"CHAPTER 11— INTERNATIONAL ACTIVITIES

Effect of international arrangements. 42 USC sec. 2151.

"**Sec. 121. Effect Of International Arrangements.**—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangements made after the date of enactment of this Act shall be deemed to be of no force or effect.

Policies contained in international arrangements. 42 USC sec. 2152.

"**Sec. 122. Policies Contained In International Arrangements.**—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

42 USC 2073, 2074, 2077, 2094, 2112, 2121, 2133, 2134, 2164. Cooperative agreements, submittal to President. Contents.

"**Sec. 123. Cooperation With Other Nations.**—"No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

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

"(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

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

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

[90]Public Law 95-242 (92 Stat. 125)(1978), sec. 301(c), added sec. 111.

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

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

42 USC 2121, 2164

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

"(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144c., a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

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

"(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or con-

structed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

Agreement requirements Presidential exemptions.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., or 144 c.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ('the Director'); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the president an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)[90a] regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c., or 144 b., which are to be implemented by the Department of Defense, by the Secretary of Defense:

Proposed cooperation agreements submittal to President. Nuclear Proliferation Assessment Statement, submitted to President. 42 USC 2121, 2164.

"b. the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and[90b] the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote and will not

[90a] As amended by Public Law 99-64, sec. 301 (a)(1).

[90b] As amended by Public Law 99-64, sec. 301 (a)(2).

constitute an unreasonable risk to, the common defense and security;

Submittal to congressional committees.

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

Ante, p. 139.

42 USC 2073, 2074, 2133, 2134.

"d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution[90c] stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms control and Disarmament Agency, when required by subsection 123 a., has been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.[90d] During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved.[90e] Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act.[90f]

Ante, p. 142.

Ante, p. 139.

[90c] As amended by Public Law 99-64, sec. 301 (a)(1).

[90d] As amended by Public Law 99-64, sec. 301 (b)(2).

[90e] As amended by Public Law 99-64, sec. 301 (a)(3).

[90f] As amended by Public Law 99-64, sec. 301 (b)(3).

Agency views to Congressional Committees 42 USC 2121, 2164.

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

"If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.[91]

Ante, p. 137.
Ante, p. 131.

[91] Public Law 95-242 (92 Stat. 142) (1978), sec. 401, amended sec. 123 by substituting a complete new sec. 123. Before amendment, sec. 123 read as follows: "Sec 123. Cooperation With Other Nations—No cooperation with any nation or regional defense organization pursuant to sections 53, 54a, 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—"

"a. the Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c. or 144 b. which are to be implemented by the Department of Defense, the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendations thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;

"b. the President has approved and authorized the execution of the proposed agreement for cooperation, and has made a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security;

"c. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the Joint committee and a period of thirty days has elapsed while congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *Provided, however,* That the Joint Committee, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

"d. The proposed agreement for cooperation together with the approval and determination of the President, if arranged pursuant to subsection 91c; 144 b., or 144 c., or if entailing implementation of sections 53, 54a, 103 or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith, has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days), but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: *Provided,* That prior to the elapse of the first thirty days of any such sixty-day period the Joint committee shall submit a report to the Congress of its views and recommendations respecting the proposed agreement and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed agreement for cooperation. Any such concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) within twenty-five days and shall be voted on within five calendar days thereafter, unless such House shall otherwise determine."

(Continued)

International atomic pool. 42 USC sec. 2154.

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

Cooperation with Berlin. 42 USC sec. 2153 (Nt.).

"**Sec. 125. Cooperation With Berlin.**—The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54a,[92] 57, 64, 82, 103, or 104; *Provided,* That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.[93]

42 USC 2155. Exemption.

"**Sec. 126. Export Licensing Procedures.**—

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

Ante, p. 125. *Supra.* 42 USC 2112 Executive branch judgment notice to

"(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the com-

(Continued)

aPublic Law 88-489 (78 Stat. 602) (1964), sec. 15, added "53.".

Sec. 5 of Public Law 93-377 (88 Stat. 475) (1974) changed the term "54" to "54a".

cPublic Law 85-479 (72 Stat. 276) (1958), sec. 3 amended sec. 123 by inserting "91," and substituting a new subsec. a. Before amendment subsec. a. read as follows:

"a. the Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 144 b., the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendation thereon, which proposed agreement shall include (1) the terms conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons, or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;"

Public Law 85-681 (72 Stat. 632) (1958), sec. 4, added the proviso to subsec. 123 c. The semicolon erroneously inserted after the word "and" at the end of the subsection was added by Public Law 85-479.

Subsec. 123d was amended by Public Law 93-485 (88 stat. 1460) (1974). Prior to amendment, subsec. 123d read as follows:

"d. the proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91c., 144 b., or 144 c., has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session, but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: *Provided, however,* That during the Eighty-fifth Congress such period shall be thirty days (in computing such sixty days, or thirty days, as the case may be, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days)".

dPublic Law 85-479 (72 Stat. 276) (1958), sec. 4 added new subsec. 123d.

[93] Sec. 5 of Public Law 93-377 (88 stat. 475) (1974) amended secs. 124 and 125 by substituting the terms "54a" for the term "54".

[93] Public Law 85-14 (71 Stat. 11) (1957), added sec. 125.

commission.

mon defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

Procedures.

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Standards and criteria.

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

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

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

Post, p. 136.

Data and recommendations.

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

"(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other applicable statutory requirements, are met: *Provided,* That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section, and for a period of twenty-three months thereafter if the Secretary of State notifies the commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section: *Provided further,* That if, upon the expiration of such twenty four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies

Post, p. 136.

42 USC 2154.

Extension, notice to Congress.

the Congress. In the event that the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 120 of this Act: *And additionally provided.,* That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further,* That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

Post, p. 139.
Findings.

Judicial review, exception.

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

Presidential review.

"(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should

Report to Congress and congressional

committees.
Post, p. 139.

nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g.) and shall be referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopt a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further,* That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review while awaiting the final executive branch judgment. In initiating its review the Commission may identify a set of concerns and requests for information associated with the projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further,* That

Review.

Concerns and requests, transmittal to executive branch.

nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a. (1) of this section.

Referral to congressional committees.

"c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.[94]

42 USC 2156

"Sec. 127. Criteria Governing United States Nuclear Exports.— "The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

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

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

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

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

[94]Public Law 95-242 (92 Stat. 131)(1978). sec. 304(a), added sec. 126.

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

"(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any exported sensitive nuclear technology.[95]

42 USC 2157.

"Sec. 128. Additional Export Criterion And Procedures.—

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

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

Export applications, criterion enforcement.

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

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

Ante, p. 131.
Post, p. 139.

[95]Public Law 95-242 (92 Stat. 136)(1978), sec. 305, added sec. 127.

adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

Congressional disapproval, resolution.

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

Export authorizations, congressional review.

"(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided,* That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further,* That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.[96]

Export terminations, criterion. 42 USC 2158.

"Sec. 129. Conduct Resulting In Termination Of Nuclear Exports.—"No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

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

"(A) detonated a nuclear explosive device; or

"(B) terminated or abrogated IAEA safeguards; or

"(C) materially violated an IAEA safeguards agreement; or

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

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

"(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially vio-

[96]Public Law 95-242 (92 Stat. 137), Sec. 306, added sec. 128.

lated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

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

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

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided,* That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.[97]

Report to. Congress.

Infra.

42 USC 2159 Congressional committee reports.

"Sec. 130. Congressional Review Procedures.—

"a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection[97a] 126 a. (2), 126 b. (2), 128 b., 129, 131 a. (3), or 131 f. (1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.[97b] shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided,* That if any such committee has not reported such a resolution at the end of such forty-five day pe-

Post. p. 142.
Ante. pp. 131, 137, 138, 127.

42 USC 2121, 2164.

[97]Public Law 95-242 (92 Stat. 138)(1978), sec. 307, added sec. 129

[97a] P.L. 99-64, sec 301 (c)(1)(A)(i)

[97b] P.L. 99-64, sec 301 (c)(1)(A)(ii)

riod, such committee shall be deemed to be discharged from further consideration of such submission.[97c] If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

"b. When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a.) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a., as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

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

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

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

"Resolution."

"f. For the purposes of subsections a. through e. of this section, the term 'resolution' means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress (does or does not) favor the transmitted to the

[97c] P.L. 99-64, sec 301 (c)(1)(B)

Congress by the President on .', the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

Continuous sessions of Congress. Computation.

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

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

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

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

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

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

"h. This section is enacted by Congress—

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

"(2) With full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.[98]

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

"(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by

[98]Public Law 95-242 (92 Stat. 138)(1978), sec. 308, added sec. 130.

Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

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

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

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

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

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

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

42 USC 2160. Consultation

Sec. 131. Subsequent Arrangements.—

a (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agree-

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

42 USC 2121, 2164.

Notice publication in the Federal Register.

(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term 'subsequent arrangements' means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

Nuclear Proliferation Assessment Statement.

"Subsequent arrangements."

Contracts.

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

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

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

Ante, p. 125.
Post, pp. 131, 141.

"(D) arrangements for physical security;

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

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

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

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

Post, p. 142.

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

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

Report to congressional committees.

"(1) the secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

Post, p. 139.

"(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such

reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device and

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

Nuclear materials, reprocessing or transfer procedures.

"c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial request should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Director shall so de-

Controversial requests, identification. Standards and criteria. Nuclear Proliferation Assessment Statement. Presidential

waiver. Notice to congressional committees.

clare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Directors request, the President waives the sixty-day requirement and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

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

42 USC 7172.

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

Presidential plan, submittal to Congress.

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

"(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this act) and has been referred to the Committee on International relations of the House of representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this act for the consideration of Presidential submission; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the

Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), which plan has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. any such plan shall be considered pursuant to the procedures set forth in section 130 of this act for the consideration of Presidential submissions:

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

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

Ante, p. 125.
Post, p. 131.

Notice to congressional committees.

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

Plan, contents.

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

"Foreign spent nuclear fuel"

"(4) For the purposes of this subsection, the term 'foreign spent nuclear fuel' shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.[99]

42 USC 2160b.

"Sec. 132. Authority To Suspend Nuclear Cooperation With Nations Which Have Not Ratified The Convention On The Physical Security Of Nuclear Material.—

[99]Public Law 95-242 (92 Stat. 127)(1978), sec. 303(a), added sec. 131.

President of U.S. "The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material."[99a]

42 USC 2160c. **"Sec. 133. Consultation With The Department Of Defense Concerning Certain Exports And Subsequent Arrangements.—**

"a. In addition to other applicable requirements—

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

42 USC 2160. "(2) approval may be granted by the Secretary of Energy under section 131 of this Act for the transfer of special nuclear material described in subsection b.;

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

"b. Subsection a. applies to the export or transfer of more than 2 kilograms of plutonium or more than 20 kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.[99b]

42 USC 2160d. **"Sec 134. Further Restrictions on Exports.—**

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

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

"b. As used in this section—

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

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

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[99a]Public Law 99-399 (100 Stat 853)(1986), sec. 602 added sec. 132.

[99b]Public Law 99-399 (100 Stat 853)(1986), sec. 602 added sec. 133.

"(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."[89c]