



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

August 31, 1998

MEMORANDUM TO: Chairman Jackson  
Commissioner Diaz  
Commissioner McGaffigan

FROM: Dennis K. Rathbun, Director  
Office of Congressional Affairs 

SUBJECT: STATUS OF ISSUES IN THE 105<sup>TH</sup> CONGRESS

Attached for your information is a summary and update of issues that are relevant to the NRC and being monitored by the Office of Congressional Affairs. We will continue to keep you apprised of progress on these and other significant issues.

Attachment: As Stated

cc: EDO  
OGC/Cyr  
OGC  
SECY  
OPA  
OIP  
OIG  
CFO  
CIO  
ACRS  
ACNW  
ASLBP  
OCAA

A/5

**INDEX  
STATUS OF ISSUES  
IN THE 105<sup>TH</sup> CONGRESS**

**AUGUST 31, 1998**

	<b>Pages</b>
<b>I. BUDGET .....</b>	<b>1</b>
<b>A. NRC Authorization .....</b>	<b>2</b>
<b>B. NRC User Fees .....</b>	<b>3</b>
<b>II. PERFORMANCE AND FINANCIAL STATEMENTS .....</b>	<b>3</b>
<b>III. NRC NOMINATIONS .....</b>	<b>4</b>
<b>IV. ISSUES AND LEGISLATION .....</b>	<b>4</b>
<b>A. CERCLA/Superfund .....</b>	<b>4</b>
<b>B. Civil Service Issues .....</b>	<b>5</b>
<b>C. DOE Facilities - External Regulation .....</b>	<b>6</b>
<b>D. DOE - Secretary of Energy .....</b>	<b>7</b>
<b>E. Electricity Deregulation .....</b>	<b>8</b>
<b>F. Federal Advisory Committee Streamlining Act .....</b>	<b>8</b>
<b>G. High-level Radioactive Waste .....</b>	<b>9</b>
<b>H. International Issues .....</b>	<b>9</b>
<b>I. Low-level Radioactive Waste .....</b>	<b>10</b>
<b>J. Regulatory Reform .....</b>	<b>10</b>
<b>K. Reports Elimination .....</b>	<b>11</b>
<b>L. U.S. Enrichment Corporation .....</b>	<b>11</b>
<b>M. Uranium Mill Tailings .....</b>	<b>11</b>
<b>N. Year 2000 (Y2K) .....</b>	<b>12</b>

## **I. BUDGET**

### **FY 1999 Appropriations**

On June 2, 1998, the Senate Subcommittee on Energy and Water Development marked up and referred S. 2138 to the Senate Committee on Appropriations. The subcommittee bill recommended \$465,655,000 for the NRC including \$17 million derived from the Nuclear Waste Fund, \$33 million from the General Fund, and \$4.8 million to the Inspector General. The base appropriation for the agency was \$438.3 million with an additional \$22.5 million made available for expenses related to a reduction in staff and related expenses. The subcommittee recommended specific reductions throughout the agency which totaled 704 FTE by the end of FY 2000. The subcommittee bill also extended NRC's user fee authority for one year. However, the fee extension was not 100% and the fee base was reduced by \$33 million.

On June 4, 1998, the Senate Committee on Appropriations met to consider S. 2138. The Committee amended the referred bill by increasing the base appropriations to \$466 million and deleting the language requiring \$22.4 million to be used for reductions in staff. The Committee retained the subcommittee's recommendation of \$17 million from the Nuclear Waste Fund, \$33 million from the General Fund, \$4.8 million for the Inspector General, and extended user fee authority for one year. S. 2138, as reported, allocates \$466 million, a \$17.3 million reduction from the budget request and \$4.8 million for the Inspector General - a reduction of \$500,000.

On June 18, 1998, the Senate passed S. 2138 by a voice vote, 98-1.

On June 10, 1998, the House Appropriations Subcommittee on Energy and Water Development agreed to H.R. 4060, the FY 1999 Energy and Water Development Appropriations Act. The bill provides \$470.8 million to the NRC, including \$4.8 million for the Inspector General -- \$14.8 million is derived from the Nuclear Waste Fund and \$3.2 million is for DOE-related work. The bill also provides for a one year extension of NRC's user fees. H.R. 4060, as reported, cuts \$21.1 million from the FY 1999 budget request.

On June 16, 1998, the House Committee on Appropriations agreed with the subcommittee's recommendations and on June 22, 1989, the House passed H.R. 4060, without amendments, by a vote of 405-4.

A conference is expected when the Congress returns after Labor Day.

Attached, for your information, are the pertinent portions of the House and Senate reports and legislation, including provisions regarding the external regulation of DOE facilities.

Attachment A: Senate Appropriations Committee, Subcommittee on Energy and Water Development DRAFT report and legislative language.

Attachment B: S. 2138 and accompanying Senate Report 105-206

Attachment C: H.R. 4060 and accompanying House Report 105-581.

### **NRC Authorization**

H.R. 3532, the NRC Authorization Act for Fiscal Year 1999, was introduced by Representative Dan Schaefer (R-CO) on March 24, 1998. The bill authorizes \$483.3 million for the NRC and \$5.3 million for the Inspector General. The bill extends NRC user fees through FY 2003 and includes the NRC's legislative proposals.

The legislative proposals:

1. Authorize guards to carry firearms at NRC-licensed facilities where there are special nuclear materials present;
2. Make unauthorized introduction of weapons at facilities subject to licensing or certification by the NRC a Federal crime;
3. Make it a Federal crime to sabotage a production, utilization, waste storage, waste treatment, or waste disposal, uranium enrichment or nuclear fuel fabrication facility during its construction, if the action could jeopardize public health and safety, or to sabotage a uranium enrichment or nuclear fuel fabrication facility during its operation;
4. Allow a Commissioner whose term has expired to continue in office for a limited time if a successor has not been confirmed;
5. Provide the NRC with general gift acceptance authority;
6. Eliminate the requirement that the NRC maintain an office for the services of process and paper within the District of Columbia.
7. Provide that the initial period of a combined construction permit for a production or utilization facility may not exceed 40 years from the date on which the NRC finds that the acceptance criteria for facility operation have been met.

The House Commerce Subcommittee on Energy and Power held an oversight hearing on March 25, 1998 to receive testimony from the NRC and review the need for legislation.

The Subcommittee on Energy and Power referred H.R. 3532 to the full Committee, and on April 29, 1998, the Committee on Commerce agreed to and reported H.R. 3532. On August 6, 1998, the committee report was issued.

Due to the time constraints and early Congressional adjournment, it does not appear that the House of Representatives will consider H.R. 3532 this Congress.

No comparable authorization legislation has been introduced in the Senate. The Senate Committee on Environment and Public Works agreed to a user fee extension S.2090 but not other authorizing legislation or legislative proposals.

### **NRC User Fees**

The NRC's authority to collect approximately 100% of its budget through user fees expires on September 30, 1998. If no action is taken, fees will revert to 33% of the budget, with the remaining 67% coming from the General Fund and the Nuclear Waste Fund. In FY 1997, the Administration included a five-year fee extension in the FY 1998 NRC authorization bill proposal. The House Commerce Committee included an extension of NRC's authority to collect approximately 100% of its budget through user fees with its budget reconciliation package, but the Senate Environment and Public Works Committee did not include such an extension. During the Conference, the Senate discussed the concept of a fee extension that was less than 100%. The Committees chose to defer consideration of fees until FY 1998.

In 1998 both House and Senate Oversight Committees took action on NRC User Fees. The House Committee on Commerce's Subcommittee on Energy and Power held an oversight hearing on March 25, 1998 to discuss, among other things, NRC user fees. The Subcommittee on Energy and Power and the full Commerce Committee agreed to a five-year extension of 100% user fees (minus funding from the Nuclear Waste Fund and costs associated with its work with other Federal agencies) from September 30, 1998 to September 30, 2003. On August 6, 1998, the committee issued its report on the proposed legislation, H.R. 3532.

Due to the expected Congressional adjournment in early October, no further action on this legislation is anticipated.

In the Senate, the Committee on Environment and Public Works, without holding a hearing on user fees agreed to and reported S. 2090, the NRC Fairness in Funding Act of 1998. The legislation provides for a five year extension of NRC user fees less the amount appropriated from the Nuclear Waste Fund. The bill also amends current law to require that the NRC exclude from the total amount collected in annual charges from licensees the costs of those activities the NRC determines would not be fair and equitable to assess on NRC licensees. The bill sets \$30 million as the maximum amount that may be excluded from the fee base.

S. 2090 is cleared for Senate Floor debate but it is unlikely at this time whether the bill will be brought to the Floor during this Congress.

## **II. PERFORMANCE PLANS AND FINANCIAL STATEMENTS**

In April 1998, the House evaluated agencies' FY 1999 performance plans; the NRC received a 58.5, the fourth highest score. The NRC was ranked high for compliance in validation and verification, format, and timeliness. Also in April, the House Government Reform and Oversight Committee's Subcommittee on Government Management, Information, and Technology gave the NRC's FY 1997 Financial Statement a B minus, a grade placing it among the top seven agencies.

### **III. NRC NOMINATIONS**

On May 22, 1998, the Senate received the nomination of Greta J. Dicus to the Commission for a term expiring on July 1, 2003; Commissioner Dicus' current term expired on July 1, 1998. The Environment and Public Works Committee has not yet scheduled a confirmation hearing. No one has been nominated to fill the other vacancy on the Commission for a term which expires on July 1, 2002.

### **IV. ISSUES AND LEGISLATION**

#### **CERCLA / Superfund**

The NRC submitted proposed amendments to CERCLA legislation that would make it clear that the standards issued by the NRC and Agreement States would govern the cleanup of Atomic Energy Act material at licensed facilities. Representative Mike Oxley (R-OH), Chairman of the House Commerce Committee's Subcommittee on Finance and Hazardous Materials included the NRC's proposal in H.R. 3000, the "Superfund Reform Act." The subcommittee held a number of hearings but was unable to achieve enough bipartisan support to hold a legislative markup.

The Senate Environment and Public Works Committee reported its version of Superfund reauthorization, S. 8, on March 26, 1998. The vote was along party lines with only one Democrat, Senator Bob Graham (D-FL), voting for passage. This version does not contain NRC's proposed language. The NRC language was offered as an amendment by Senator Graham but it was withdrawn after an objection by Chairman John Chafee (R-RI). Chairman Chafee thought the amendment to be controversial and offered to hold a hearing on dual NRC/EPA regulation. The hearing has not been scheduled. It does not appear that S. 8 will be considered by the Senate because of opposition by the Administration.

In a related effort, the House report, H. Rpt. 105-610, on the VA, HUD, Independent Agencies (including EPA) Appropriations bill, H.R. 4194, contains language that directs EPA, "to spend no funds to enforce cleanup requirements at sites being remediated under regulatory requirements enforced through the NRC licensing procedure." The Senate report does not contain this language. On July 23, 1998, during Floor consideration of the bill, Representative Henry Waxman (D-CA) offered an amendment that, among other things, would have removed this limitation. Representative Jerry Lewis (R-CA) argued against accepting the NRC-related portion of the Waxman Amendment and the House voted against the entire amendment 243 - 176. The House passed H.R. 4194 on July 29, 1998. The Senate had earlier passed the bill on July 17, 1998.

## **Civil Service Issues**

### **Civil Service Reform**

Chairman Mica (R-FL) of the House Government Reform and Oversight Committee's Subcommittee on Civil Service had ambitious plans for comprehensive civil service reform legislation this year, having conducted more than 60 hearings on the subject in past years. His particular concerns were poor performers and the involvement of organized labor in both the political process and the federal workplace. He suggested that "more radical" approaches would be used in the next Congress if reform does not proceed. When he tried to have his subcommittee mark up legislation this summer, however, there was significant opposition from Members representing large numbers of federal employees. Instead, only individual bills which enjoyed bipartisan support were ordered reported by the Committee. The Senate Governmental Affairs Committee has not pursued civil service reform this year, so comprehensive legislation will not occur in this Congress.

The civil service bills which the House Government Reform and Oversight Committee did approve are described below. H.R. 2526 would increase to the maximum IRS annual limit (\$10,000 in 1998) the amount which both FERS and CSRS employees could contribute to TSP. Currently, contributions of FERS and CSRS employees are limited to 10% and 5% of their salaries, respectively. Additionally, private 401(k)'s could be rolled into TSP and new employees could begin contributing immediately rather than waiting for 6 to 12 months. This bill was considered in the last Congress, but its budgetary impact resulting from increased tax-deferred contributions was an insurmountable obstacle. The Senate Governmental Affairs Committee does not expect to take up the bill unless an offset is found. H.R. 4280 would allow federal agencies, at their own discretion, to subsidize child care for their lower income employees; no additional monies would be available for this option. On July 28 the Senate approved an amendment containing the same provision to S. 2312, FY99 Treasury/Postal Appropriations. H.R. 2943 would authorize an additional 30 days of leave each calendar year for federal employees who are organ donors; Senator Levin introduced a companion bill, S. 2261, but no action has occurred. H.R. 2566 would allow federal employees who had previously received refunds of their pension contributions the option of redepositing, with interest, the refunds or being credited for the service but having a reduced annuity. A similar bill is not pending in the Senate.

### **Federal Activities Inventory Reform Act**

Title II of H.R. 4244, a procurement reform measure, contains the text of the Federal Activities Inventory Reform Act (formerly known as the Freedom from Government Competition Act), H.R. 716. This Act would require agencies to annually submit a list of their activities that are not inherently governmental to OMB for review and consultation. Following that review, OMB would publish a final list. Agency heads would then be required "within a reasonable time" to review the activities and to use a competitive process when contracting with a private sector source is considered. The House Government Reform and Oversight Committee ordered H.R. 4244 to be reported on July

23, and a hearing was held on Title II on August 6. The Senate passed a companion bill to Title II, S. 314, on July 30. Both Title II and S. 314 as approved represent modifications of the bills as introduced; originally, the federal government would have been prohibited from competing with the private sector for the listed activities.

The Administration and federal employees' unions do not oppose S. 314's or Title II's enactment; however, the Administration is opposed to other titles in H.R. 4244 which deal with procurement. As a result, if H.R. 4244 in its entirety is presented for signature, the President may veto it.

#### Federal Employee Retirement Coverage Correction Act

On July 20, 1998, the House passed H.R. 3249 which corrects retirement coverage for those employees who were placed in the wrong pension program during the transition from CSRS to FERS. The Administration's approach, contained in S. 1710, was the subject of a hearing before a Senate Governmental Affairs subcommittee in May; no further action has occurred. H.R. 3249 would have a greater revenue impact because the federal government would be responsible for paying both the employee and employer contributions to TSP during the time period to be corrected; S. 1710 would have the federal government liable only for the employer portion. Resolving these differences has stymied further action.

#### Federal Pay Raise

The President has approved a federal pay raise of 3.6%, effective January 1999, and has proposed a 4.4% pay raise for January 2000. The 3.6% will be allocated between the base pay rate and locality pay, so some federal workers will receive a pay raise greater than 3.6% and some less, depending upon where they work. The President's budget for FY 1999 had proposed a 3.1% federal pay raise while federal employee unions advocated 5.8%. The Senate version of the FY 1999 Treasury/Postal Service appropriations bill includes 3.6%, and the President accepted that figure.

#### Travel and Transportation Reform Act

The House approved H.R. 930, which mandates use of government credit cards for work-related travel by employees, on April 16. The Senate Governmental Affairs Committee ordered the bill to be reported on June 17. That Committee's staff is completing report language now and expects H.R. 930 to come to the floor when the Senate returns.

#### DOE Facilities - External Regulation

There are currently three Congressional arenas in which various initiatives on the matter are being discussed:

#### Appropriations

The House and Senate Appropriations staffs are working on legislative language that would end DOE self-regulation at Lawrence Berkeley National Laboratory (LBNL) on

August 1, 1999 and provide that NRC assumes regulatory authority. The remaining issue concerns the authorities of NRC and OSHA pertaining to worker safety at the Lab and how to write it in the bill. With agreement seemingly reached between OSHA and NRC, the provision on LBNL could be included in the final legislation.

### Defense Authorization

Provisions relating to tritium production and MOX fuel are being discussed by conferees and their staffs.

The Senate bill provides that any MOX fuel fabrication facility that may be constructed must be licensed by the NRC. There is no evident opposition to this provision in the House. The House bill provides that no tritium produced in a NRC-licensed facility may be used for nuclear explosive purposes. This provision would effectively terminate the light water reactor option and eliminate the need for DOE to choose between accelerator production and commercial reactor production. Such a choice is currently required by law. The Senate bill provides that a decision is made by the end of the year, which effectively leaves open the commercial reactor option. This issue is reportedly being decided by a small number of principal Members having the most interest in its resolution.

### House Science Committee

Committee staff has indicated that a number of the Committee Members want to introduce a bill before the end of the session which would provide that DOE self-regulation of nine nonmilitary DOE labs would cease on August 1, 1999 and, on that date, NRC and OSHA would become the regulators of those facilities.

There is little likelihood of success for this bill this session since it is so late in the session and there is no comparable effort underway in the Senate. It is intended to set a mark for this Committee for the next session.

### Hearings

Both the House Commerce and House Science Committees held subcommittee hearings on this matter. At both hearings, DOE indicated a number of issues need further study, including the issue of who should be the licensee, before legislative changes are made.

### DOE - Secretary of Energy

On July 31 the Senate confirmed Ambassador Bill Richardson as Secretary of Energy; he was sworn in August 18 and began serving on August 24. Prior to the confirmation vote President Clinton wrote to Senate Energy and Natural Resources Chairman Frank Murkowski assuring him that Ambassador Richardson would have full authority to carry out his responsibilities with regard to resolving the high-level radioactive waste issue.

Based upon that letter, Senator Murkowski issued a statement supporting Ambassador Richardson.

### **Electricity Deregulation**

After more than 30 hearings by various congressional committees, electricity deregulation is now considered dead for this Congress due to the inability of members to reach agreement on whether federal action is necessary. Many members believe that sufficient action is being taken by the states to advance competition, while others believe that competition should not be rushed in light of supply concerns in the Midwest this summer. The Administration submitted its long-awaited legislative proposal to the Hill in July. By request, Senator Murkowski (R-AK) introduced that proposal while stating his view that competition was already occurring without federal action. On the House side, Rep. Bliley (R-VA), Chairman of the Commerce Committee, pulled draft legislation from further consideration by the Subcommittee on Energy and Power last month, acknowledging that there were not enough votes to move a bill.

### **Federal Advisory Committee Streamlining Act**

The House Government Reform and Oversight Committee's Subcommittee on Government Management, Information, and Technology held a hearing on July 14 to review the effectiveness of both the Federal Advisory Committee Act (FACA) and federal advisory committees. Separately, on July 15 the Senate Governmental Affairs Committee approved S. 2228, the Federal Advisory Committee Streamlining Act, which would sunset statutorily-authorized federal advisory committees three years after the bill's enactment. The bill is of interest to the NRC because ACRS is statutorily-authorized and is subject to S. 2228's provisions; ACMUI and ACNW are not statutorily-authorized.

Both the House and Senate Committees noted that although the number of advisory committees has dropped from 1305 to 963 since February 1993, their cost has increased by almost 50%, and the number of people serving on the committees has increased by more than 7000. Although statutorily-authorized advisory committees would sunset three years after S. 2228's enactment, the bill does contain an exemption provision for those committees whose purpose is to "address critical needs relating to health, safety, national security, or other concerns as the President may certify"; the ACRS might qualify under this exemption. Senator Stevens (R-AK) is concerned that Congress is turning too much authority over to the President to decide which advisory committees would survive when some were created by Congress over the objection of federal agencies. Committee staff is attempting to address Senator Stevens' concerns before filing a report on the bill. If his concerns can be addressed, they anticipate Floor action soon. The House Government Reform Committee has expressed general interest in the Senate approach, but it is uncertain whether there is sufficient time remaining to advance the bill there.

### **High-level Radioactive Waste**

On April 15, 1997, the Senate passed S. 104, to address the high-level waste disposal issue and, among other things, establish an interim high-level radioactive waste storage facility at Yucca Mountain, Nevada. The bill was then referred to the House.

The House passed its version of the legislation, H.R. 1270, on October 29, 1997. Subsequently, on March 5, 1998, the House adopted H. Res. 379, to send S. 104 back to the Senate arguing that the Senate's proposed change in assessing fees on utilities paying into the Nuclear Waste Fund was a revenue measure that must originate in the House.

The House Commerce Committee and Senate Energy and Natural Resources Committee attempted to preconference a bill that would satisfy outstanding concerns. Senate Majority Leader Trent Lott (R-MS) tried to bring up the House passed H.R. 1270; however, the vote on a cloture petition to stop a filibuster by the Nevada Senators failed to gather the 60 votes necessary to proceed. This has effectively ended the bill's chances in this Congress.

The subject received some renewed interest when it became an issue in the confirmation of Ambassador Bill Richardson as Secretary of Energy. A July 30, 1998, letter from the President to Senate Energy Committee Chairman Frank Murkowski provided assurance that Secretary Richardson would have the authority to deal with nuclear waste disposal once DOE's viability assessment has been issued. Based on that assurance, Bill Richardson was confirmed.

### **International Issues**

#### **Convention on Nuclear Safety**

In June 1998, the Senate Committee on Foreign Relations drafted a resolution on the ratification of the Convention on Nuclear Safety. Representatives from the State Department and NRC met to discuss the draft resolution and come up with a text they could agree upon. The State Department representatives then met with the Committee staff to discuss the revised draft. The resolution was finalized and put on the Committee's schedule for a vote before going to the Senate Floor for ratification. However, the resolution was dropped from Committee action at the last minute.

#### **Convention on Waste Management**

The Convention on Waste Management is at the State Department awaiting ratification of the Convention on Nuclear Safety before the President submits it to the Senate for ratification.

#### **Liability Convention**

The Liability Convention is also at the State Department awaiting ratification of the Convention of Nuclear Safety before the President submits it to the Senate for ratification.

### Nuclear Exports

The House passed an amendment to H.R. 3616, the Department of Defense Authorization Act, that requires nuclear exports, except for general licensed exports and exports to a country that is a member of the Organization for Economic Cooperation and Development, to sit before Congress for 30 days for final approval. This amendment was introduced by Representative Gilman (R-NY) and was not included in the Senate version. The Senate conferees are opposed to the amendment, therefore, it remains to be one of the open issues that the conferees intend to resolve when they return from the August recess.

### Withholding U.S. Funds for IAEA Programs in Iran

On August 3, 1998, the House passed H.R. 3743, a bill introduced by Representative Menendez (D-NJ) prohibiting the International Atomic Energy Agency (IAEA) from using U.S. funds for Iran's nuclear power program. The Administration supports the intent of the bill but opposes the approach. They would prefer that the IAEA not lose access to Iran's nuclear program. The Senate has been silent on this issue.

### Low-level Waste

#### Southwest Compact/Ward Valley

On July 22, 1997, the Senate Energy and Natural Resources Committee held a hearing concerning the status of the Department of the Interior's transfer of public land to the State of California for the Ward Valley low-level waste site. The land transfer has not taken place and no legislation has been introduced to require them to do so.

#### Texas Compact

The House and Senate have both passed the Texas low-level Radioactive Waste Disposal Compact, H.R. 629 and S. 270 respectively and a conference committee report has been issued. An amendment by Representative Lloyd Doggett (D-TX) and Senator Paul Wellstone (D-MN) to void the Compact if waste was brought in from outside the Compact's member states -- Texas, Maine and Vermont -- was dropped by the conferees. A second Wellstone amendment on environmental justice was also dropped. Prior to the recess, the House passed the conferenced bill and the Senate came to an agreement with Senator Wellstone to vote on it during the first week back in session. The bill is expected to be passed and signed by the President.

### Regulatory Reform

Regulatory reform, the object of contentious debate in past Congresses, has had a similar history in this Congress. Senators Thompson's (R-TN) and Levin's (D-MI) S. 981,

Regulatory Improvement Act, was approved by the Senate Governmental Affairs Committee in March. The bill would place new requirements on agencies' rulemaking process, imposing risk assessment and cost benefit analyses of all major rules. Four days before the markup, Majority Leader Lott introduced his own version which was similar to that which was withdrawn in the previous Congress. The Administration also submitted a draft proposal which was not introduced. Then in July, the Administration and Senators Thompson and Levin agreed to further modifications of S. 981. These modifications are not expected to address the concerns of those who already oppose S. 981 for either its alleged adverse effects on environmental and public health and safety laws or its supposed moderate nature. With limited floor time left before Congress adjourns in October, it is unlikely that regulatory reform will be further considered.

### **Reports Elimination**

S. 1364, Reports Elimination Act, was approved by the Senate on June 10. This bill would eliminate the ACRS and Price-Anderson Act annual reports, modify NRC's reporting requirement for gaseous diffusion facilities, and eliminate government-wide reports to which NRC contributes such as those on appointment and payment of ALJ's, payment to providers of property and services, civil monetary penalties, and matching programs of Government agencies. The House Government Reform and Oversight Committee has circulated a list to pertinent committees for comment on the reports to be eliminated or modified. A majority of responses have been received, and it is expected that the Committee will soon move forward with its own list. The climate is favorable for action unless Congress adjourns first.

### **U.S. Enrichment Corporation**

On July 28, 1998, the United States Enrichment Corporation (USEC) became a wholly private company with shares being sold to the public.

Senator Mitch McConnell (R-KY) introduced legislation, S. 2316, to require the Secretary of Energy to prepare a report to ensure that all monies that had been accrued by USEC for environmental restoration will be used to treat and recycle the stockpile of depleted uranium hexafluoride. On July 16, 1998, the Senate passed S. 2316 and on July 20, 1998, the House passed the same bill. The President signed the bill into law on July 21, 1998, as P.L. 105-204

### **Uranium Mill Tailings**

On July 27, 1998, the House Commerce Committee's Subcommittee on Energy and Power held a hearing on a proposal to increase the amount of money under Title X of the Energy Policy Act that the government will pay to reimburse companies to reclaim Uranium Mill Tailing Radiation Control Act Title II (civilian) sites from \$6.25 per ton to \$9.50 per ton. It is likely that a bill to accomplish this will be introduced after the August recess.

**Year 2000 (Y2K) Problem**

During the past six months there have been two hearings at which NRC testified on Y2K. On May 14, Hugh Thompson testified before the House Science Committee's Technology Subcommittee at a hearing, "Millennium Short Circuit: Effects of Year 2000 on Energy Utilities." On June 12, Chairman Jackson testified before the Senate Special Y2K Technology Problem Committee regarding "Y2K and the Power Grid." Both hearings provided an opportunity to discuss NRC's Y2K efforts internally and externally, particularly NRC Generic Letter 98-01 which addresses Y2K readiness of nuclear power plants. OCA memos dated May 15 and June 22, 1998 provide additional information on the hearings.

Additionally, Rep. Horn (R-CA), Chair of the House Government Reform and Oversight Committee's Subcommittee on Government Management, Information and Technology, continued his quarterly grading of agencies' progress in addressing Y2K concerns. In March, NRC was given a grade of C- versus a government-wide grade of D-. This grade was based on the assumption that the rate of progress at which agencies had proceeded to date would be continued into the future, resulting in noncompliance; however, NRC's progress has accelerated. In June, NRC was given a B.

content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy.

### NUCLEAR REGULATORY COMMISSION

#### SALARIES AND EXPENSES

##### GROSS APPROPRIATION

Appropriations, 1998 .....	\$468,000,000
Budget estimate, 1999 .....	483,340,000
Committee recommendation .....	468,000,000

##### REVENUES

Appropriations, 1998 .....	\$460,000,000
Budget estimate, 1999 .....	152,343,000
Committee recommendation .....	416,000,000

##### NET APPROPRIATION

Appropriations, 1998 .....	\$18,000,000
Budget estimate, 1999 .....	330,998,000
Committee recommendation .....	60,000,000

The Nuclear Regulatory Commission has been subject to six major reviews since 1979; the Kemeny report in 1979, the Rogovin report in 1980, regulatory impact surveys in 1981 and 1989, the National Academy of Sciences in 1992, and the regulatory review task force in 1994. The reviews contain common criticisms, among them; the NRC's approach to regulation is punitive rather than performance based, licensees are forced to expend considerable resources on regulations that are not related to safety, the NRC is unnecessarily prescriptive, licensees fear retribution for criticism, there are no specific criteria for important NRC actions such as placing a reactor on the watch list, and the NRC focus on paper compliance is not related to and can distract from safety activities. The Committee is concerned that the NRC has done little to respond to these reviews and believes that a major review should be undertaken to improve the efficiency of the NRC and the manner in which it oversees public health and safety.

In recent years, the safety performance of U.S. nuclear powerplants has significantly improved. Since 1991, the number of significant events has decreased in excess of 70 percent, safety systems unavailability has decreased in excess of 60 percent, scrams while critical have decreased 50 percent, and collective radiation exposure has decreased 35 percent. Despite these improvements, in the last 3 years, the NRC has dramatically increased its imposition of civil fines (25 in 1995, 50 in 1996, and 71 in 1997) and level four (the least severe) violations (567 in 1995, 905 in 1996, and 1427 in 1997).

The Committee believes that the increased issuance of fines and violations is not a reflection on the safety of the nuclear utility industry; it is the result of a change in regulatory culture at the NRC that defies the achieved improvement in safety that is quantified by the reduced number of significant events, safety system unavail-

ability, scrams while critical, and collective radiation exposure doses among other metrics.

The result is an amplification of the criticisms identified in previous reviews. The NRC has launched a review of nuclear plant design baselines which requires exhaustive review of design calculations, electrical separation, 50.59 safety evaluations, accident analysis documentation, historical plant operating records, and steps taken to implement NRC generic letters. Tremendous costs have been imposed upon reactor operators; and significant deficiencies have been found at only a few reactors. More important, the NRC's new interpretation of what constitutes design base information is creating uncertainty as to what the NRC expects of reactor operators.

The NRC frequently imposes regulatory requirements using informal approaches that circumvent legal requirements for imposing regulatory requirements, including the Administrative Procedures Act. Those informal practices include: implementation of the systematic assessment of licensee performance process, determining which plants should be added to the watch list, generic communications that reactor operators feel obligated to follow, the use of diagnostic evaluation teams, and the practice of NRC staff providing guidance to reactor operators on what should be included in an operator's confirmatory action letters.

The Committee believes these informal practices have gained in influence in recent years as a result of two phenomena; the continuing inconsistency of regional offices, and the increasing willingness of the NRC to regulate the management as well as safety of plants; even going so far as to require NRC approval of certain personnel changes at plants.

NRC regulations are supposed to be developed through formal rulemaking processes conducted in accordance with the Administrative Procedures Act and should be consistent with the backfit rule. The backfit rule requires that new interpretations of existing regulations or the imposition of new regulations first be subject to review under 10 CFR 50.109 to determine if the new interpretation or new regulation is necessary to preserve adequate protection or to bring a plant into compliance with regulations. If the NRC cannot demonstrate that a backfit is necessary to meet either of those requirements, under NRC regulations, backfits should not be imposed unless a cost-benefit backfit analysis demonstrates that such an action will result in substantial increase in safety to the public and be cost beneficial. Concerns have been raised to the Committee that informal practices outlined above fail to meet these backfit requirements.

The Committee is aware of concerns that the NRC may have inappropriately expanded the scope of its reviews. Specifically, it has been suggested that the NRC's regulation of the below-ground aspects of uranium recovery operations that utilize in situ (that is, solution mining) extraction techniques unnecessarily duplicate adequate regulation by other Federal and State authorities. It has also been suggested that the NRC is inappropriately interpreting the Atomic Energy Act and Uranium Mill Tailings Remediation Act to limit the use of existing mill tailings impoundments for the deposition of materials that are chemically, physically, and radiologically

Indistinguishable from uranium mill tailings. The Committee will work with the relevant congressional authorizing committee's to ensure that appropriations are not provided to the NRC to incorrectly implement these acts.

The Committee is aware that the NRC imposes an economic feasibility requirement on some applicants to the Commission. Within 180 days of enactment of this act, the NRC should provide to the Appropriations and relevant authorizing committees of the House and Senate a summary of the cases in which the NRC considered the economic feasibility of applicants' proposals, the length of time required by the NRC to dispose of those cases, and the final disposition of each of those cases.

The Committee supports the move to risk-informed, performance-based regulation. Risk informed requires the recognition that all activities entail risk. It can be limited but not eliminated, and that the reasonableness notion incorporated in the as low as reasonably achievable concept can be quantified and should not be exceeded by regulatory requirements. The Committee supports efforts to define frequently used terms such as "safety-significant" and "important to safety." Current nuclear powerplants may have 10,000 to 20,000 components classified as safety related or important to safety, but reviews indicate that up to 80 percent of these items have low safety significance. The Committee supports a graded safety value scale that enables reactor operators to better apply resources and procedures to components of greatest safety significance.

Numerous reviews, including those cited above, recommend the NRC review existing regulations to reform those that are outdated, paperwork oriented, or that consume resources needed to comply with regulations but that do not add to safety or that obscure actual safety issues. In 1985, the NRC's Regulations Marginal to Safety Program offered promise in this regard. Unfortunately, that review, which identified in excess of 20 regulations as marginal to safety, resulted in changes to only one major regulation. The Committee supports the resumption of that effort.

The Committee is concerned that an inappropriately large portion of the funds appropriated to the NRC are used to support an interminable adjudicatory process imposed by the atomic safety and licensing boards. Even though the majority of the NRC's budget is reimbursed to the Federal Treasury through fees imposed upon licensees, the Committee has an obligation to ensure that appropriated funds are spent wisely. The Committee supports previous efforts by the Commission to streamline its adjudicatory process, in particular the abolition of the appeals panel in 1991.

The Committee welcomes efforts by the relevant congressional authorizing committees to review the exorbitant and unpredictable time required to consider applications (even simply to write decisions once they are made), the broad discretion provided to judges to give standing, and the effort required to resolve issues no matter how trivial and unrelated to safety; such as personnel and economic viability issues addressed above. Within 180 days of enactment of this act, the NRC should provide a report to the Appropriations and relevant authorizing committees of the House and Senate on the amount of appropriated funds in fiscal years 1990-98 expended by and in support of atomic licensing and safety boards.

The Committee recommendation includes authority for the NRC to collect annual charges not to exceed a total of \$416,000,000 from licensees in fiscal year 1999. The Committee recommends \$17,000,000 be made available to the NRC from the nuclear waste fund. An additional \$33,000,000, that will not be reimbursed through user fees, is provided for: agreement State oversight, international activities, generic decommissioning and reclamation activities, the site decommissioning management program, regulatory support to agreement States, the small entities program, support to nonprofit educational institutions, and other Federal agency programs.

The Committee directs the NRC to provide a monthly report on the status of its licensing and regulatory duties. The Committee recommends the NRC use the same format used in the so-called Bevell reports previously provided to the Committee.

The Committee recommendation includes a single year extension of the NRC's user fee collection authority. The Omnibus Budget and Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission recover 100 percent of its budget authority, less the appropriation from the nuclear waste fund, by assessing licenses and annual fees. That authority expires in fiscal year 1998, and unless additional fee collection authority is enacted prior or concurrent to enactment of this act, the NRC's authority to collect user fees would be limited to 33 percent of its budget. The Committee is aware that the Senate Environment and Public Works Committee recently reported legislation (S. 2090) to extend this authority for 5 years and intends that the 1-year extension included in this measure serve as a safeguard should that measure not be enacted by September 1, 1998.

#### OFFICE OF INSPECTOR GENERAL

##### GROSS APPROPRIATION

Appropriations, 1998 .....	\$4,800,000
Budget estimate, 1999 .....	5,300,000
Committee recommendation .....	4,800,000

##### REVENUES

Appropriations, 1998 .....	\$4,800,000
Budget estimate, 1999 .....	1,749,000
Committee recommendation .....	4,800,000

This appropriation provides for the Office of Inspector General of the Nuclear Regulatory Commission. The Committee recommends an appropriation of \$4,800,000 for fiscal year 1998.

#### NUCLEAR WASTE TECHNICAL REVIEW BOARD

Appropriations, 1998 .....	\$2,600,000
Budget estimate, 1999 .....	2,950,000
Committee recommendation .....	2,600,000

The Committee recommends an appropriation of \$2,600,000 for the Nuclear Waste Technical Review Board. The Nuclear Waste Policy Amendments Act of 1987 directed the Board to evaluate the technical and scientific validity of the activities of the Department

**Calendar No. 401**105TH CONGRESS  
2D SESSION**S. 2138****[Report No. 105-206]**

Making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 5, 1998

Mr. DOMENICI, from the Committee on Appropriations, reported the following original bill; which was read twice and placed on the calendar

---

**A BILL**

Making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the following sums are appropriated, out of any
- 4 money in the Treasury not otherwise appropriated, for the
- 5 fiscal year ending September 30, 1999, for energy and
- 6 water development, and for other purposes, namely:

## 1 DENALI COMMISSION

2 For expenses of the Denali Commission including the  
3 purchase, construction and acquisition of plant and capital  
4 equipment as necessary and other expenses as authorized  
5 pursuant to this Act, \$20,000,000, to remain available  
6 until expended.

## 7 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

## 8 SALARIES AND EXPENSES

9 For necessary expenses of the Defense Nuclear Fa-  
10 cilities Safety Board in carrying out activities authorized  
11 by the Atomic Energy Act of 1954, as amended by Public  
12 Law 100-456, section 1441, \$17,500,000, to remain  
13 available until expended.

## 14 NUCLEAR REGULATORY COMMISSION

## 15 SALARIES AND EXPENSES

## 16 (INCLUDING TRANSFER OF FUNDS)

17 For necessary expenses of the Commission in carry-  
18 ing out the purposes of the Energy Reorganization Act  
19 of 1974, as amended, and the Atomic Energy Act of 1954,  
20 as amended, including the employment of aliens; services  
21 authorized by 5 U.S.C. 3109; publication and dissemina-  
22 tion of atomic information; purchase, repair, and cleaning  
23 of uniforms; official representation expenses (not to exceed  
24 \$20,000); reimbursements to the General Services Admin-  
25 istration for security guard services; hire of passenger  
26 motor vehicles and aircraft, \$466,000,000, to remain

1 available until expended: *Provided*, That of the amount ap-  
2 propriated herein, \$17,000,000 shall be derived from the  
3 Nuclear Waste Fund: *Provided further*, That from this ap-  
4 propriation, transfers of sums may be made to other agen-  
5 cies of the Government for the performance of the work  
6 for which this appropriation is made, and in such cases  
7 the sums so transferred may be merged with the appro-  
8 priation to which transferred: *Provided further*, That mon-  
9 eys received by the Commission for the cooperative nuclear  
10 safety research program, services rendered to State gov-  
11 ernments, foreign governments and international organi-  
12 zations, and the material and information access author-  
13 ization programs, including criminal history checks under  
14 section 149 of the Atomic Energy Act may be retained  
15 and used for salaries and expenses associated with those  
16 activities, notwithstanding 31 U.S.C. 3302, and shall re-  
17 main available until expended: *Provided further*, That rev-  
18 enues from licensing fees, inspection services, and other  
19 services and collections estimated at \$416,000,000 in fis-  
20 cal year 1999 shall be retained and used for necessary  
21 salaries and expenses in this account, notwithstanding 31  
22 U.S.C. 3302, and shall remain available until expended:  
23 *Provided further*, That of the amount appropriated herein,  
24 \$33,000,000 shall be available only for agreement State  
25 oversight, international activities, the generic decommis-

1 sioning management program, regulatory support to  
2 agreement States, the small entity program, the nonprofit  
3 educational program, and other federal agency programs,  
4 and shall be excluded from license fee revenues, notwith-  
5 standing 42 U.S.C. 2214: *Provided further*, That the sum  
6 herein appropriated shall be reduced by the amount of rev-  
7 enues received during fiscal year 1999 from licensing fees,  
8 inspection services and other services and collections, ex-  
9 cluding those moneys received for the cooperative nuclear  
10 safety research program, services rendered to State gov-  
11 ernments, foreign governments and international organi-  
12 zations, and the material and information access author-  
13 ization programs, so as to result in a final fiscal year 1999  
14 appropriation estimated at not more than \$50,000,000.

15 OFFICE OF INSPECTOR GENERAL

16 (INCLUDING TRANSFER OF FUNDS)

17 For necessary expenses of the Office of Inspector  
18 General in carrying out the provisions of the Inspector  
19 General Act of 1978, as amended, including services au-  
20 thorized by 5 U.S.C. 3109, \$4,800,000, to remain avail-  
21 able until expended; and in addition, an amount not to  
22 exceed 5 percent of this sum may be transferred from Sal-  
23 aries and Expenses, Nuclear Regulatory Commission: *Pro-*  
24 *vided*, That notice of such transfers shall be given to the  
25 Committees on Appropriations of the House of Represent-

1 atives and Senate: *Provided further*, That from this appro-  
 2 priation, transfers of sums may be made to other agencies  
 3 of the Government for the performance of the work for  
 4 which this appropriation is made, and in such cases the  
 5 sums so transferred may be merged with the appropriation  
 6 to which transferred: *Provided further*, That revenues from  
 7 licensing fees, inspection services, and other services and  
 8 collections shall be retained and used for necessary sala-  
 9 ries and expenses in this account, notwithstanding 31  
 10 U.S.C. 3302, and shall remain available until expended:  
 11 *Provided further*, That the sum herein appropriated shall  
 12 be reduced by the amount of revenues received during fis-  
 13 cal year 1999 from licensing fees, inspection services, and  
 14 other services and collections, so as to result in a final  
 15 fiscal year 1999 appropriation estimated at not more than  
 16 \$0.

17           NUCLEAR WASTE TECHNICAL REVIEW BOARD

18                           SALARIES AND EXPENSES

19           For necessary expenses of the Nuclear Waste Tech-  
 20 nical Review Board, as authorized by Public Law 100-  
 21 203, section 5051, \$2,600,000, to be derived from the Nu-  
 22 clear Waste Fund, and to remain available until expended.

23                           TENNESSEE VALLEY AUTHORITY

24           For the purpose of carrying out the provisions of the  
 25 Tennessee Valley Authority Act of 1933, as amended (16

1 native Repayment Plan” described in the report entitled  
2 “Repayment Report, Kesterson Reservoir Cleanup Pro-  
3 gram and San Joaquin Valley Drainage Program, Feb-  
4 ruary 1995”, prepared by the Department of the Interior,  
5 Bureau of Reclamation. Any future obligations of funds  
6 by the United States relating to, or providing for, drainage  
7 service or drainage studies for the San Luis Unit shall  
8 be fully reimbursable by San Luis Unit beneficiaries of  
9 such service or studies pursuant to Federal Reclamation  
10 law.

11 SEC. 507. Section 6101(a)(3) of the Omnibus Budget  
12 Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is  
13 amended by striking “September 30, 1998” and inserting  
14 “September 30, 1999”.

15 SEC. 508. None of the funds made available in this  
16 or any other Act may be used to restart the High Flux  
17 Beam Reactor.

## 18 TITLE VI

### 19 DENALI COMMISSION

20 SEC. 601. SHORT TITLE.

21 This title may be cited as the “Denali Commission  
22 Act of 1998”.

23 SEC. 602. FINDINGS.

24 The Congress finds that—

**NUCLEAR REGULATORY COMMISSION**

**SALARIES AND EXPENSES**

**GROSS APPROPRIATION**

Appropriations, 1998	_____	\$468,000,000
Budget estimate, 1999	_____	483,340,000
Committee recommendation	_____	460,855,000

**REVENUES**

Appropriations, 1998	_____	\$450,000,000
Budget estimate, 1999	_____	152,341,000
Committee recommendation	_____	410,855,000

**NET APPROPRIATION**

Appropriations, 1998	_____	\$18,000,000
Budget estimate, 1999	_____	330,999,000
Committee recommendation	_____	50,000,000

The Nuclear Regulatory Commission has been subject to six major reviews since 1979; the Kennedy report in 1979, the Rogovin report in 1980, regulatory impact surveys in 1981 and 1989, the National Academy of Sciences in 1992, and the regulatory review task force in 1994. The reviews contain common criticisms, among them; the NRC's approach to regulation is punitive rather than performance based, licensees are forced to expend considerable resources on regulations that are not related to safety, the NRC is unnecessarily prescriptive, licensees fear retribution for criticism, there are no specific criteria for important NRC actions such as placing a reactor on the watch list, and the NRC focus on paper compliance is not related to and can distract from safety activities.

In recent years, the safety performance of U.S. nuclear powerplants has significantly improved. Since 1991, the number of significant events has decreased in excess of 70 percent, safety systems unavailability has decreased in excess of 60 percent, scrams while critical have decreased 50 percent, and collective radiation exposure has decreased 85 percent. Despite these improvements, in the last 3 years, the NRC has dramatically increased its imposition of civilian fines (25 in 1995, 50 in 1996, and 71 in 1997) and level four (the least severe) violations (567 in 1995, 905 in 1996, and 1427 in 1997).

The increased issuance of fines and violations is not a reflection on the safety of the nuclear utility industry; it is the result of a change in regulatory culture at the NRC that defies the achieved improvement in safety that is quantified by the reduced number of significant events, safety system unavailability, scrams while critical, and collective radiation exposure doses among other metrics.

The result is an amplification of the criticisms identified in previous reviews. The NRC has launched a review of nuclear plant design baselines which requires exhaustive review of design calculations, electrical separation, 50.59 safety evaluations, accident analysis documentation, historical plant operating records, and steps taken to implement NRC generic letters. Tremendous costs have been imposed upon reactor operators and few significant deficiencies have been found. More important, the NRC's new interpre-

tation of what constitutes design base information is creating uncertainty as to what the NRC expects of reactor operators. In order to resolve the uncertainty, NRC needs to reaffirm its interpretation of design basis information consistent with NUMARC 90-12 or the proposed NEI 97-004 revision of NUMARC 90-12.

The NRC frequently imposes regulatory requirements using informal approaches that circumvent the Administrative Procedures Act. Those informal practices include: implementation of the systematic assessment of licensee performance process, determining which plants should be added to the watch list, generic communications that reactor operators feel obligated to follow, the use of diagnostic evaluation teams, and the practice of NRC staff providing guidance to reactor operators on what should be included in an operator's confirmatory action letters.

These informal practices have gained in influence in recent years as a result of two phenomena; the rise in authority and inconsistency of regional offices, and the increasing willingness of the NRC to regulate the management as well as safety of plants; even going so far as to require NRC approval of certain personnel changes at plants. As a general rule, the NRC should regulate and act upon safety violations at plants including those that result from poor or inadequate management but not try to subjectively evaluate management practices, especially since such a practice provides an opportunity for intimidation and retribution that should not be vested in NRC staff. To resolve this particular concern, the NRC should provide at the request of licensees for expeditious review of amendments to technical specifications to remove all personnel specific matters.

The NRC needs to end the use of these and other informal means even if that requires abolishing instruments such as the watch list and systematic assessment of licensee performances. Requirements placed on licenses should be contained in regulations developed through rulemaking processes conducted in accordance with the Administrative Procedures Act and should be consistent with the backfit rule. Backfit rule considerations are inappropriately and frequently avoided through the use of informal practices. New interpretation of existing regulations or the imposition of new regulations must first be subject to review under 10 CFR 50.109 to determine if the new interpretation or new regulation is necessary to preserve adequate protection or to bring a plant into compliance with regulations. If the NRC cannot demonstrate that a backfit is necessary to meet either of those requirements, backfits should not be imposed unless a cost-benefit backfit analysis demonstrates that such an action will result in substantial increase in safety to the public and be cost beneficial.

In addition to changing the manner in which it enforces requirements, the NRC has inappropriately expanded the scope of its reviews. For example, the NRC has encroached its jurisdiction upon the below-ground aspects of uranium recovery operations that utilize in situ (that is, solution mining) extraction techniques. These below-ground well-field operations are already adequately regulated by Federal agencies other than NRC and by competent State regulatory authorities. Consequently, regulation of these below-ground activities by NRC is duplicative and unnecessary, as well

as inconsistent with the jurisdictional scheme created under the Atomic Energy Act as amended by the Uranium Mill Tailings Remediation Act. The act, which establishes uniform national standards for waste disposal from uranium mills (House Rept. 95-1480) is also inappropriately being interpreted to limit the use of existing uranium mill tailings impoundments for the deposition of materials that are chemically, physically, and radiologically indistinguishable from uranium mill tailings largely on the basis of whether the material has first been milled; clearly not an issue when considering the NRC's overriding responsibility is to adequately protect public health and safety.

On occasion, in 11(e)2 byproduct material and other proceedings, the Commission imposes an economic feasibility requirement on applicants to the Commission. The Commission's responsibility is not to determine whether applicants exhibit sound business knowledge, especially when Commission proceedings take so long that the economic viability of a proposal can change entirely due to the length of the Commission's review.

The Committee recommends that the NRC change the regulations it imposes upon its licensees and the manner in which it develops and implements those regulations.

With regard to regulations, the Commission should move to risk-informed, performance-based regulation. Risk informed requires the recognition that all activities entail risk; it can be limited but not eliminated, and that the reasonableness notion incorporated in the as low as reasonably achievable concept can be quantified and should not be exceeded by regulatory requirements. The Commission needs to define frequently used terms such as "safety-significant" and "important to safety." Current nuclear powerplants may have 10,000 to 20,000 components classified as safety related or important to safety, but reviews indicate that up to 80 percent of these items have low safety significance. NRC needs to develop a graded safety value scale that enables reactor operators to better apply resources and procedures to components of greatest safety significance.

The Commission needs to review existing regulations to reform those that are outdated, paperwork oriented, that consume resources needed to comply with regulations but that do not add to safety or that obscure actual safety issues. In 1985, the NRC's Regulations Marginal to Safety Program offered promise in this regard. Unfortunately, that review, which identified in excess of 20 regulations as marginal to safety, resulted in changes to only one major regulation.

Most importantly, the NRC can no longer tolerate the interminable adjudicatory process imposed by atomic safety and licensing boards. Although the Committee has detailed serious concerns with the Commission's regulations and the manner in which those regulations are imposed, the most egregious concern by far is the conduct of licensing boards, in particular the exorbitant and unpredictable time required to consider applications (even simply to write decisions once they are made), the broad discretion provided to judges to give standing, and the effort required to resolve issues no matter how trivial and unrelated to safety; such as personnel and economic viability issues addressed above.

Previous Commission reforms, in particular the abolition of the appeals panel in 1991, have modestly streamlined the licensing process. The Committee recommends that the 1991 reform be taken a step further by replacing the Commission's adjudicatory hearings (including those conducted by licensing boards on behalf of the Commission) with legislative style hearings before the full NRC. The licensing boards currently issue in the range of 10 decisions per year, a volume that could be considered by the NRC en banc. In a legislative proceeding, the NRC's consideration of legal issues could be handled in one of two manners; legal advice could be provided to the Commissioners in the manner currently provided by the Office of Commission Appellate Adjudication for appeals matters, or the licensing staff could be charged to develop an evidentiary record for review by the Commissioners prior to consideration by the full NRC.

The Committee is aware of the magnitude of this suggested reform. However, it is the Committee's view that reform of this magnitude is required. The Committee has confidence that the full Commission, when it begins its consideration of applications, will become aware of and is well suited and disposed to resolve troubling issues that do not come to the attention of the Commission under the current system.

The Commission has a unique opportunity to begin a new hearing process with relicensing applications. Relicensing applications, because of their limited nature and previous adjudicatory review, are well suited to legislative style review by the full Commission. Further, the Commission has an obligation to quickly establish the precedent for relicensing cases.

The Committee has reviewed the NRC's request for 2,958 full-time equivalents and has compared the NRC's staffing levels to those of other nuclear regulatory agencies. The NRC's professional staff of 1,705 FTE's is more than twice the professional staff of the French (350 FTE's) and Japanese (400 FTE's) regulatory entities combined; a useful comparison since France and Japan combined operate 108 power reactors, slightly more than the United States total.

The Committee recommends the NRC reduce its staff in the following manner by the end of fiscal year 2000.

Subject area	Fiscal year 1999 request	End of fiscal year 2000
Nuclear reactor safety	1,440	904
Nuclear materials safety	336	186
Nuclear waste safety	120	120
Common defense and security and international involvement	74	25
Protecting the environment	81	81
Management and support	813	684
<b>Total</b>	<b>2,914</b>	<b>2,210</b>

The Committee estimates the NRC's budget requirements for a staff of this size to be approximately \$393,400,000 per year or a reduction of \$89,940,000 from the fiscal year 1999 request of \$483,340,000. Consistent with the Committee's recommendation to reduce staffing levels over 2 years, the Committee recommends a

base budget for the NRC in fiscal year 1999 of \$438,370,000 and an additional \$22,485,000 available only for expenses related to a reduction in staff including salaries and other expenses for employees that will be separated during fiscal year 1999.

The Committee recommendation includes authority for the NRC to collect annual charges not to exceed a total of \$410,855,000 from licensees in fiscal year 1999. The Committee recommends \$17,000,000 be made available to the NRC from the nuclear waste fund. An additional \$33,000,000, that will not be reimbursed through user fees, is provided for: agreement State oversight, international activities, generic decommissioning and reclamation activities, the site decommissioning management program, regulatory support to agreement States, the small entities program, support to nonprofit educational institutions, and other Federal agency programs.

In light of the Committee's recommendations to reform the NRC, the Committee directs the NRC to provide a monthly report on the status of its licensing and regulatory duties and the implementation of the recommendations in this report. The Committee recommends the NRC use the same format used in the so-called Beville reports previously provided to the Committee.

The Committee recommendation includes a single year extension of the NRC's user fee collection authority. The Omnibus Budget and Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission recover 100 percent of its budget authority, less the appropriation from the nuclear waste fund, by assessing licenses and annual fees. That authority expires in fiscal year 1998, and unless additional fee collection authority is enacted prior or concurrent to enactment of this act, the NRC's authority to collect user fees would be limited to 33 percent of its budget.

#### OFFICE OF INSPECTOR GENERAL

##### GROSS APPROPRIATION

Appropriations, 1998 .....	\$4,800,000
Budget estimate, 1999 .....	5,300,000
Committee recommendation .....	4,800,000

##### REVENUES

Appropriations, 1998 .....	\$4,800,000
Budget estimate, 1999 .....	1,749,000
Committee recommendation .....	4,800,000

This appropriation provides for the Office of Inspector General of the Nuclear Regulatory Commission. The Committee recommends an appropriation of \$4,800,000 for fiscal year 1998.

#### NUCLEAR WASTE TECHNICAL REVIEW BOARD

Appropriations, 1998 .....	\$2,600,000
Budget estimate, 1999 .....	2,950,000
Committee recommendation .....	2,600,000

The Committee recommends an appropriation of \$2,600,000 for the Nuclear Waste Technical Review Board. The Nuclear Waste Policy Amendments Act of 1987 directed the Board to evaluate the

1 pursuant to this Act, \$20,000,000, to remain available  
2 until expended.

3       **DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

4               **SALARIES AND EXPENSES**

5       For necessary expenses of the Defense Nuclear Fa-  
6 cilities Safety Board in carrying out activities authorized  
7 by the Atomic Energy Act of 1954, as amended by Public  
8 Law 100-456, section 1441, \$17,500,000, to remain  
9 available until expended.

10               **NUCLEAR REGULATORY COMMISSION**

11               **SALARIES AND EXPENSES**

12               **(INCLUDING TRANSFER OF FUNDS)**

13       For necessary expenses of the Commission in carry-  
14 ing out the purposes of the Energy Reorganization Act  
15 of 1974, as amended, and the Atomic Energy Act of 1954,  
16 as amended, including the employment of aliens; services  
17 authorized by 5 U.S.C. 3109; publication and dissemina-  
18 tion of atomic information; purchase, repair, and cleaning  
19 of uniforms; official representation expenses (not to exceed  
20 \$20,000); reimbursements to the General Services Admin-  
21 istration for security guard services; hire of passenger  
22 motor vehicles and aircraft, \$460,855,000, to remain  
23 available until expended: *Provided*, That of the amount ap-  
24 propriated herein, \$17,000,000 shall be derived from the  
25 Nuclear Waste Fund: *Provided further*, That from this ap-  
26 propriation, transfers of sums may be made to other agen-

1 cies of the Government for the performance of the work  
2 for which this appropriation is made, and in such cases  
3 the sums so transferred may be merged with the appro-  
4 priation to which transferred: *Provided further*, That mon-  
5 eys received by the Commission for the cooperative nuclear  
6 safety research program, services rendered to State gov-  
7 ernments, foreign governments and international organi-  
8 zations, and the material and information access author-  
9 ization programs, including criminal history checks under  
10 section 149 of the Atomic Energy Act may be retained  
11 and used for salaries and expenses associated with those  
12 activities, notwithstanding 31 U.S.C. 3302, and shall re-  
13 main available until expended: *Provided further*, That rev-  
14 enues from licensing fees, inspection services, and other  
15 services and collections estimated at \$410,855,000 in fis-  
16 cal year 1999 shall be retained and used for necessary  
17 salaries and expenses in this account, notwithstanding 31  
18 U.S.C. 3302, and shall remain available until expended:  
19 *Provided further*, That of the amount appropriated herein,  
20 \$22,485,000 shall be available only for expenses related  
21 to a reduction in staff: *Provided further*, That of the  
22 amount appropriated herein, \$33,000,000 shall be avail-  
23 able only for agreement State oversight, international ac-  
24 tivities, the generic decommissioning management pro-  
25 gram, regulatory support to agreement States, the small

1 entity program, the nonprofit educational program, and  
2 other federal agency programs, and shall be excluded from  
3 license fee revenues, notwithstanding 42 U.S.C. 2214:  
4 *Provided further*, That the sum herein appropriated shall  
5 be reduced by the amount of revenues received during fis-  
6 cal year 1999 from licensing fees, inspection services and  
7 other services and collections, excluding those moneys re-  
8 ceived for the cooperative nuclear safety research program,  
9 services rendered to State governments, foreign govern-  
10 ments and international organizations, and the material  
11 and information access authorization programs, so as to  
12 result in a final fiscal year 1999 appropriation estimated  
13 at not more than \$50,000,000.

14 OFFICE OF INSPECTOR GENERAL

15 (INCLUDING TRANSFER OF FUNDS)

16 For necessary expenses of the Office of Inspector  
17 General in carrying out the provisions of the Inspector  
18 General Act of 1978, as amended, including services au-  
19 thorized by 5 U.S.C. 3109, \$4,800,000, to remain avail-  
20 able until expended; and in addition, an amount not to  
21 exceed 5 percent of this sum may be transferred from Sal-  
22 aries and Expenses, Nuclear Regulatory Commission: *Pro-*  
23 *vided*, That notice of such transfers shall be given to the  
24 Committees on Appropriations of the House of Represent-  
25 atives and Senate: *Provided further*, That from this appro-

\$16,500,000, a decrease of \$1,000,000 from the budget request of \$17,500,000. The Committee urges the Board to focus on those defense nuclear production facilities that are operational and represent the highest radiological risk to workers and the public.

#### NUCLEAR REGULATORY COMMISSION

##### GROSS APPROPRIATION

Appropriation, 1998 .....	\$468,000,000
Budget Estimate, 1999 .....	483,340,000
Recommended, 1999 .....	462,700,000
Comparison:	
Appropriation, 1998 .....	- 5,300,000
Budget Estimate, 1999 .....	-20,640,000

##### REVENUES

Appropriation, 1998 .....	- \$450,000,000
Budget Estimate, 1999 .....	- 152,341,000
Recommended, 1999 .....	-444,700,000
Comparison:	
Appropriation, 1998 .....	5,300,000
Budget Estimate, 1999 .....	-292,359,000

##### NET APPROPRIATION

Appropriation, 1998 .....	\$18,000,000
Budget Estimate, 1999 .....	330,999,000
Recommended, 1999 .....	18,000,000
Comparison:	
Appropriation, 1998 .....	.....
Budget Estimate, 1999 .....	- 312,999,000

The Committee recommendation is \$462,700,000, a reduction of \$5,300,000 from the current fiscal year and \$20,640,000 from the budget request. The recommendation reflects the Committee's continued concerns over ever-increasing budget requests of the Commission, while, by its own admission, the Commission must place more emphasis on streamlining and making more efficient use of its resources.

The recommendation includes \$14,800,000, a reduction of \$200,000 from the current fiscal year in support of the Department of Energy's efforts to characterize Yucca Mountain as a potential site for a permanent nuclear waste repository. Funding for these activities is to be derived from the Nuclear Waste Fund. The recommendation also includes \$3,200,000, the same amount as the budget request, for regulatory reviews and other assistance provided to the Department of Energy.

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, by assessing license and annual fees. This authority expires at the end of the current fiscal year. The Committee has included a statutory provision providing for a one-year extension of this authorization. The extension of this authority is necessary to provide the resources needed to fund the activities of the Commission.

The Committee notes that while the workload of the Commission should continue to decrease with the closure of plants, overall im-

provements in plant safety and the increase in the number of agreement states, there has not been a commensurate reduction reflected in budget requests. Indeed, outyear budget projections for the Commission show steadily increasing budgets. The Commission has resisted recommended reforms including risk-informed, performance-based regulation. The Commission is directed to reduce its workforce, reduce the regulatory burdens on licensees, and streamline its adjudicatory process. The Committee observes that the Commission has resisted these and other reforms which have been recommended in six major reviews dating back to 1979.

In the Commission's strategic plan, the Commission claims that it will: "implement risk-informed, and, where appropriate, performance-based regulatory approaches for power reactors"; "make licensee performance and compliance with our requirements consequential by decreasing the inspection frequency for good performers and assessing penalties for poor performers"; "eliminate unnecessary regulatory requirements and policy statements, and streamline our processes"; and "adjust our regulatory oversight of facilities undergoing decommissioning to be commensurate with the safety risk." The Commission has stated its intention; the Committee urges the Commission to follow through with meaningful reforms.

In the strategic plan, the Commission also states that it will make improvements "in a continuous, systematic, and open manner with the support and input of our internal and external stakeholders." The Commission also rightly observes that: "The Administration, the Congress and the public will continue to expect cost-effective programs throughout the Government."

The Committee observes that much work remains to be done before the Commission can clear the bar of making these reforms with the support of its stakeholders. The Committee expects that these changes would result in lower budget requirements and has therefore recommended a lower amount for fiscal year 1999. The Committee is committed to the same goals of public safety as the Commission. The Committee is very much committed to working with the Commission throughout the budget process to resolve the current differences between the resources requested and the resources recommended by the Committee.

The Committee recognizes and has been strongly supportive of the Commission's commitment to establishing independent oversight of certain Department of Energy facilities. Currently, the Department of Energy operates its facilities in a self-regulating environment. The Commission and the Department have taken steps to participate in a pilot program to identify facilities over which the Commission could exercise independent regulatory oversight. This demonstration effort should not interfere with ongoing national security programs.

The Committee believes that one of the most important activities the Commission will undertake is license renewal of current operating reactors. The Committee is aware that the licensee for the Calvert Cliffs nuclear power plant has filed such an application with the agency. The Commission must have a fair, effective, predictable and efficient process for license renewal. The Committee is concerned, however, that the Commission may not be prepared to ensure a timely license renewal review. The Committee urges the

Commission to act expeditiously to resolve public comments received, and to streamline the hearing process. To that end, the Committee believes that such a process should take no more than two years for the submittal of the license application to approval by the Commission. The Commission shall issue detailed guidance by December 1998 on how the licensing process will be structured so that licensees, Commission staff, and the public will have a clear understanding of the regulatory framework in which these plants will continue to operate.

The Committee recommendation includes a statutory provision that permanently extends the authority for the Commission to expend funds for various purposes and retain moneys collected for the cooperative nuclear research program, services rendered to State governments and international organizations, and the material and information access authorization programs. The authority provided is identical to the authority the Committee has been including annually with the appropriation.

OFFICE OF INSPECTOR GENERAL

GROSS APPROPRIATION

Appropriation, 1998 .....	\$4,800,000
Budget Estimate, 1999 .....	5,300,000
Recommended, 1999 .....	4,800,000
Comparison:	
Appropriation, 1998 .....	
Budget Estimate, 1999 .....	- 500,000

REVENUES

Appropriation, 1998 .....	\$ -4,800,000
Budget Estimate, 1999 .....	- 1,749,000
Recommended, 1999 .....	- 4,800,000
Comparison:	
Appropriation, 1998 .....	
Budget Estimate, 1999 .....	- 3,051,000

This appropriation provides for the Office of Inspector General of the Nuclear Regulatory Commission. Pursuant to law, budget authority appropriated to the Inspector General must be recovered through the assessment of license and annual fees.

The Committee recommends an appropriation of \$4,800,000, equal to the the amount provided in the current fiscal year, and \$500,000 less than the amount requested. Pursuant to 42 U.S.C. 2214, this appropriation must be recovered through the assessment of license and annual fees, resulting in a net appropriation of \$0.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Appropriation, 1998 .....	\$2,600,000
Budget Estimate, 1999 .....	2,950,000
Recommended, 1999 .....	2,600,000
Comparison:	
Appropriation, 1998 .....	
Budget Estimate, 1999 .....	- 350,000

The Committee recommendation provides continued funding for the Nuclear Waste Technical Review Board. The Nuclear Waste Policy Amendments Act of 1987 directs the Board to evaluate the technical and scientific validity of the activities of the Department

## TITLE V

### GENERAL PROVISIONS

The Committee recommendation includes several general provisions pertaining to specific programs and activities funded in the Energy and Water Development Appropriations bill.

*Prohibition on Lobbying.*—Section 501 provides that none of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in section 1913 of Title 18, United States Code.

*Buy American.*—Section 502 requires that American-made equipment and goods be purchased to the greatest extent practicable.

*Drainage of the San Luis Unit.*—Section 503 provides language clarifying the funding requirements for the San Luis Unit.

*Restart of the High Flux Beam Reactor.*—Section 504 provides that no funds may be used to restart the High Flux Beam Reactor at the Brookhaven National Laboratory in New York.

*Extension of Authority for Nuclear Regulatory Commission to Collect Fees and Charges.*—Section 505 provides a one-year extension of the authority of the Nuclear Regulatory Commission to collect fees and charges to offset appropriated funds.

*Extension of Authority for Nuclear Regulatory Commission to Expend Funds for Certain Purposes.*—Section 506 provides permanent authority for the Nuclear Regulatory Commission to expend funds for various purposes for which the Committee on Appropriations has been providing annual authorization.

*Repeal of Prohibitions on Studying Rate-Setting and Asset Sales at Federal Public Power Authorities.*—Section 507 repeals section 505 of Public Law 102-377, the Fiscal Year 1993 Energy and Water Development Appropriations Act and section 208 of Public Law 99-349, the Urgent Supplemental Appropriations Act, 1986. Section 505 prohibits the use of funds to conduct studies relating to consideration of market or other non-cost pricing of hydroelectric power sales by the six Federal public power authorities. Section 208 prohibits the use of funds to conduct studies relating to selling assets of the six Federal public power authorities.

*External Regulation of Department of Energy Laboratory.*—Section 508 provides that notwithstanding any other provision of law, the Department of Energy can no longer implement and enforce its own regulatory systems for environment, safety, and health at the Lawrence Berkeley National Laboratory in California.

Recent Congressional hearings and a General Accounting Office (GAO) report have highlighted concerns that the Department of Energy is no longer moving expeditiously toward external regulation of its facilities. As GAO noted, the Department has long been

criticized for weaknesses in its self-regulation of the environment, safety, and health of its own facilities. Previous Departmental leaders recognized this, and in 1993, then-Secretary Hazel O'Leary announced that the Department would seek external regulation for worker safety. The benefits of external regulation include: increased credibility and public confidence; more effective and consistent safety management; enhanced competitiveness as uniform safety standards apply to both DOE and non-DOE laboratories; elimination of a conflict of interest whereby DOE regulates safety and directs program execution; and cost savings to the taxpayer by minimizing overlapping and conflicting requirements.

Last year at the request of Congress, the Department was asked to conduct a study of how it manages the nuclear weapons program, including an analysis of the functions performed at Headquarters, operations offices, and applicable area and site offices. The March 1997 report, prepared by the Institute for Defense Analyses (IDA), noted that:

The single largest problem uncovered in this study is that Defense Programs'—and, more generally, DOE's—practices for managing environmental, safety, and health (ES&H) concerns are constipating the system. The Department's ES&H practices are based on a hybrid of centralized and decentralized management practices that have evolved over the past decade. For example, in Defense Programs' review of key documents defining a contractor's safety envelope, the current system can best be described as one in which everybody reviews everything until everyone is satisfied. The "process" is ad hoc; there is inadequate discipline regarding who should participate and how that participation should take place.

Compounding these process problems, there is no consensus among all these reviewers and checkers, and checkers of checkers regarding the desired end-state for a facility. That is to say, there is no agreement on what it means to be safe. Consequently, each of the organizations that review a document, decision, or process does so from its own perspective and insists that the facility meet its priority requirements for safety. At any time during what could be a multi-year process, the area office or contractor might, for example, receive a hundred pages of comments from just about anyone that must then be addressed. When conflicts arise between two or more reviewers, there is no formal method for resolving them.

Both outside advisory groups and internal reviews have voiced significant concerns over the Department's environment, safety, and health processes, but actions to resolve these concerns have been woefully slow. Changes in the leadership of the Department have delayed implementation of this effort. Departmental actions to submit legislation in support of this objective have lagged. Instead, a pilot program to simulate NRC's regulation at various facilities over a two year period was initiated. The Department now appears to be reevaluating the need for independent external regulation of safety and health.

*Pilot Project for Simulated Regulation.*—The first pilot project was conducted at the Lawrence Berkeley National Laboratory (LBNL) in California. Nuclear Regulatory Commission (NRC) staff conducted the simulated regulation at LBNL through developing a mock license and performing typical NRC inspection activities. In recent testimony, the Chairman of the Commission noted that the license developed was typical of that of an NRC-licensed major research and development center such as the National Institutes of Health (NIH) or the University of Missouri. The inspection showed the current radiation safety program at LBNL to be acceptable, with some minor exceptions. The cost of NRC regulation at LBNL likely would be the same as that for a similar very large facility like the NIH.

*Occupational Safety and Health Administration (OSHA) Pilot Project.*—A pilot project for OSHA regulation was completed at Argonne National Laboratory in Illinois in November 1996. Since completion of the Argonne pilot, DOE and OSHA cosponsored a report by the National Academy of Public Administration entitled, "Ensuring Worker Safety and Health Across the DOE Complex" (January 1997). The Academy panel concluded that with appropriate support from Congress, DOE should formally transfer regulatory authority for occupational safety and health across its complex to OSHA, and urged Congress and the Administration to expedite the transition. The President's fiscal year 1999 budget proposes a one-time increase of OSHA resources by five employees and \$400,000, and a one-time reduction in DOE resources by an equal amount, to offset any extraordinary logistical burden on OSHA enforcement resources that might be imposed by DOE facilities during the pilot projects.

*Implementation of External Regulation for the Lawrence Berkeley National Laboratory.*—The Committee has included statutory language eliminating the Department's regulatory authority for the Lawrence Berkeley National Laboratory in California. The Committee wants to ensure that future changes in top management of the Department do not lead to further delays in implementing this important initiative. No later than March 31, 1999, the Ernest Orlando Lawrence Berkeley National Laboratory in California will no longer be subject to Department of Energy self-regulation of environment, safety and health activities.

*Departmental Oversight Under External Regulation.*—In response to an inquiry by the House Appropriations Subcommittee on Energy and Water Development, several laboratory directors expressed their support for moving to external regulation by both the NRC and the OSHA. However, the laboratory directors were also unanimous in their concern that the move toward external regulation not create dual or overlapping regulatory roles between DOE and the NRC. The Committee is quite cognizant of this concern. For those facilities which are to be externally regulated, the Department is directed to eliminate all internal safety and health oversight staffs at Headquarters and in field offices with the exception of a small corporate group at Headquarters. The Department should establish a small Headquarters quality assurance program designed to complement, but not duplicate external regulation and enforcement, and it should be modeled after private industry cor-

porate safety organizations. This small organization would be responsible for understanding the external safety and health standards and regulations and determining that the laboratory or facility was in compliance with these standards.

*Fiscal year 1999 Pilot Projects.*—To continue progress toward external regulation of additional facilities, the Department is directed to include a nuclear reactor in the pilot projects to be conducted in fiscal year 1999. The Department and NRC should keep the Committee fully informed of these efforts.

*Reimbursement for Cost of Regulation.*—Departmental facilities which are subject to external regulation shall reimburse NRC and OSHA for the incremental cost of the services provided to Department of Energy facilities. These expenses should be identified in the Department's budget submission.

*New Construction Consistent with NRC Standards.*—In anticipation of future NRC regulation of DOE nuclear facilities, the Department is directed to ensure that, starting in fiscal year 2000, all new nuclear facilities, with the exception of the naval reactors program, are constructed in accordance with Nuclear Regulatory Commission (NRC) licensing requirements. The Department should ensure that this requirement does not result in a program requirement to meet two separate sets of standards (both DOE and NRC standards), but should ensure a smooth transition for meeting NRC standards.

*Department of Energy Reporting Requirement.*—There are several issues which need to be addressed in the transition to external regulation. The report due October 31, 1998, should include, but not be limited to: identifying who will be the external regulator of radiation, and who will be named in the NRC license; addressing the issue of regulatory jurisdiction over accelerators, accelerator-produced isotopes, and other electronic sources of radiation not currently assigned to the NRC; determining the impact of NRC decommissioning requirements; analyzing the impacts on existing agreements for storing legacy waste materials; assessing the possibility of conflict of interest issues when DOE laboratories perform work for NRC; determining the impact of imposing civil penalties on government facilities; and identifying funding mechanisms for external regulation of DOE facilities.

The Department should coordinate development of the report with the NRC and OSHA and other affected units of government to ensure that the report to Congress is a fair and unbiased representation of the issues surrounding the elimination of Departmental regulation of LBNL.

*Nuclear Regulatory Commission Reporting Requirement.*—The Committee recognizes that the Commission currently does not have the authority to regulate the use of accelerators, and that the primary regulatory authority for accelerator use lies at the state level. As accelerator regulation is an integral component of the external regulation of many DOE facilities, the Committee expects the Commission to provide a report by January 30, 1999, recommending what statutory changes, if any, would be needed to provide the Commission with the authority to regulate accelerator use; what additional Commission resources would be needed to accomplish such regulation; and what technical or regulatory hurdles to Commission regulation of accelerator use may exist.

*Good Faith Effort.*—The Committee understands there may be concerns about the transition of this authority, but expects each of the participants to act in a good faith manner to ensure a smooth transition, and to use external regulation to strengthen the integration of health, safety, and productivity throughout the Department of Energy complex.

Calendar No. 327

105TH CONGRESS  
2D SESSION**H. R. 4060****[Report No. 105-581]**

Making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1998

Mr. McDADE, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

**A BILL**

Making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That the following sums are appropriated, out of any  
4 money in the Treasury not otherwise appropriated, for the  
5 fiscal year ending September 30, 1999, for energy and  
6 water development, and for other purposes, namely:

## 1           NUCLEAR REGULATORY COMMISSION

## 2                           SALARIES AND EXPENSES

3           For necessary expenses of the Commission in carry-  
4 ing out the purposes of the Energy Reorganization Act  
5 of 1974, as amended, and the Atomic Energy Act of 1954,  
6 as amended, including official representation expenses  
7 (not to exceed \$5,000); \$462,700,000, to remain available  
8 until expended: *Provided*, That of the amount appro-  
9 priated herein, \$14,800,000 shall be derived from the Nu-  
10 clear Waste Fund: *Provided further*, That revenues from  
11 licensing fees, inspection services, and other services and  
12 collections estimated at \$444,700,000 in fiscal year 1999  
13 shall be retained and used for necessary salaries and ex-  
14 penses in this account, notwithstanding 31 U.S.C. 3302,  
15 and shall remain available until expended: *Provided fur-*  
16 *ther*, That \$3,200,000 of the funds herein appropriated  
17 for regulatory reviews and other assistance provided to the  
18 Department of Energy and other Federal agencies shall  
19 be excluded from license fee revenues, notwithstanding 42  
20 U.S.C. 2214: *Provided further*, That the sum herein ap-  
21 propriated shall be reduced by the amount of revenues re-  
22 ceived during fiscal year 1999 so as to result in a final  
23 fiscal year 1999 appropriation estimated at not more than  
24 \$18,000,000.

## 1 OFFICE OF INSPECTOR GENERAL

2 For necessary expenses of the Office of Inspector  
3 General in carrying out the provisions of the Inspector  
4 General Act of 1978, as amended, \$4,800,000, to remain  
5 available until expended: *Provided*, That the sum herein  
6 appropriated shall be reduced by the amount of revenues  
7 received during fiscal year 1999 so as to result in a final  
8 fiscal year 1999 appropriation estimated at not more than  
9 \$0.

## 10 NUCLEAR WASTE TECHNICAL REVIEW BOARD

## 11 SALARIES AND EXPENSES

12 For necessary expenses of the Nuclear Waste Tech-  
13 nical Review Board, as authorized by Public Law 100-  
14 203, section 5051, \$2,600,000, to be derived from the Nu-  
15 clear Waste Fund, and to remain available until expended.

## 16 TITLE V—GENERAL PROVISIONS

17 SEC. 501. None of the funds appropriated by this Act  
18 may be used in any way, directly or indirectly, to influence  
19 congressional action on any legislation or appropriation  
20 matters pending before Congress, other than to commu-  
21 nicate to Members of Congress as described in section  
22 1913 of title 18, United States Code.

23 SEC. 502. (a) PURCHASE OF AMERICAN-MADE  
24 EQUIPMENT AND PRODUCTS.—It is the sense of the Con-  
25 gress that, to the greatest extent practicable, all equip-

1 shall conform to the water quality standards of the State  
2 of California as approved by the Administrator of the En-  
3 vironmental Protection Agency, to minimize any detrimen-  
4 tal effect of the San Luis drainage waters.

5 (b) The costs of the Kesterson Reservoir Cleanup  
6 Program and the costs of the San Joaquin Valley Drain-  
7 age Program shall be classified by the Secretary of the  
8 Interior as reimbursable or nonreimbursable and collected  
9 until fully repaid pursuant to the "Cleanup Program—  
10 Alternative Repayment Plan" and the "SJVDP—Alter-  
11 native Repayment Plan" described in the report entitled  
12 "Repayment Report, Kesterson Reservoir Cleanup Pro-  
13 gram and San Joaquin Valley Drainage Program, Feb-  
14 ruary 1995", prepared by the Department of the Interior,  
15 Bureau of Reclamation. Any future obligations of funds  
16 by the United States relating to, or providing for, drainage  
17 service or drainage studies for the San Luis Unit shall  
18 be fully reimbursable by San Luis Unit beneficiaries of  
19 such service or studies pursuant to Federal Reclamation  
20 law.

21 SEC. 504. None of the funds made available in this  
22 or any other Act may be used to restart the High Flux  
23 Beam Reactor.

24 SEC. 505. Section 6101(a)(3) of the Omnibus Budget  
25 Reconciliation Act of 1990, as amended, (42 U.S.C.

1 2214(a)(3)) is amended by striking "September 30, 1998"  
2 and inserting "September 30, 1999".

3 SEC. 506. (a) Funds appropriated for "Nuclear Reg-  
4 ulatory Commission—Salaries and Expenses" shall be  
5 available to the Commission for the following additional  
6 purposes:

7 (1) Employment of aliens.

8 (2) Services authorized by section 3109 of title  
9 5, United States Code.

10 (3) Publication and dissemination of atomic in-  
11 formation.

12 (4) Purchase, repair, and cleaning of uniforms.

13 (5) Reimbursements to the General Services  
14 Administration for security guard services.

15 (6) Hire of passenger motor vehicles and air-  
16 craft.

17 (7) Transfers of funds to other agencies of the  
18 Federal Government for the performance of the  
19 work for which such funds are appropriated, and  
20 such transferred funds may be merged with the ap-  
21 propriations to which they are transferred.

22 (8) Transfers to the Office of Inspector General  
23 of the Commission, not to exceed an additional  
24 amount equal to 5 percent of the amount otherwise  
25 appropriated to the Office for the fiscal year. Notice

1 of such transfers shall be submitted to the Commit-  
2 tees on Appropriations.

3 (b) Funds appropriated for "Nuclear Regulatory  
4 Commission—Office of Inspector General" shall be avail-  
5 able to the Office for the additional purposes described  
6 in paragraphs (2) and (7) of subsection (a).

7 (c) Moneys received by the Commission for the coop-  
8 erative nuclear research program, services rendered to  
9 State governments, foreign governments, and inter-  
10 national organizations, and the material and information  
11 access authorization programs, including criminal history  
12 checks under section 149 of the Atomic Energy Act of  
13 1954 (42 U.S.C. 2169) may be retained and used for sala-  
14 ries and expenses associated with those activities, notwith-  
15 standing 31 U.S.C. 3302, and shall remain available until  
16 expended.

17 (d) This section shall apply to fiscal year 1999 and  
18 each succeeding fiscal year.

19 SEC. 507. Sec. 505 of Public Law 102-377, the Fis-  
20 cal Year 1993 Energy and Water Development Appropria-  
21 tions Act, and section 208 of Public Law 99-349, the Ur-  
22 gent Supplemental Appropriations Act, 1986, are re-  
23 pealed.

24 IMPLEMENTATION OF EXTERNAL REGULATION

25 SEC. 508. (a) TRANSFER OF AUTHORITY.—Notwith-  
26 standing any other provision of law, no later than March

1 31, 1999, the Department of Energy shall not implement  
2 and enforce its own regulatory system, through rules, reg-  
3 ulations, orders, or standards, with regard to the Ernest  
4 Orlando Lawrence Berkeley National Laboratory for envi-  
5 ronment, safety, and health, but shall be regulated by the  
6 appropriate Federal, State, and local agencies as provided  
7 by the applicable Federal, State, and local laws and regu-  
8 lations: *Provided*, That for this facility, the Department  
9 shall be deemed to be a "person" under the Atomic En-  
10 ergy Act of 1954, as amended.

11 (b) DEPARTMENT OF ENERGY REPORTING REQUIRE-  
12 MENT.—By October 31, 1998, the Secretary of Energy  
13 shall transmit to the Congress a plan for termination of  
14 its authority to regulate its contractors and to self-regu-  
15 late its own operations in the areas of environment, safety,  
16 and health at the facility named in section (a). The report  
17 shall include—

18 (1) A detailed transition plan, giving the sched-  
19 ule for termination of self-regulation authority as  
20 outlined in section (a), including the activities to be  
21 coordinated with the Nuclear Regulatory Commis-  
22 sion (NRC) and the Occupational Safety and Health  
23 Administration (OSHA);

24 (2) A description of any issues remaining to be  
25 resolved with the NRC and OSHA or other external

.1 regulators, and a timetable for resolving such issues  
2 before March 31, 1999; and

3 (3) An estimate of the current annual cost of  
4 administering and implementing self-regulation of  
5 environment, safety, and health activities at all De-  
6 partment of Energy facilities, and an estimate of the  
7 number of Federal and contractor employees cur-  
8 rently administering and implementing self-regula-  
9 tion of environment, safety and health activities at  
10 each of the facilities. For the Lawrence Berkeley  
11 National Laboratory, there should also be an esti-  
12 mate of the cost of the external regulators based on  
13 the pilot project of simulated NRC regulation which  
14 has already been conducted; an estimate of the cost  
15 and number of Federal and contractor employees  
16 currently administering and implementing self-regu-  
17 lation of environment, safety and health activities at  
18 the Laboratory; and an estimate of the extent and  
19 schedule by which the Department and Laboratory  
20 staffs will be reduced as a result of implementation  
21 of section (a).

22 (c) NUCLEAR REGULATORY COMMISSION REPORTING  
23 REQUIREMENT.—By January 30, 1999, the Chairman of  
24 the Nuclear Regulatory Commission shall submit to Con-  
25 gress a plan for regulating accelerator-produced radio-

1 active material, and ionizing radiation generating ma-  
2 chines at Department of Energy facilities. The report  
3 shall:

4           (1) Recommend what statutory changes, if any,  
5           would be needed to provide the Commission with the  
6           authority to regulate accelerator use at Department  
7           of Energy facilities;

8           (2) Identify what additional Commission re-  
9           sources would be needed to accomplish such regula-  
10          tion; and

11          (3) Identify any existing technical or regulatory  
12          obstacles to the Commission regulation of accelera-  
13          tor use.

14          This Act may be cited as the "Energy and Water De-  
15          velopment Appropriations Act, 1999".