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NUCLEAR FEES REAUTHORIZATION ACT OF 2005

JULY 1, 2005.—Ordered to be printed

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

REPORT

[to accompany S. 858]

The Committee on Environment and Public Works, to which was referred the bill (S. 858) to reauthorize Nuclear Regulatory Commission user fees, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

This legislation addresses critical non-security needs that will help to better align Nuclear Regulatory Commission's (NRC or Commission) limited resources and capabilities so as to accomplish the Commission's goals. In addition to extending NRC's authority to recover 90 percent of its costs from licensee fees, the legislation provides needed NRC reforms and the incentives for the NRC to attract both young and retired technical expertise.

BACKGROUND

History of NRC Fee Authority

In 1986, Congress enacted the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA–85 (P.L. 99–272). Section 7601 of this legislation directed the NRC to assess and collect annual fees from its licensees in an amount that, when added to other fees such as fees for service collected in the same fiscal year, would not exceed 33 percent of NRC costs for that fiscal year. COBRA–85 directed that this annual charge should be 'reasonably related

to the regulatory service provided by the Commission and [must] fairly reflect the cost to the Commission of providing such service.'

In the late 1980's, Congress twice acted to increase the percentage of the NRC budget that was to be collected in licensee fees. Congress enacted the Omnibus Budget Reconciliation Act of 1987 (P.L. 100–203), which directed the NRC to collect up to 45 percent of its budget in fees in each of fiscal years 1988 and 1989. The Omnibus Budget Reconciliation Act of 1989 (P.L. 101–234) extended this requirement through fiscal year 1990.

One year later, Congress approved the Omnibus Budget Reconciliation Act of 1990, known as OBRA–90 (P.L. 101–508). Section 6101 of that legislation required the NRC to collect fees-for-service from NRC applicants and annual fees from NRC licensees. With regard to fees-for-service, OBRA–90 required that pursuant to the Independent Offices Appropriations Act, the NRC continue to charge any applicant or other person receiving a service from the NRC a fee covering the cost to the NRC of providing the service. With regard to annual charges, the legislation directed the NRC to 'collect annual fees from licensees that to the maximum extent practicable . . . have a reasonable relationship to the cost of providing regulatory services' and in an amount that, when added to the amount collected in fees for service and the amount appropriated for the Nuclear Waste Fund, would approximate fully 100 percent of NRC budget authority for that fiscal year. To meet the new requirement, the NRC adopted a policy of collecting annual fees not only from reactor licensees, but materials licensees as well.

OBRA–90 provided this fee authority for a period of 5 years, through fiscal year 1995. Since then, that authority has been extended three times: for an additional 3 years (through fiscal year 1998) by the Omnibus Budget Reconciliation Act of 1993, or OBRA–93 (P.L. 103–66); for an additional year (through fiscal year 1999) by the 1998 Energy and Water Development appropriations legislation (P.L. 105–245); and for an additional year (through fiscal year 2000) by the 1999 Energy and Water Development appropriations legislation (P.L. 106–60).

Fairness Concerns

In the early 1990's, concerns were raised regarding the fairness of the fee assessment structure. In the Energy Policy Act of 1992 (P.L. 102–486), Congress took steps to address one perceived inequity by statutorily excluding certain federally owned research reactors from the NRC annual fee requirement. In addition, the 1992 Act directed the NRC to undertake a review of its policy for assessing annual charges, solicit public comment on necessary changes to such policy, and make recommendations to Congress on possible changes to existing law that could prevent an unfair burden from being levied on certain NRC licensees.

Accordingly, in February 1994 the NRC submitted to Congress its 'Report to Congress on the U.S. Nuclear Regulatory Commission's Licensee Fee Policy Review Required by the Energy Policy Act of 1992.' The Report took into account not only the 566 public comments received during the compilation of the Report, but also the more than 1,000 public comments submitted during consideration of previous fee-related rules, the thousands of letters and

phone calls received regarding fees, two petitions for rulemaking, a court decision, and an NRC-requested review by the Commission's Inspector General.

The 1994 Report identified two key concerns regarding fairness and equity: first, that not all direct beneficiaries of NRC activities pay fees; and second, that fees are based on the NRC's cost of performance, rather than on the licensees' perception of benefits received. With regard to the question of fees that are not directly related to services to licensees, the Report acknowledged that the fee requirements inherently placed a burden on licensees when certain activities such as some international activities, oversight of and regulatory support to the Agreement State program, the statutory fee exemption for Federal agencies, and the NRC's fee exemptions or reductions for nonprofit educational institutions and small entities are considered. As for the issue of benefits perceived, the Report concluded that the concern had merit when considered with regard to the materials regulatory program.

Finally, the Report included legislative recommendations to Congress to remove certain costs from the fee base, the net effect of which would be the recovery of 90 percent of the NRC's budget authority through fees. While the NRC initiated some changes in its fee structure, Congress did not act on the legislative recommendations.

PAST COMMITTEE ACTIONS ON RECOMMENDATIONS

On two separate occasions, the committee has acted on legislation that would address fee collection. On May 18, 1998, former Environment and Public Works Committee Chairman Chafee introduced the NRC Fairness in Funding Act of 1998 (S. 2090), legislation to extend the authority of the NRC to collect fees through 2003, and to exclude from the fee base those costs for which it would not be fair and equitable to assess charges on licensees. Joining him as original cosponsors were Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety Chairman Inhofe and Ranking Member Graham; Subcommittee on Superfund, Waste Control, and Risk Assessment Chairman Smith; and Senator Jeffords. S. 2090 was reported favorably by the full committee on May 21; however, the bill did not receive Senate approval prior to the end of the 105th Congress.

On September 23, 1999, Senator Inhofe introduced the NRC Fairness in Funding Act of 1999 (S. 1627), legislation to extend the authority of the NRC to collect fees through 2004, and to exclude inequitable costs from the fee base. On September 29, Senator Inhofe offered an amendment in the nature of a substitute on behalf of Senators Chafee, Baucus, and Graham. Title I of that amendment extends the NRC's fee authority through 2005, excludes inequitable costs from the fee base, and allows fee recovery from other government agencies for NRC services. Title II of the amendment amends current law to enhance nuclear safety and physical security, increase NRC efficiency, and maximize Commission resources. The full committee adopted the substitute amendment, and then favorably reported S. 1627 as amended by unanimous consent on April 13th, 2000. S. 1627 then passed the Senate with an amendment and an amendment to the title by unanimous

consent on April 13, 2000. Since the passage of S. 1627 out of committee, the NRC has proceeded to implement many of the requirements of S. 1627 through orders and rulemaking.

CURRENT COMMITTEE ACTION ON RECOMMENDATIONS

The committee continues to support recovery of NRC regulatory costs, including the costs of the implementation of additional security measures, through the imposition of fees on licensees. However, the committee acknowledges that the NRC should retain an appropriated account for security-related planning activities that have dramatically increased since September 11, 2001.

On April 20th 2005, Senator Voinovich introduced S. 858 which contains many similar provisions to S. 1627. On June 8th 2005, S. 858 was ordered to be reported by the full committee with an amendment in the nature of a substitute by unanimous consent. Title I of S. 858 allows the NRC to continue to recover 90 percent of its budget from licensee fees through 2011. Title II includes several NRC reform provisions that are critical to better aligning the NRC's resources and capabilities. Title III includes human capital provisions needed to ensure that NRC meets its long-term staffing needs. A section-by-section analysis of S. 858 as amended follows.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents.

This Act may be cited as the "Nuclear Fees Reauthorization Act of 2005".

TITLE I—NRC USER FEES

Sec. 101. Nuclear Regulatory Commission user fees and annual charges.

Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is amended by extending the Nuclear Regulatory Commission's authority to recover 90 percent of its costs from licensee fees through 2011. Absent congressional action, amount collected via licensee fees would be reduced to approximately 33 percent at the end of December, 2005. Excluded from these fees are costs incurred from regulating residual defense radioactive waste and homeland security activities. The 90 percent level was set in law in 2000 via Public Law 106–377.

TITLE II—NRC REFORM

Sec. 201. Treatment of nuclear reactor financial obligations.

Section 541(b) of title 11, United States Code, is amended to ensure that funds held to pay for decontamination and decommissioning of nuclear power plants will not be used to satisfy the claim of any creditor in a bankruptcy proceeding under this title until decommissioning is complete. The requirement to use such funds for decommissioning applies, under this section, regardless of who owns or controls the funds.

Sec. 202. Period of combined license.

Section 103(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2135 (c)) is amended to ensure that the initial duration of a combined construction and operating license may be up to 40 years from the date on which the NRC finds that the acceptance criteria of the license are met. This clarification ensures that the duration period of combined licenses is consistent with that of separate operating licenses.

Sec. 203. Elimination of NRC antitrust reviews.

Section 105(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2135 (c)) is amended so as to eliminate prospectively the NRC's antitrust review requirement in connection with applications to construct or operate a commercial utilization or production facility. Given the broad antitrust authority of both the Federal Energy Regulatory Commission (FERC) and the Department of Justice, the NRC's authority is rarely used and duplicative, and does not need to be maintained. This provision is intended to affect only the NRC's antitrust responsibilities with respect to its regulatory actions. The committee intends such reviews to be conducted, as appropriate, by the Department of Justice and FERC, and this provision does not diminish the authority of those agencies to conduct antitrust reviews associated with licensing actions at nuclear facilities. The NRC remains responsible for assuring that its licensees continue to operate plants safely, regardless of changes that may take place in the structure of the industry. Interested members of the public therefore will continue to have the opportunity to intervene in NRC proceedings to raise potential safety issues related to those changes.

Sec. 204. Medical isotope production.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended allowing for the U.S. to continue exporting highly enriched uranium (HEU) to Canada, Belgium, France, Germany, and the Netherlands for the production of medical isotopes on the condition that these countries agree to switch to low enriched uranium (LEU) as soon as possible and that LEU fuel for their reactors be under active development. The NRC is also to review current security requirements for HEU usage. The National Academy of Sciences is also required to study the feasibility of producing medical isotopes in LEU reactors.

Sec. 205. Cost recovery from government agencies.

Section 161(w) of the Atomic Energy Act of 1954 (42 U.S.C. 2201 (w)) is amended to allow the NRC to recover fees from other government agencies for NRC services (such as licensing and inspection services). It permits the NRC to recover fees from other Federal agencies for NRC services.

Sec. 206. Conflicts of interest relating to contracts and other arrangements.

Section 170A(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2210a(b)) is amended to allow the NRC to access specialized expertise with the Department of Energy or a contractor even though

there may be a conflict of interest, however the contracts to do such work require adequate justification. This is intended to be limited to extraordinary circumstances, specifically so that NRC can access Department of Energy labs when the expertise does not exist elsewhere.

Sec. 207. Authorization of appropriations.

Such sums as necessary are authorized to carry out this title for fiscal year 2006 and each subsequent fiscal year.

TITLE III—NRC HUMAN CAPITAL PROVISIONS

Sec. 301. Provision of support to university nuclear safety, security, and environmental protection programs.

Section 31(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051 (b)) to is amended to authorize the NRC to provide incentives such as grants, loans, cooperative agreements, contracts, etc. to institutions of higher education to support studies, courses, training in areas such as nuclear safety, security, environmental protection, etc.

The additional authority provided by this section would enable the Commission to foster the development of the next generation of nuclear regulatory specialists by funding university programs that would help address shortages of individuals with critical skills needed by the NRC.

Sec. 302. Recruitment tools.

A new section 170C is added to the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) that authorizes the NRC to purchase recruitment items of nominal value to help recruit new employees.

Sec. 303. Expenses authorized to be paid by the Nuclear Regulatory Commission.

A new section 170D is added to the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) that authorizes the NRC to pay for the transportation, lodging, and subsistence of students working at the NRC in areas critical to the mission of the NRC while attending institutions of higher education. It addresses current NRC difficulties in hiring students, for summer and other short term periods of employment because of the areas' high cost of travel, housing, and related expenses. These student employees are a valuable source for future recruitment for NRC employment. Assistance with the high cost of housing will help ensure the agency's ability to hire the best.

This section would also authorize the NRC to pay for costs of health and medical services furnished, pursuant to an agreement with the State Department, to NRC employees and their dependents serving in foreign countries. This provision is needed to provide NRC staff and their dependents that are assigned overseas health and medical services from the United States embassies and health facilities in those countries.

Sec. 304. Nuclear Regulatory Commission scholarship and fellowship program.

Section 243 is added to the Atomic Energy Act of 1954 (42 U.S.C. 2015a) authorizing the NRC to provide scholarships and fellowships in areas critical to the NRC's mission. To maintain its ability to protect the health and safety of the public and the common defense and security, the agency must be able to recruit new employees who have the skills necessary for the NRC to continue to carry out its mission. The section would also establish a similar program for the award by NRC of fellowships to graduate students. A student who receives such a scholarship or fellowship would have to be a citizen of the United States.

Sec. 305. Partnership program with institutions of higher education.

A new Section 244 is added to the Atomic Energy Act of 1954 (42 U.S.C. 2015 et seq.) authorizing NRC to establish and participate in partnership programs with institutions of higher education, including Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges. These could include collaborative research, mentoring, instruction, and training activities conducted at these educational institutions or conducted at NRC facilities.

Sec. 306. Elimination of pension offset for certain rehired Federal retirees.

A new section 170E is added to the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) provides the NRC with the authority to rehire on a case-by-case basis retired employees as contractors without adversely affecting their pensions. This authority will enable the agency to more expeditiously return former Federal employees to Federal service when those employees are needed for the purpose of maintaining the agency's ability to protect the public health and safety and common defense and security.

Sec. 307. Authorization of appropriations.

Such sums as necessary are authorized to carry out this title for fiscal year 2006 and each subsequent fiscal year.

HEARINGS

Since the committee approved S. 1627 on April 13, 2000, it has held annual oversight hearings. There was one general oversight hearing held on the Nuclear Regulatory Commission in the 109th Congress during which testimony on S. 858 was taken. Witnesses included: Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission; Edward McGaffigan, Jr., Commissioner, U.S. Nuclear Regulatory Commission; Gregory B. Jaczko, Commissioner, U.S. Nuclear Regulatory Commission; Jim Wells, Director, Natural Resources and the Environment, Government Accountability Office; Marilyn C. Kray, President, NuStart Energy Development; Dr. Edwin Lyman, Senior Staff Scientist, Global Security Program Union of Concerned Scientists.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any roll call votes taken during consideration of legislation be noted in the report.

The Committee on Environment and Public Works met to consider S. 858 on June 8, 2005. The committee voted favorably to report S. 858 by voice vote.

REGULATORY IMPACT STATEMENT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report of the committee's estimate of the regulatory impact of the bill as reported. S. 858, as reported, is expected to impose no new regulatory impact. This bill will not affect the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), the committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 858, as reported, impose no Federal intergovernmental mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires each report to contain a statement of the cost of a reported bill prepared by the Congressional Budget Office. Senate Rule XXVI paragraph 11(a)(3) allows the report to include a statement of the reasons why compliance is impracticable. The committee has requested this statement from the Congressional Budget Office and will publish it in the Congressional Record when it becomes available.

CHANGES IN 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:

[11 U.S.C. 541(B)]

SEC. 541. PROPERTY OF THE ESTATE

(a) * * *

* * * * * * *

(b) Property of the estate does not include—

(1) * * *

* * * * * * *

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 542 of this title; **[**or**]**

(5) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition**[**.**]** *; or*

(6) funds accumulated or otherwise designated for decontamination and decommissioning pursuant to a regulation or order of the Nuclear Regulatory Commission for a nuclear power reactor licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

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ATOMIC ENERGY ACT OF 1954

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CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

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

a. * * *

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SEC. 31. RESEARCH ASSISTANCE.—

a. * * *

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[b. The Commission is further authorized to make]

b. GRANTS AND CONTRIBUTIONS.—The Nuclear Regulatory Commission is authorized—

(1) to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection a[.] *; and*

(2) to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the Nuclear Regulatory Commission determines to be critical to the regulatory mission of the Nuclear Regulatory Commission.

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SEC. 103. COMMERCIAL LICENSES.—

a. * * *

* * * * * * *

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding [forty years] *40 years from the authorization to commence operations*, and may be renewed upon the expiration of such period.

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SEC. 105. ANTITRUST PROVISIONS.—

a. * * *

* * * * * * *

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

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

Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

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

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

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

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

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

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 103, and

with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided,* That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b., if the application is filed on or after, or is pending on, the date of enactment of this paragraph.

* * * * * * *

SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

[b.] *a.* As used in this section—

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

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

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

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

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

[a.] [*b.* The Commission] *b.RESTRICTIONS.—Except as provided in subsection c., the Nuclear Regulatory Commission* may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

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

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

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

c. MEDICAL ISOTOPE PRODUCTION.—

(1) DEFINITIONS.—In this subsection:

(A) MEDICAL ISOTOPE.—The term 'medical isotope' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(B) RADIOPHARMACEUTICAL.—The term 'radiopharmaceutical' means a radioactive isotope that—

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

(C) RECIPIENT COUNTRY.—The term 'recipient country' means Belgium, Canada, France, Germany, and the Netherlands.

(2) LICENSES.—The Nuclear Regulatory Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection b.), the Nuclear Regulatory Commission determines that—

(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Nuclear Regulatory Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

(i) uses an alternative nuclear reactor fuel; or

(ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

(A) IN GENERAL.—The Nuclear Regulatory Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Nuclear Regulatory Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Nuclear Regulatory

Commission shall impose such requirements as license conditions or through other appropriate means.

(4) FIRST REPORT TO CONGRESS.—

(A) NATIONAL ACADEMY OF SCIENCES STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Nuclear Fees Reauthorization Act of 2005, the Secretary shall submit to Congress a report that—

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) SECOND REPORT TO CONGRESS.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched ura-

nium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Nuclear Fees Reauthorization Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Nuclear Regulatory Commission shall, by rule, terminate the review of the Nuclear Regulatory Commission of export license applications under this subsection.

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

a. * * *

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w. prescribe and collect from any other Government agency, which applies **[**for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., or which operates any facility regulated or certified under section 1701 or 1702**]** *to the Nuclear Regulatory Commission for, or is issued by the Nuclear Regulatory Commission, a license or certificate*, any fee, charge, or price which it may require, in accordance with the provisions of section **[**483a**]** *9701* of title 31 of the United States Code or any other law**[**, of applicants for, or holders of, such licenses or certificates**]**.

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SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—

a. * * *

* * * * * * *

[b. The Commission**]**

b. EVALUATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Nuclear Regulatory 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)**]***(A)* it is unlikely that a conflict of interest would exist, or

[(2)](B)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.

(2) NUCLEAR REGULATORY COMMISSION.—Notwithstanding any conflict of interest, the Nuclear Regulatory Commission may enter into a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, if the Nuclear Regulatory Commission determines that—

(A) the conflict of interest cannot be mitigated; and

(B) adequate justification exists to proceed without mitigation of the conflict of interest.

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SEC. 170C. RECRUITMENT TOOLS.

The Nuclear Regulatory Commission may purchase promotional items of nominal value for use in the recruitment of individuals for employment.

SEC. 170D. EXPENSES AUTHORIZED TO BE PAID BY THE NUCLEAR REGULATORY COMMISSION.

The Nuclear Regulatory Commission may—

(1) pay transportation, lodging, and subsistence expenses of employees who—

(A) assist scientific, professional, administrative, or technical employees of the Nuclear Regulatory Commission; and

(B) are students in good standing at an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) pursuing courses related to the field in which the students are employed by the Nuclear Regulatory Commission; and

(2) pay the costs of health and medical services furnished, pursuant to an agreement between the Nuclear Regulatory Commission and the Department of State, to employees of the Nuclear Regulatory Commission and dependents of the employees serving in foreign countries.

SEC. 170E. ELIMINATION OF PENSION OFFSET FOR CERTAIN REHIRED FEDERAL RETIREES.

a. IN GENERAL.—The Nuclear Regulatory Commission may waive the application of section 8344 or 8468 of title 5, United States Code, on a case-by-case basis for employment of an annuitant—

(1) in a position of the Nuclear Regulatory Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(2) when a temporary emergency hiring need exists.

b. PROCEDURES.—The Nuclear Regulatory Commission shall prescribe procedures for the exercise of authority under this section, including—

(1) criteria for any exercise of authority; and

(2) procedures for a delegation of authority.

c. EFFECT OF WAIVER.—An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5, United States Code.

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SEC. 242. COLD STANDBY.

The Secretary is authorized to expend such funds as may be necessary for the purposes of maintaining enrichment capability at the Portsmouth, Ohio, facility.

SEC. 243. SCHOLARSHIP AND FELLOWSHIP PROGRAM.

a. SCHOLARSHIP PROGRAM.—To enable students to study, for at least 1 academic semester or equivalent term, science, engineering, or another field of study that the Nuclear Regulatory Commission determines is in a critical skill area related to the regulatory mission of the Nuclear Regulatory Commission, the Nuclear Regulatory Commission may carry out a program to—

(1) award scholarships to undergraduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Nuclear Regulatory Commission in the area of study for which the scholarship is awarded.

b. FELLOWSHIP PROGRAM.—To enable students to pursue education in science, engineering, or another field of study that the Nuclear Regulatory Commission determines is in a critical skill area related to its regulatory mission, in a graduate or professional degree program offered by an institution of higher education in the United States, the Nuclear Regulatory Commission may carry out a program to—

(1) award fellowships to graduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Nuclear Regulatory Commission in the area of study for which the fellowship is awarded.

c. REQUIREMENTS.—

(1) IN GENERAL.—As a condition of receiving a scholarship or fellowship under subsection a. or b., a recipient of the scholarship or fellowship shall enter into an agreement with the Nuclear Regulatory Commission under which, in return for the assistance, the recipient shall—

(A) maintain satisfactory academic progress in the studies of the recipient, as determined by criteria established by the Nuclear Regulatory Commission;

(B) agree that failure to maintain satisfactory academic progress shall constitute grounds on which the Nuclear Regulatory Commission may terminate the assistance;

(C) on completion of the academic course of study in connection with which the assistance was provided, and in accordance with criteria established by the Nuclear Regu-

latory Commission, engage in employment by the Nuclear Regulatory Commission for a period specified by the Nuclear Regulatory Commission, that shall be not less than 1 time and not more than 3 times the period for which the assistance was provided; and

(D) if the recipient fails to meet the requirements of subparagraph (A), (B), or (C), reimburse the United States Government for—

(i) the entire amount of the assistance provided the recipient under the scholarship or fellowship; and

(ii) interest at a rate determined by the Nuclear Regulatory Commission.

(2) WAIVER OR SUSPENSION.—The Nuclear Regulatory Commission may establish criteria for the partial or total waiver or suspension of any obligation of service or payment incurred by a recipient of a scholarship or fellowship under this section.

d. COMPETITIVE PROCESS.—Recipients of scholarships or fellowships under this section shall be selected through a competitive process primarily on the basis of academic merit and such other criteria as the Nuclear Regulatory Commission may establish, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b).

e. DIRECT APPOINTMENT.—The Nuclear Regulatory Commission may appoint directly, with no further competition, public notice, or consideration of any other potential candidate, an individual who has—

(1) received a scholarship or fellowship awarded by the Nuclear Regulatory Commission under this section; and

(2) completed the academic program for which the scholarship or fellowship was awarded.

SEC. 244. PARTNERSHIP PROGRAM WITH INSTITUTIONS OF HIGHER EDUCATION.

a. DEFINITIONS.—In this section:

(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given the term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(2) HISTORICALLY BLACK COLLEGE AND UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(3) TRIBAL COLLEGE.—The term 'Tribal college' has the meaning given the term 'tribally controlled college or university' in section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)).

b. PARTNERSHIP PROGRAM.—The Nuclear Regulatory Commission may establish and participate in activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-serving institutions, historically Black colleges or universities, and Tribal colleges, to strengthen the capacity of the institutions—

(1) to educate and train students (including present or potential employees of the Nuclear Regulatory Commission); and

(2) to conduct research in the field of science, engineering, or law, or any other field that the Nuclear Regulatory Commission determines is important to the work of the Nuclear Regulatory Commission.

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[42 U.S.C. 2214]

OMNIBUS BUDGET RECONCILIATION ACT OF 1990

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**]** *2011.*

(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**[**.**]** *;*

(iii) amounts appropriated to the Nuclear Regulatory Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (118 Stat. 2162; 50 U.S.C. 2601 note); and

(iv) amounts appropriated to the Nuclear Regulatory Commission for homeland security activities of the Nuclear Regulatory 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⟧ *each of fiscal years 2005 through 2011.*

(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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