC ENERGY

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

* * * * * * *

Sec. 2214. NRC user fees and annual charges

(a) Annual assessment

(1) In general

Except as provided in paragraph(3), the Nuclear Regulatory Commission(in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c) of this section.

(2) First assessment

The first assessment of fees under subsection (b) of this section and annual charges under subsection (c) of this section shall be made not later than September 30, 1991.

(3) Last assessment of annual charges

The last assessment of annual charges under subsection (c) of this section shall be made not later than September 20, 2005.

(b) Fees for service or thing of value

Pursuant to section 9701 of title 31, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) Annual charges

(1) Persons subject to charge

Except as provided in paragraph(4), any licensee or certificate holder of the Commission may be required to pay, in addition to the fees set forth in subsection (b) of this section, an annual charge.

(2) Aggregate amount of charges

(A) In general

The aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph(B), less—

(i) amounts collected under subsection (b) of this section during the fiscal year; **[**and**]**

(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year[.]; *and*

(iii) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.

(B) Percentages

The percentages referred to in subparagraph(A) are—

(i) 98 percent for fiscal year 2001;

(ii) 96 percent for fiscal year 2002;

(iii) 94 percent for fiscal year 2003;

(iv) 92 percent for fiscal year 2004; and

(v) 90 percent for fiscal year 2005.

(3) Amount per licensee

The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph(2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(4) Exemption

(A) In general

Paragraph(1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(B) Research reactor

For purposes of subparagraph(A), the term "research reactor" means a nuclear reactor that—

(i) is licensed by the Nuclear Regulatory Commission under section 2134(c) of this title for operation at a thermal power level of 10 megawatts or less; and

(ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(I) a circulating loop through the core in which the licensee conducts fuel experiments;

(II) a liquid fuel loading; or

(III) an experimental facility in the core in excess of 16 square inches in cross-section.

(d) "Nuclear Waste Fund" defined

As used in this section, the term "Nuclear Waste Fund" means the fund established pursuant to section 10222(c) of this title.

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