

MAR 14 2000

The Honorable Dennis Hastert
Speaker of the United States
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for consideration by the Congress is a bill entitled the "Energy Employee Protection Amendments of 2000." Both the Department of Labor and the Nuclear Regulatory Commission believe that this bill will do much to enhance the protection of nuclear industry employees from retaliation by their employers for raising safety issues.

The bill would accomplish this by amending section 211 of the Energy Reorganization Act of 1974, which provides a process for an employee (or former employee) who believes that he or she has been the subject of discrimination for raising safety concerns to seek a personal remedy, such as reinstatement to a former position. The Department of Labor has the responsibility for administering section 211. The Department's actions under section 211 affect the ability to establish a climate in which employees can feel free to raise safety concerns without fear of retaliation, a matter of considerable importance to the Nuclear Regulatory Commission in carrying out its responsibility to protect the public health and safety with respect to civilian uses of radioactive material under the Atomic Energy Act of 1954.

Current law has significant shortcomings that weaken the protections afforded to nuclear industry employees who report safety concerns. In particular, some of the section 211 time frames for the procedural steps in the process are unrealistic. Moreover, the fact that, under current law, reinstatement may not be ordered until the conclusion of a hearing on the record can have a chilling effect on employees who fear removal from their jobs if they raise safety concerns.

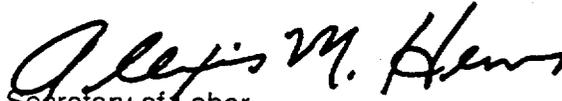
Accordingly, the bill would revise section 211 by setting more realistic time limits for steps in the adjudicatory process and specifying explicit time frames for steps for which no time limits are currently provided. It would also provide a clearer description of the procedural steps that are involved, giving parties better notice of how the process works. The bill would afford more timely relief to complainants by providing for a preliminary order of reinstatement of the complainant, if the Secretary of Labor determines at the conclusion of the investigation conducted at the outset of the process that a violation has occurred.

We believe that the enactment of this bill would enhance nuclear safety and increase the efficiency of the section 211 process. A draft bill (Enclosure 1), an analysis of its provisions

(Enclosure 2), a comparative text (Enclosure 3), and a memorandum explaining the need for the legislation (Enclosure 4) are provided.

The Office of Management and Budget has advised that there is no objection to the transmittal of this proposal from the standpoint of the Administration's program.

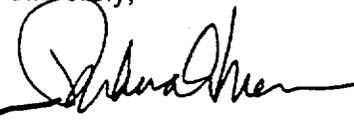
Sincerely,



Alexis M. Henry

Secretary of Labor

Sincerely,



Chairman,
Nuclear Regulatory Commission

- Enclosures:
1. Draft Bill
 2. Analysis of Proposal
 3. Comparative Text
 4. Legislative Memorandum

MAR 14 2000

The Honorable Albert Gore, Jr.
President of the United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed for consideration by the Congress is a bill entitled the "Energy Employee Protection Amendments of 2000." Both the Department of Labor and the Nuclear Regulatory Commission believe that this bill will do much to enhance the protection of nuclear industry employees from retaliation by their employers for raising safety issues.

The bill would accomplish this by amending section 211 of the Energy Reorganization Act of 1974, which provides a process for an employee (or former employee) who believes that he or she has been the subject of discrimination for raising safety concerns to seek a personal remedy, such as reinstatement to a former position. The Department of Labor has the responsibility for administering section 211. The Department's actions under section 211 affect the ability to establish a climate in which employees can feel free to raise safety concerns without fear of retaliation, a matter of considerable importance to the Nuclear Regulatory Commission in carrying out its responsibility to protect the public health and safety with respect to civilian uses of radioactive material under the Atomic Energy Act of 1954.

Current law has significant shortcomings that weaken the protections afforded to nuclear industry employees who report safety concerns. In particular, some of the section 211 time frames for the procedural steps in the process are unrealistic. Moreover, the fact that, under current law, reinstatement may not be ordered until the conclusion of a hearing on the record can have a chilling effect on employees who fear removal from their jobs if they raise safety concerns.

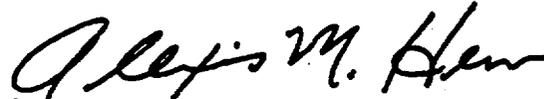
Accordingly, the bill would revise section 211 by setting more realistic time limits for steps in the adjudicatory process and specifying explicit time frames for steps for which no time limits are currently provided. It would also provide a clearer description of the procedural steps that are involved, giving parties better notice of how the process works. The bill would afford more timely relief to complainants by providing for a preliminary order of reinstatement of the complainant, if the Secretary of Labor determines at the conclusion of the investigation conducted at the outset of the process that a violation has occurred.

We believe that the enactment of this bill would enhance nuclear safety and increase the efficiency of the section 211 process. A draft bill (Enclosure 1), an analysis of its provisions

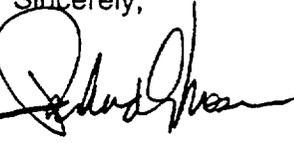
(Enclosure 2), a comparative text (Enclosure 3), and a memorandum explaining the need for the legislation (Enclosure 4) are provided.

The Office of Management and Budget has advised that there is no objection to the transmittal of this proposal from the standpoint of the Administration's program.

Sincerely,


Secretary of Labor

Sincerely,


Chairman,
Nuclear Regulatory Commission

Enclosures: 1. Draft Bill
2. Analysis of Proposal
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DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Energy Employee Protection Amendments of 2000".

SECTION 2. PROCEEDINGS UPON COMPLAINT.

Section 211(b)(2)(A) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(b)(2)(A), is amended to read as follows:

"(2)(A)(i) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 90 days after the receipt of the complaint, the Secretary shall complete the investigation and shall notify in writing the complainant (and any person acting in the complainant's behalf) and the person alleged to have committed such violation of the results of the investigation. If the Secretary determines, at the conclusion of the investigation, that a violation of subsection (a) has occurred, the Secretary shall include in the written notification a preliminary order providing the relief prescribed by subparagraph (B). The preliminary order shall be effective immediately, except that any award of back pay, compensatory damages, or costs and expenses shall not be effective until there is a final order of the Secretary. The preliminary order shall remain in effect until it is superseded by an order issued pursuant to clause (iii) or a final order is issued or deemed to be issued by the Secretary, whichever is earlier.

"(ii) Within 30 days after the issuance of written notification of the results of the investigation of the allegations of the complaint, the complainant or any

person alleged to have committed the violation may request a hearing before an administrative law judge. Such a hearing shall be on the record after notice and opportunity for public hearing. If a hearing is not requested within 30 days after issuance of written notification of the results of the investigation, any preliminary order issued pursuant to clause (i), including any award of back pay, compensatory damages, or costs and expenses, shall be deemed a final order issued by the Secretary. Any person adversely affected or aggrieved by the preliminary order issued pursuant to clause (i) who may request a hearing pursuant to this clause, but fails to do so, shall be precluded from seeking any further administrative or judicial review of an order issued pursuant to this subparagraph.

"(iii) Unless the proceeding on the complaint has been terminated by a settlement entered into by the Secretary and the person alleged to have committed the violation, within 120 days after the Secretary receives a hearing request pursuant to clause (ii) the administrative law judge assigned to the proceeding shall issue a decision containing findings of fact, conclusions of law, and an order. If the administrative law judge finds a violation has occurred, the order shall provide the relief prescribed by subparagraph (B) and such relief shall be effective immediately, except that any award of back pay, compensatory damages, and costs and expenses shall not be effective until there is a final decision and order of the Secretary. The decision and order of the administrative law judge shall supersede any preliminary order issued pursuant to clause (i).

"(iv) Any party to the hearing who is adversely affected or aggrieved by the decision and order of the administrative law judge may file a petition for review of the decision and order of the administrative law judge with the Secretary within

30 days after the issuance of the administrative law judge's decision and order. If no petition for review is filed within that time period, the decision and order of the administrative law judge shall be deemed the final decision and order of the Secretary 45 days after their issuance, unless the Secretary orders otherwise before the 45 day period has ended. Any person who may file a petition for review pursuant to this clause, but fails to do so, shall be precluded from seeking any further administrative or judicial review of an order issued pursuant to this subparagraph.

"(v) When a petition for review is filed pursuant to clause (iv) or the Secretary otherwise takes jurisdiction over the case before the decision and order of the administrative law judge becomes the final decision and order of the Secretary pursuant to such clause, the Secretary shall, within 120 days after the issuance of the administrative law judge's decision and order--

(I) issue a final order, or

(II) if the Secretary concludes that further findings of fact or law are required, remand the proceeding to an administrative law judge.

If the Secretary remands the proceeding to an administrative law judge for further findings of fact or law, any decision and order issued by the administrative law judge pursuant to clause (iii) shall remain in effect, except as modified by the Secretary, until a final order is issued by the Secretary pursuant to clause (vi).

"(vi) In the event of a remand by the Secretary pursuant to clause (v), the administrative law judge shall issue a decision on the remanded issues within 90 days after the remand by the Secretary. The Secretary shall issue a final order

within 90 days after the issuance of the administrative law judge's decision and order on remand.

"(vii) A proceeding on a complaint may be terminated at any time by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed the violation. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(viii) The provisions of sections 49 and 50 of Title 15 (which relate, respectively, to attendance of witnesses and production of documentary evidence, and offenses and penalties for failure to attend and testify or produce documentary evidence) shall be applicable to the jurisdiction, powers, and duties of the Secretary under this subparagraph, and to any person (including a corporation) subject to the provisions of this subparagraph.

"(ix) The time span for an action provided in this subparagraph may be extended by the administrative law judge or the Secretary with the agreement of the parties or, in exceptional circumstances, upon the request of a party and a finding that an extension of time is in the interests of justice."

SECTION 3. RELIEF FOR VIOLATION.

Section 2. Section 211(b)(2)(B) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(b)(2)(B), is amended to read as follows:

"(2)(B)(i) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (I) take affirmative action to abate the violation, and (II) reinstate the complainant to the complainant's former position together with the

compensation (including back pay and interest at the quarterly rates established under section 6621(a)(2) of Title 26), terms, conditions, and privileges of the employment. The Secretary may also order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph providing relief to the complainant, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) the Secretary determines to have been reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued, including any judicial proceeding initiated pursuant to subparagraph (c) for which the court has not awarded such costs and expenses.

“(ii) For purposes of a preliminary order issued pursuant to subparagraph (A)(i), reinstatement of the complainant to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment shall be considered to be reinstatement of the complainant to his or her former position.”

SECTION 4. JUDICIAL REVIEW.

Section 211(c) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(c), is amended to read as follows:

“(c)(1) Any person who--

(A) is or has been a participant in a proceeding held pursuant to subsection (b)(2)(A),

(B) is adversely affected or aggrieved by a final order issued in the proceeding under subsection (b)(2)(A)(v), and

(C) has exhausted all administrative remedies available to the party with respect to the proceeding and order,

may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of Title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

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

SECTION 5. ENFORCEMENT OF ORDER BY SECRETARY.

Section 211(d) of the Energy Reorganization Act of 1974, 58 U.S.C. 5851(d), is amended to read as follows:

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

SECTION 6. ENFORCEMENT OF ORDER BY PARTY.

Section 211(e) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(e), is amended to read as follows:

"(e)(1) Any person on whose behalf a preliminary or final order was issued under paragraph (2) of subsection (b), including an order approving a settlement agreement, may commence a civil action against the person to whom such order was issued to require

compliance with such order. In such an action, the findings of fact and conclusions of law of the preliminary or final order shall be conclusive. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

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

SECTION 7. REGULATIONS.

Section 211 of the Energy Reorganization Act of 1974, 42 U.S.C. 5851, is amended by adding the following subsection after subsection (j):

“(k) Regulations. The Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this section.”

SECTION 8. APPLICABILITY OF AMENDMENTS.

The amendments made by this Act shall not apply to any complaint filed before the effective date of this Act.

SECTION ANALYSIS

SECTION 2. PROCEEDINGS UPON COMPLAINT.

Section 211 of the Energy Reorganization Act of 1974 was enacted to protect nuclear industry employees from retaliation by their employers for raising safety issues with their employers or the Nuclear Regulatory Commission. The purpose of this amendment is to strengthen section 211 by setting more realistic time limits for the steps in the investigatory and adjudicatory processes, affording early relief for employees who suffer retaliation, and providing a clearer description of the procedural steps that can potentially be involved -- i.e., complaint, investigation, request for and holding of hearing, review by the Secretary of Labor.

In addition, this amendment provides more timely relief to the complainant in section 211 proceedings. To accomplish this, the amendment provides for immediate reinstatement of the complainant to a position that provides the complainant with the equivalent employment benefits, pay, and other terms and conditions of employment as were furnished by the complainant's former position, if the Secretary of Labor determines at the conclusion of the investigation that a violation has occurred. The preliminary reinstatement order would not, however, include an award of back pay, compensatory damages, or costs and expenses. These (if awarded) would have to wait until later in the proceeding.

This amendment also gives the Secretary of Labor the same subpoena authority that exists under a number of other statutes enforced by the Department.

SECTION 3. RELIEF FOR VIOLATION.

This amendment does not change the basic relief available to a prevailing complainant (abatement of violation, reinstatement to former position together with compensation and terms,

conditions, and privileges of the employment, compensatory damages, and costs and expenses) in cases where the Secretary of Labor determines that the employee suffered retaliation for raising safety concerns, though it makes clear that for the purpose of early reinstatement at the conclusion of the investigation, the reinstatement requirement may be satisfied by reinstatement to a position that provides equivalent employment benefits, pay, and other terms and conditions of employment that were afforded by the complainant's former position. The amendment makes express the existing authority to add interest at the quarterly rates established under Section 6621(a)(2) of Title 26 to a back pay, and to authorize award by the Secretary of Labor of costs and expenses incurred by the complainant in a judicial proceeding for review in the court of appeals under certain circumstances.

SECTION 4. JUDICIAL REVIEW.

The purpose of this amendment is almost entirely to clarify the present provisions allowing a party to a section 211 adjudicatory proceeding who is adversely affected by the outcome of the proceeding to obtain review in the U.S. court of appeals. In particular, the proposed amendment would make clear that this section applies only to a final order of the Secretary of Labor.

SECTION 5. ENFORCEMENT OF ORDER BY SECRETARY.

The purpose of this amendment is to make clear that both preliminary and final orders may be the subject of an action brought by the Secretary of Labor to enforce an order issued in a section 211 adjudicatory proceeding, and that orders approving a settlement agreement are also included. In addition, the amendment is intended to make the findings of fact and conclusions of law of the preliminary or final order conclusive in such an action.

SECTION 6. ENFORCEMENT OF ORDER BY PARTY.

The purpose of this amendment, like that of section 5, is to make clear that both preliminary and final orders, as well as orders approving a settlement agreement, may be the subject of an action to enforce an order issued in a section 211 adjudicatory proceeding. In addition, the amendment is intended to make the findings of fact and conclusions of law of the preliminary or final order conclusive in such an action.

SECTION 7. REGULATIONS.

The purpose of this proposed amendment to section 211 is to make explicit the authority of the Secretary of Labor to issue regulations implementing section 211.

SECTION 8. APPLICABILITY OF AMENDMENTS.

The purpose of this section is to make clear that the changes in section 211 that are made by the bill apply only to complaints filed on or after the effective date of the Act, leaving existing complainants and parties alleged by them to have committed a violation subject to the law as it stood before enactment of the changes.

COMPARATIVE TEXT

SECTION 2

The amended section 211(b)(2)(A) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851 (b)(2)(A), would read as follows:

"(2)(A)(i) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within ~~thirty~~ 90 days after the receipt of ~~such~~ the complaint, the Secretary shall complete ~~such~~ the investigation and shall notify in writing the complainant (and any person acting in his the complainant's behalf) and the person alleged to have committed such violation of the results of the investigation ~~conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (b) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue~~ If the Secretary determines, at the conclusion of the investigation, that a violation of subsection (a) has occurred, the Secretary shall include in the

written notification a preliminary order providing the relief prescribed in subparagraph (B), ~~but may not order compensatory damages pending a final order.~~ The preliminary order shall be effective immediately, except that any award of back pay, compensatory damages, or costs and expenses shall not be effective until there is a final order of the Secretary. The preliminary order shall remain in effect until it is superseded by an order issued pursuant to clause (iii) or a final order is issued or deemed to be issued by the Secretary, whichever is earlier. ~~The secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.~~

"(ii) Within 30 days after the issuance of written notification of the results of the investigation of the allegations of the complaint, the complainant or any person alleged to have committed the violation may request a hearing before an administrative law judge. Such a hearing shall be on the record after notice and opportunity for public hearing. If a hearing is not requested within 30 days after issuance of written notification of the results of the investigation, any preliminary order issued pursuant to clause (i), including any award of back pay, compensatory damages, or costs and expenses, shall be deemed a final order issued by the Secretary. Any person adversely affected or aggrieved by the preliminary order issued pursuant to clause (i) who may request a hearing pursuant to this clause, but fails to do so, shall be precluded from seeking any further administrative or judicial review of an order issued pursuant to this subparagraph.

"(iii) Unless the proceeding on the complaint has been terminated by a settlement entered into by the Secretary and the person alleged to have committed the violation, within 120 days after the Secretary receives a hearing

request pursuant to clause (ii) the administrative law judge assigned to the proceeding shall issue a decision containing findings of fact, conclusions of law, and an order. If the administrative law judge finds a violation has occurred, the order shall provide the relief prescribed by subparagraph (B) and such relief shall be effective immediately, except that any award of back pay, compensatory damages, and costs and expenses shall not be effective until there is a final decision and order of the Secretary. The decision and order of the administrative law judge shall supersede any preliminary order issued pursuant to clause (i).

"(iv) Any party to the hearing who is adversely affected or aggrieved by the decision and order of the administrative law judge may file a petition for review of the decision and order of the administrative law judge with the Secretary within 30 days after the issuance of the administrative law judge's decision and order. If no petition for review is filed within that time period, the decision and order of the administrative law judge shall be deemed the final decision and order of the Secretary 45 days after their issuance, unless the Secretary orders otherwise before the 45 day period has ended. Any person who may file a petition for review pursuant to this clause, but fails to do so, shall be precluded from seeking any further administrative or judicial review of an order issued pursuant to this subparagraph.

"(v) When a petition for review is filed pursuant to clause (iv) or the Secretary otherwise takes jurisdiction over the case before the decision and order of the administrative law judge becomes the final decision and order of the Secretary pursuant to such clause, the Secretary shall, within 120 days after the issuance of the administrative law judge's decision and order--

(I) issue a final order, or

(II) if the Secretary concludes that further findings of fact or law are required, remand the proceeding to an administrative law judge.

If the Secretary remands the proceeding to an administrative law judge for further findings of fact or law, any decision and order issued by the administrative law judge pursuant to clause (iii) shall remain in effect, except as modified by the Secretary, until a final order is issued by the Secretary pursuant to clause (vi).

"(vi) In the event of a remand by the Secretary pursuant to clause (v), the administrative law judge shall issue a decision on the remanded issues within 90 days after the remand by the Secretary. The Secretary shall issue a final order within 90 days after the issuance of the administrative law judge's decision and order on remand.

"(vii) A proceeding on a complaint may be terminated at any time by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed the violation. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(viii) The provisions of sections 49 and 50 of Title 15 (which relate, respectively, to attendance of witnesses and production of documentary evidence, and offenses and penalties for failure to attend and testify or produce documentary evidence) shall be applicable to the jurisdiction, powers, and duties of the Secretary under this subparagraph, and to any person (including a corporation) subject to the provisions of this subparagraph.

"(ix) The time span for an action provided in this subparagraph may be extended by the administrative law judge or the Secretary with the agreement of the parties or, in exceptional circumstances, upon the request of a party and a finding that an extension of time is in the interests of justice."

SECTION 3

The amended section 211(b)(2)(B) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851 (b)(2)(B), would read as follows:

"(2)(B)(i) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his the complainant's former position together with the compensation (including back pay and interest at the quarterly rates established under section 6621(a)(2) of Title 26), terms, conditions, and privileges of his the employment, and the Secretary may order such person to provide compensatory damages to the complainant. The Secretary may also order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph providing relief to the complainant, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, the Secretary determines to have been reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued, including any judicial proceeding initiated pursuant to subparagraph (c) for which the court has not awarded such costs and expenses.

“(ii) For purposes of a preliminary order issued pursuant to subparagraph(A)(i), reinstatement of the complainant to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment shall be considered to be reinstatement of the complainant to his or her former position.”

SECTION 4

The amended section 211(c) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(c), would read as follows:

“(c)(1) Any person who--

(A) is or has been a participant in a proceeding held pursuant to subsection (b)(2)(A),

(B) is adversely affected or aggrieved by an a final order issued under subsection (b) in the proceeding under subsection (b)(2)(A)(v), and

(C) has exhausted all administrative remedies available to the party with respect to the proceeding and order,

may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of Title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

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

SECTION 5

The amended section 211(d) of the Energy Reorganization Act of 1974, 42 U.S.C.

5851 (d), would read as follows:

“(d) Whenever a person has failed to comply with ~~an~~ a preliminary or final order issued under subsection (b)(2), including an order approving a settlement agreement, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the findings of fact and conclusions of law of the preliminary or final order shall be conclusive, and the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory damages, and exemplary damages.”

SECTION 6

The amended section 211(e) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851(e), would read as follows:

“(e)(1) Any person on whose behalf ~~an~~ a preliminary or final order was issued under paragraph (2) of subsection (b), including an order approving a settlement agreement, may commence a civil action against the person to whom such order was issued to require compliance with such order. In such an action, the findings of fact and conclusions of law of the preliminary or final order shall be conclusive. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

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

LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

SECTION 2. PROCEEDINGS UPON COMPLAINT.

Section 211 of the Energy Reorganization Act of 1974 was enacted to protect nuclear industry employees from retaliation by their employers for raising safety issues with their employers or the Nuclear Regulatory Commission. Though the Department of Labor has the actual responsibility for administering section 211, efficient and expeditious implementation of that responsibility is important to the Commission, the regulated industry, and the public. In recent years, it has become evident that attainment of these goals requires enactment of amendments to the statutory framework upon which the procedures for protecting allegers are based. In particular, it has become evident that the implementation of section 211 would be strengthened by setting more realistic time limits for the steps in the adjudicatory process, affording early relief for employees (and former employees) who suffer retaliation, providing a more explicit statement of the applicable adjudicatory procedures, and giving the Secretary of Labor subpoena authority to compel the attendance of witnesses and production of documentary evidence.

To these ends, the proposed amendments would revise section 211(b)(2)(A) of the Energy Reorganization Act to elaborate on the current, cursory description of the proceedings upon a complaint alleging discrimination for reporting violations. In addition to providing a clearer description of the procedural steps that can potentially be involved -- i.e., complaint, investigation, request for and holding of hearing, review by the Secretary of Labor -- the amendments would explicitly provide realistic time limits in which claims of discrimination will be investigated and reviewed within the Department of Labor. These changes would include the

following: the time by which the investigation of the alleged violation must be completed would be changed from 30 to 90 days after the receipt of the complaint; the complainant and the person alleged to have committed the violation would have 30 days after issuance of written notification of the results of the investigation to request a hearing; the administrative law judge who conducts the hearing would be required to issue a decision within 120 days after the Secretary receives a hearing request; a party to the hearing who is adversely affected by the decision of the administrative law judge would have 30 days from the issuance of the decision to petition for review; and, when a petition for review is filed, the Secretary of Labor would have 120 days after issuance of the administrative law judge's decision to issue a final order or to remand for further proceedings.

Because the process for investigating and adjudicating section 211 complaints can be lengthy and costly, an employee who faces possible discharge for a significant period of time may not be prepared to accept the risk of having to go through a lengthy adjudicatory process before obtaining relief. This chilling effect on reporting of safety concerns would be reduced significantly if, in addition to adoption of the proposed time limits for completion of actions in section 211 adjudicatory proceedings, more timely relief were afforded to the complainant in such proceedings. To accomplish the latter, the proposed amendments would provide for immediate reinstatement of the complainant to a position that provides the complainant with equivalent employment benefits, pay, and other terms and conditions of employment that were furnished by the complainant's former position, if the Secretary of Labor determines at the conclusion of the investigation that a violation has indeed occurred. The preliminary reinstatement order would not implement an award of back pay, compensatory damages, or costs and expenses. The effective date of these remedies (if awarded) would have to wait until later in the proceeding.

In sum, the proposed amendments to section 211(b)(2)(A) would state more clearly the procedural steps available in section 211 proceedings, affording parties better notice of how the process works; provide realistic time limits for investigation and adjudication of section 211 complaints, which will make the implementation of the process more time efficient; and, provide for immediate reinstatement of the complainant to a position equivalent to the one the complainant previously held if the conclusion of the investigation is that a violation has occurred, reducing the chilling effect of possible loss of employment on reporting of violations by employees. The proposed amendments would also give the Secretary of Labor the same subpoena authority to compel the attendance of witnesses and production of documentary evidence as exists under a number of other statutes enforced by the Department. This provision will ensure that relevant information and witnesses are available to the Secretary during the course of the complaint investigation and to both parties during any hearing on a complaint.

SECTION 3. RELIEF FOR VIOLATION.

Section 211(b)(2)(B) of the Energy Reorganization Act of 1974 sets forth the relief available to the complainant in a section 211 proceeding if the Secretary of Labor determines that the alleged violation (retaliation against an employee for raising safety concerns) has taken place. The relief available to a prevailing complainant (abatement of violation, reinstatement to former position -- together with its compensation and terms, conditions, and privileges of employment -- compensatory damages, and costs and expenses) is not changed by the proposed amendments, but the proposed amendment clarifies that interest on a back pay award would be added to retroactive compensation, and award by the Secretary of Labor of costs and expenses incurred by the complainant in a judicial proceeding for review in the court of appeals would be authorized under certain circumstances. The changes are appropriate in

light of the financial burden that may have to be assumed by a complainant before his or her rights are vindicated.

However, for the purpose of early reinstatement at the conclusion of the investigation, it seems fairer to allow the reinstatement requirement to be satisfied by reinstatement to a position that provides equivalent employment benefits, pay, and other terms and conditions of employment that were furnished by the complainant's former position. Only when the preliminary order is superseded by an order issued by an Administrative Law Judge or a final order is issued or deemed to be issued by the Secretary of Labor would reinstatement to the former position itself be required.

SECTION 4. JUDICIAL REVIEW.

Section 211(c) allows a party to a section 211 adjudicatory proceeding who is dissatisfied with the outcome of the proceeding to obtain review in the U.S. court of appeals. The changes that are proposed are almost entirely of a clarifying nature. The proposed amendment of subsection (c) would make clear that this section applies only to a final order of the Secretary of Labor. This will avoid the unproductive expenditure of time in litigating orders that are not final.

SECTION 5. ENFORCEMENT OF ORDER BY SECRETARY.

Section 211(d) authorizes the Secretary of Labor to seek enforcement of an order issued in a section 211 adjudicatory proceeding by filing a civil action in a U.S. district court. The proposed amendment of subsection (d) would make clear that both preliminary orders (to the extent that they are immediately effective upon issuance) and final orders are covered under this authority, and that orders approving a settlement agreement are included. In large

part, these clarifications are necessitated by the elaboration of the section 211 adjudicatory proceedings contained in section 2 of the proposed bill.

In addition, because the underlying safety concerns and the nuclear operations involved in these adjudicatory proceedings are generally technical in nature, and in view of the considerable economic burden a complainant in a section 211 proceeding must bear when there is a failure to comply with an order providing relief to the complainant, it is reasonable to avoid further litigation of the findings of fact and conclusions of law arrived at by the Secretary of Labor in a civil action to enforce an order issued in such a proceeding. Therefore, the proposal clarifies that the findings of fact and conclusions of law of the preliminary or final order are conclusive in such an action.

SECTION 6. ENFORCEMENT OF ORDER BY PARTY.

Section 211(e) authorizes any person on whose behalf a preliminary or final order was issued in a section 211 adjudicatory proceeding to file a civil action in a U.S. district court against the person to whom the order was issued for the purpose of requiring compliance with the order. As with the amendment of section 211(d), the proposed amendment of subsection (e) would make clear that both preliminary orders (to the extent that they are immediately effective upon issuance) and final orders are covered under this authority, and that orders approving a settlement agreement are included. In large part, these clarifications are necessitated by the elaboration of the section 211 adjudicatory proceedings contained in section 2 of the proposed bill.

In addition, because the underlying safety concerns and the nuclear operations involved in these adjudicatory proceedings are generally technical in nature, and in view of the multi-layered consideration that may be invoked within the Department of Labor by the parties to section 211 proceedings, it is reasonable to avoid further litigation of the findings of fact and

conclusions of law arrived at by the Secretary of Labor in a civil action to enforce an order issued in such a proceeding. Therefore, the proposal clarifies that the findings of fact and conclusions of law of the preliminary or final order are conclusive in such an action.

SECTION 7. REGULATIONS.

The purpose of this proposed amendment to section 211 is simply to make explicit the authority of the Secretary of Labor to issue regulations implementing section 211.

SECTION 8. APPLICABILITY OF AMENDMENTS.

This section would make clear that the changes contained in the proposed amendments of section 211 will apply only to complaints filed on or after the effective date of the Act, leaving existing complainants and parties alleged by them to have committed a violation subject to the law as it stood before enactment of the changes. This seems fair in light of the fact that the expectations of the parties should have been fixed as of that time.