LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985

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LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985

TITLE II–OMNIBUS LOW-LEVEL RADIOACTIVE WASTE INTERSTATE COMPACT CONSENT ACT

42 USC 2021d note.

Sec. 201. Short Title.

This Title may be cited as the "Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act."[1]

SUBTITLE A–GENERAL PROVISIONS

42 USC 2021d note. *Infra.*

Sec. 211. Congressional Finding.

The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act.

42 USC 2021d note. Effective date.

Sec. 212. Conditions of Consent to Compacts.

The consent of the Congress to each of the compacts set forth in subtitle B–

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended; and

(3) is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act.

42 USC 2021d note.

Sec. 213. Congressional Review.

The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided in such compact.

SUBTITLE B–CONGRESSIONAL CONSENT TO COMPACTS

42 USC 2021d note. Alaska. Hawaii. Idaho. Montana. Oregon. Utah. Washington. Wyoming.

Sec. 221. Northwest Interstate Compact on Low-level Radioactive Waste Management.

The Consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I–POLICY AND PURPOSE

Health. Safety.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through

[1]NOTE: Title I of this Law Is Found in Volume I of this NUREG

cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II–DEFINITIONS

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities;

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten (10) nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) "Host state" means a state in which a facility is located.

ARTICLE III–REGULATORY PRACTICES

Transportation.

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) Authorization of the containers in which such waste may be shipped, and a requirement that generators use only that type of container authorized by the state;

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

Transportation.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to

assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV–REGIONAL FACILITIES

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in article V.

(3) Until such time as paragraph (2) of article IV takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state, and shall contain at least the following:

(A) The generator's name and address;

(B) A description of the contents of the low-level waste container.

Regulations.

(C) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable Federal regulations and such additional requirements as may be imposed by the host state;

(D) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

Health.
Safety.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one (1) party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

Hazardous materials.
Idaho.
Oregon.
Prohibition.
Washington.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such

facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders of from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V–NORTHWEST LOW-LEVEL WASTE COMPACT COMMITTEE

The governor of each party state shall designate one (1) official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modification in such regulations. Notwithstanding any provision of article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds (2/3) vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

Regulations.

ARTICLE VI–ELIGIBLE PARTIES AND EFFECTIVE DATE

Alaska. Hawaii. Idaho. Montana. Oregon. Utah. Washington.

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two (2) states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

Effective date. Wyoming.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

42 USC 2021b note. Effective date.

(3) Paragraph (2) of article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five (5) year period.

ARTICLE VII–SEVERABILITY

Provisions held invalid.

If any provision of this compact, or its application to any person or circumstances, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

Sec. 222. Central Interstate Low-level Radioactive Waste Compact.

42 USC 2021d note. Arkansas. Iowa. Kansas. Louisiana. Minnesota. Missouri. Nebraska. North Dakota. Oklahoma.

The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows:

CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

ARTICLE I–POLICY AND PURPOSE

42 USC 2021b note. Environmental protection. Health. Safety.

The party states recognize that each state is responsible for the management of its non-federal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573) has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety and welfare of their citizens and the environment and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits and obligations among the party states.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Commission" means the Central Interstate Low-Level Radioactive Waste Commission;

b. "disposal" means the isolation and final disposition of waste;

c. "extended care" means the care of a regional facility including necessary corrective measures subsequent to its active use for waste management until such time as the regional facility no longer poses a threat to the environment or public health;

d. "facility" means any site, location, structure or property used or to be used for the management of waste;

e. "generator" means any person who, in the course of or as incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research or mining in a party state, produces or processes waste.

"Generator" does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

f. "host state" means any party state in which a regional facility is situated or is being developed;

42 USC 2021b note.

g. "low-level radioactive waste" or "waste" means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: High-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended through 1978.

42 USC 2014.

h. "management of waste" means the storage, treatment or disposal of waste;

i. "notification of each party state" means transmittal of written notice to the Governor, presiding officer of each legislative body and any other persons designated by the party state's Commission member to receive such notice;

j. "party state" means any state which is a signatory party to this compact;

k. "person" means any individual, corporation, business enterprise, or other legal entity, either public or private;

l. "region" means the area of the party states;

m. "regional facility" means a facility which is located within the region and which has been approved by the Commission for the benefit of the party States;

n. "site" means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

o. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands or any other territorial possession of the United States;

p. "storage" means the holding of waste for treatment or disposal; and

q. "treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render such waste after for transport or management, amendable for recovery, convertible to another usable material, or reduced in volume.

ARTICLE III–RIGHTS AND OBLIGATIONS

a. There shall be provided within the region one or more regional facilities which together provide sufficient capacity to manage all wastes generated within the region. It shall be the duty of regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of this Act, and each party state shall have the right to have the wastes generated within its borders managed at such facility.

Regulation.

b. To the extent authorized by Federal law and host State law, a host state shall regulate and license any regional facility within its borders and ensure the extended care of such facility.

c. Rates shall be charged to any user of the regional facility, set by the operator of a regional facility and shall be fair and reasonable and be subject to the approval of the host state. Such approval shall be based upon criteria established by the Commission.

d. A host state may establish fees which shall be charged to any user of a regional facility and which shall be in addition to the rates approved pursuant to section c. of this Article, for any regional facility within its borders. Such fees shall be reasonable and shall provide the host state with sufficient revenue to cover any costs associated with such facilities. If such fees have been reviewed and approved by the Commission and to the extent that such revenue is insufficient, all party states shall share the costs in a manner to be determined by the Commission.

Regulation. Transportation.

e. To the extent authorized by Federal law, each party state is responsible for enforcing any applicable Federal and state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders and shall adopt practices that will ensure that waste shipments originating within its borders and destined for a regional facility will conform to applicable packaging and transportation laws and regulations.

f. Each party state has the right to rely on the good faith performance of each other party state.

g. Unless authorized by the Commission, it shall be unlawful after January 1, 1986, for any person:

1. to deposit at a regional facility, waste not generated within the region;

2. to accept, at a regional facility, waste not generated within the region;

Exports.

3. to export from the region, waste which is generated within the region; and

4. to transport waste from the site at which it is generated, except to a regional facility.

ARTICLE IV–THE COMMISSION

Central Interstate Low-Level Radioactive Waste Commission, establishment.

a. There is hereby established the Central Interstate Low-Level Radioactive Waste Commission. The Commission shall consist of one voting member from each party state to be appointed according to the laws of each state. The appointing authority of each party state shall notify the Commission in writing of the identity of its member and any alternates. An alternate may act on behalf of the member only in the absence of such member. Each state is responsible for the expenses of its member of the Commission.

b. Each Commission member shall be entitled to one vote. Unless otherwise provided herein, no action of the Commission shall be bonding unless a majority of the total membership casts its vote in the affirmative.

c. The Commission shall elect from among its membership a chairman. The Commission shall adopt and publish, in convenient form, by-laws and policies which are not inconsistent with this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the chairman, by petition of a majority of the membership or upon the call of a host state member.

e. The Commission may initiate any proceedings or appear as an intervenor or party in interest before any court of law, or any Federal, state or local agency, board or Commission that has jurisdiction over any matter arising under or relating to the terms of the provisions of this compact. The Commission shall determine in which proceedings it shall intervene or otherwise appear and may arrange for such expert testimony,

reports, evidence or other participation in such proceedings as may be necessary to represent its views.

f. The Commission may establish such committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of waste.

Contracts.

g. The Commission may employ and compensate a staff limited only to those persons necessary to carry out its duties and functions. The Commission may also contract with and designate any person to perform necessary functions to assist the Commission. Unless otherwise required by the acceptance of a Federal grant, the staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the Federal government and shall be compensated from funds of the Commission.

h. Funding for the Commission shall be as follows:

1. The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Party states shall equally contribute to the Commission budget on an annual basis, an amount not to exceed $25,000 until surcharges are available for that purpose. Host states shall begin imposition of the surcharges provided for in this section as soon as practicable and shall remit to the Commission funds resulting from collection of such surcharges within 60 days of their receipt; and

2. Each state hosting a regional facility shall annually levy surcharges on all users of such facilities, based on the volume and characteristics of wastes received at such facilities, the total of which:

(A) Shall be sufficient to cover the annual budget of the Commission; and

(B) shall be paid to the Commission, provided, however, that each host state collecting such surcharges may retain a portion of the collection sufficient to cover the administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

Audit.
Report.

i. The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public account shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by this Article.

Grants.

j. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services, conditional or otherwise from any person and may receive, utilize and dispose of same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

Reports.

Prohibition.

k. (1) Except as otherwise provided herein, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators, transporters of waste, owners and operators of facilities shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto.

Prohibitions.

(2) The Commission herein established is a legal entity separate and distinct from the party states and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken by them in their official capacity.

1. Any person or party state aggrieved by a final decision of the Commission may obtain judicial review of such decisions in the United States District Court in the District wherein the Commission maintains its headquarters by filing in such court a petition for review within 60 days after the Commission's final decision. Proceedings thereafter shall be in accordance with the rules of procedure applicable in such court.

m. The Commission shall:

1. Receive and approve the application of a non-party state to become a party state in accordance with Article VII;

Report.

2. submit an annual report, and otherwise communicate with, the Governors and the presiding officers of the legislative bodies of the party states regarding the activities of the Commission;

3. hear and negotiate disputes which may arise between the party states regarding this compact;

4. require of and obtain from the party states, and non-party states seeking to become party states, data and information necessary to the implementation of Commission and party states' responsibilities;

5. approve the development and operation of regional facilities in accordance with Article V;

Contracts.
Exports.
Imports.

6. notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the Commission, including the affirmative vote of any host state which may be affected;

7. revoke the membership of a party state in accordance with Articles V and VII;

8. require all party states and other persons to perform their duties and obligations arising under this compact by an appropriate action in any forum designated in section e. of Article IV; and

9. take such action as may be necessary to perform its duties and functions as provided in this compact.

ARTICLE V–DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

a. Following the collection of sufficient data and information from the states, the Commission shall allow each party state the opportunity to volunteer as a host for a regional facility.

b. If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the Commission, based on the criteria in section c. of this Article, then the Commission shall publicly seek applicants for the development and operation of regional facilities.

c. The Commission shall review and consider each applicant's proposal based upon the following criteria:

1. The capability of the applicant to obtain a license from the applicable authority;

2. the economic efficiency of each proposed regional facility, including the total estimated disposal and treatment costs per cubic foot of waste;

3. financial assurances;

4. accessibility to all party states; and

Health. Safety.

5. such other criteria as shall be determined by the Commission to be necessary for the selection of the best proposal, based on the health, safety and welfare of the citizens in the region and the party states.

d. The Commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in section c. and the needs of the region.

e. Following notification of each party state of the results of the preliminary selection process, the Commission shall:

1. Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance with the proposal originally submitted to the Commission or as modified with the approval of the Commission; and

2. require the appropriate state or states or the U.S. Nuclear Regulatory Commission to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted.

f. The preliminary selection or selections made by the Commission pursuant to this Article shall become final and receive the Commission's approval as a regional facility upon the issuance of license by the licensing authority. If a proposed regional facility fails to become licensed, the Commission shall make another selection pursuant to the procedures identified in this Article.

g. The Commission may, by two-thirds affirmative vote of its membership, revoke the membership of any party state which, after notice and hearing, shall be found to have arbitrarily or capriciously denied or delayed the issuance of a license or permit to any person authorized by the Commission to apply for such license or permit. Revocation shall be in the same manner as provided for in section e. of Article VII.

ARTICLE VI–OTHER LAWS AND REGULATIONS

Prohibition.

a. Nothing in this compact shall be construed to:

1. Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any Federal agency expressly conferred thereon by the Congress;

2. prevent the application of any law which is not otherwise inconsistent with this compact;

3. prohibit or otherwise restrict the management and waste on the site where it is generated if such is otherwise lawful;

4. affect any judicial or administrative proceeding pending on the effective date of this compact;

5. alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

Research and development.

6. affect the generation or management of waste generated by the Federal government or federal research and development activities.

Prohibition.

b. No party state shall pass or enforce any law or regulation which is inconsistent with this compact.

Regulations.

c. All laws and regulations or parts thereof of any party state which are inconsistent with this compact are hereby declared null and void for purposes of this compact. Any legal right, obligation, violation or penalty arising under such laws or regulations prior to enactment of this compact shall not be affected.

Prohibition.
Regulations.

d. No law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

ARTICLE VII–ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

Arkansas.
Iowa.
Kansas.
Louisiana.
Minnesota.
Missouri.
Nebraska.
North Dakota.
Oklahoma.

a. This compact shall have as initially eligible parties the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota and Oklahoma. Such initial eligibility shall terminate on January 1, 1984.

b. Any state may petition the Commission for eligibility. A petitioning state shall become eligible for membership in the compact upon the unanimous approval of the Commission.

c. An eligible state shall become a member of the compact and shall be bound by it after such state has enacted the compact into law. In no event shall the compact take effect in any state until it has been entered into force as provided for in section f. of this Article.

Prohibition.

Effective date.
Prohibition.

d. Any party state may withdraw from this compact by enacting a statute repeating the same. Unless permitted earlier by unanimous approval of the Commission, such withdrawal shall take effect five-years after the Governor of the withdrawing state has given notice in writing of such withdrawal to each Governor of the party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

e. Any party state which fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing have its privileges suspended or its membership in the compact revoked by the Commission. Revocation shall take effect one year from the date such party state receives written notice from the Commission of its action. The Commission may require such party state to pay to the Commission, for a period not to exceed five years from the date of notice of revocation, an amount determined by the Commission based on the anticipated fees which the generators of such party state would have paid to each regional facility and an amount equal to that which such party state would have contributed in accordance with section d. of Article III, in the event of insufficient revenues. The Commission shall use such funds to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which such party state would have contributed to the annual budget of the Commission if such party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective

Effective date.

date of revocation; however, any legal obligations of such party state arising prior to the effective date of revocation shall not cease until they have been fulfilled. Written notice of revocation of any state's membership in the company shall be transmitted immediately following the vote of the Commission, by the chairman, to the Governor of the affected party state, all other Governors of the party states and the Congress of the United States.

f. This compact shall become effective after enactment by a least three eligible states and after consent has been given to it by the Congress. The Congress shall have the opportunity to withdraw such consent every five-years. Failure of the Congress to withdraw its consent affirmatively shall have the effect of renewing consent for an additional five-year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this Article and to the power to ban the exportation of waste pursuant to Article III.

Prohibition.

g. The withdrawal of a party state from this compact under section d. of this Article or the revocation of a state's membership in this compact under section 3. of this Article shall not affect the applicability of this compact to the remaining party states.

Termination.

h. This compact shall be terminated when all party states have withdrawn pursuant to section d. of this Article.

ARTICLE VIII–PENALTIES

a. Each party state, consistent with its own law, shall prescribe and enforce penalties against any person for violation of any provision of this compact.

Regulations.

b. Each party state acknowledges that the receipt by a regional facility of waste packaged or transported in violation of applicable laws and regulations can result in sanctions which may include suspension or revocation of the violator's right of access to the regional facility.

ARTICLE IX–SEVERABILITY AND CONSTRUCTION

Provisions held invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purpose thereof.

Sec. 223. Southeast Interstate Low-level Radioactive Waste Management Compact.

42 USC 2021d note. Alabama. Florida. Georgia. Mississippi. North Carolina. South Carolina. Tennessee. Virginia.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2), the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

ARTICLE I–POLICY AND PURPOSE

Research and development.

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the State for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573), has provided for encouraged the development of low level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

42 USC 2021b note.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort; provide sufficient facilities for the proper management of low-level radioactive waste generated in the region; promote the health and safety of the region; limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region; encourage the reduction of the amounts of low-level waste generated in the region; distribute the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states; and ensure the ecological and economical management of low-level radioactive wastes.

Regulations.

Implicit in the Congressional consent to this compact is the expectation by Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. expeditious enforcement of federal rules, regulations, and laws;
2. imposing sanctions against those found to be in violation of federal rules, regulations, and laws;
3. timely inspection of their licensees to determine their capability to adhere to such rules, regulations, and laws;
4. timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act, as amended.

42 USC 2021b note.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "Commission" or "Compact Commission" means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

2. "Facility" means a parcel of land, together with the structure, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

3. "Generator" means any person who produces or processes low-level radioactive waste in the course of, or as an incident to, manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage, or disposal of wastes with respect to such waste generated outside the region.

4. "High-level waste" means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel, and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

5. "Host state" means any state in which a regional facility is situated or is being developed.

42 USC 2014.

6. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954, or as may be further defined by Federal law or regulation.

7. "Party state" means any state which is a signatory party to this compact.

8. "Person" means any individual, corporation, business enterprise, or other legal entity (either public or private).

9. "Region ' means the collective party states.

10. 'Regional facility" means (1) a facility as defined in this article which has been designated, authorized, accepted, or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

11. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

42 USC 2021.

12. "Transuranic wastes" means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under Section 274 of the Atomic Energy Act of 1954.

13. "Waste management" means the storage, treatment, or disposal of waste.

ARTICLE III–RIGHTS AND OBLIGATIONS

Prohibition.

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit, or abridge those rights.

(A) Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities and, additionally, shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to article 4(e)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

(B) If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the Commission.

(C) Each party state must establish the capability to regulate, license, and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities in accordance with the provisions of Article 5, Section (b).

Regulations.
Transportation.

(D) Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

(E) Each party state must provide to the Commission on an annual basis any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation.

(F) Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of waste requiring disposal.

ARTICLE IV–THE COMMISSION

Southeast Interstate Low-Level Radioactive Waste Management Commission, establishment.

(A) There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ("Commission" or "Compact Commission"). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

(B) Each commission member is entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

(C) The Commission must elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, bylaws which are consistent with this compact.

(D) The Commission must meet at least once a year and also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission must be open to the public.

(E) The Commission has the following duties and powers:

1. To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(b).

2. To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(c).

Report.

3. To submit an annual report and other communications to the Governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.

Health. Safety.

4. To develop and use procedures for determining, consistent with consideration for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

5. To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities.

6. To develop and adopt, within one year after the Commission is constituted as provided in Article 7(d) procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article 7(d), and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

Environmental protection. Health. Safety. Transportation.

In developing criteria, the Commission must consider the following; the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic, and ecological impacts on the air, land, and water resources of the party states.

Reports. Studies.

The Commission shall conduct such hearings, require such reports, studies, evidence, and testimony, and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility.

Prohibition.

7. In accordance with the procedures and criteria developed pursuant to Section (e)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility.

8. To require of and obtain from party states, eligible states seeking to become party states, and nonparty states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities.

Contracts. Imports.

9. Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of a host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facility's capability to handle such wastes.

10. To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states as an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has jurisdiction over the management of wastes. The authority to act, intervene, or otherwise appear shall be exercised by the Commission, only after approval by a majority vote of the Commission.

11. To revoke the membership of a party state in accordance with Article 7(f).

F. The Commission may establish any advisory committees as it deems necessary for the purpose of advising the Commission on any matters pertaining to the management of low-level radioactive waste.

G. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as

may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

H. Funding for the Commission must be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay twenty-five thousand dollars to the Commission which shall be used for costs of the Commission's services.

2. Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

a. must be sufficient to cover the annual budget of the Commission;

b. must represent the financial commitments of all party states to the Commission;

c. must be paid to the Commission;

Provided, however, That each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

3. The Commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states and must remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

Audit report.

I. The Commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by Article 4(e)(3).

Grants.

J. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state, or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and condition, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender shall be detailed in the annual report to the Commission.

Report.

K. The Commission is not responsible for any costs associated with:

(1) the creation of any facility,

(2) the operation of any facility,

(3) the stabilization and closure of any facility,

(4) the post-closure observation and maintenance of any facility, or

(5) the extended institutional control, after post-closure observation and maintenance of any facility.

L. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within nonparty states when authorized by the Com mission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

Exports. Prohibition.

M. 1. The Commission herein established is a legal entity separate and distinct from the party states capable of acting in its own behalf and is liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not personally be liable for action taken by them in their official capacity.

Prohibition.

2. Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators and transporters of wastes and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

ARTICLE V–DEVELOPMENT AND OPERATION OF FACILITIES

A. Any party state which becomes a host state in which a regional facility is operated shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

B. A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure.

Health. Safety.

Notwithstanding the four-year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

C. Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

Prohibition.

D. No party state shall have any form of arbitrary prohibition on the treatment, storage, or disposal of low-level radioactive waste within its borders.

E. No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.[2]

ARTICLE VI–OTHER LAWS AND REGULATIONS

Prohibition.

A. Nothing in this compact shall be construed to:

(1) Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

42 USC 2021.

(2) Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under Section 274 of the Atomic Energy Act of 1954 in which a regional facility is located.

(3) Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact.

(4) Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article 3, Article 4, and Article 5 and shall be subject to any action lawfully taken pursuant thereto.

Prohibition.

(5) Prohibit any storage or treatment of waste by the generator on its own premises.

(6) Affect any judicial or administrative proceeding pending on the effective date of this compact.

(7) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions.

42 USC 2021b note.
Research and development.

(8) Affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the United States Department of Energy or federal research and development activities as defined in Public Law 96-573.

(9) Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

Prohibition.
Regulation.

B. No party shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

Prohibition.
Regulation.

C. Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

D. Restrictions of waste management of regional facilities pursuant to Article 4 shall be enforceable as a matter of state law.

[2]Public Law 101-171 (103 Stat. 1289), November 22, 1989 added new section E.

ARTICLE VII–ELIGIBLE PARTIES; WITHDRAWAL; REVOCATION; ENTRY INTO FORCE; TERMINATION

Alabama.
Florida.
Georgia.
Mississippi.
North Carolina.
South Carolina.
Tennessee.
Virginia.

A. This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

B. Any state not expressly declared eligible to become a party state to this compact in Section (A) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to such provisions of this section. Upon satisfactorily meeting the conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the manner as those states declared eligible in Section (a) of this Article.

C. Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article 4(H)(1). The Commission is the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

D. 1. The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article 4(H)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission; shall cause legislation to be introduced in Congress which grants the consent of Congress to this compact; and shall do those things necessary to organize the commission and implement the provisions of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of Section (C) of this Article.

Effective date.

3. The consent of Congress shall be required for the full implementation of this compact. The provisions of Article 5 Section (D) shall not become effective until the effective date of the import ban authorized by Article 4, Section (L) as approved by Congress. Congress may by law withdraw its consent only every five years.

Prohibition.

E. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

F. Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only upon the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than ninety days from the date of

such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission must, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action, along with a copy of the resolution, to the Governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of Congress.

G. Subject to the provisions of Article 7 section H., any party state may withdraw from the compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party state of the rescission of the Compact. The Commission, upon receipt of the verification, shall as soon as practicable provide copies of such verification to the Governor, the presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.[3]

H. The right of a party state to withdraw pursuant to section G. shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress.

South Carolina.

For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.[4]

I. This compact may be terminated only by the affirmative action of the Congress or by rescission of all laws enacting the compact in each party state.[5]

ARTICLE VIII–PENALTIES

A. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provisions of this compact.

Regulation.

B. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the hose state which may include suspension or revocation of the violator's right of access to the facility in the host state.

ARTICLE IX–SEVERABILITY AND CONSTRUCTION

Provisions held invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution, of any participating state or of the United States, or the applicability thereof to

[3]Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new language to section G.
[4]Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new language to section H.
[5]Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new section I.

any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any State participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

Sec. 224. Central Midwest Interstate Low-level Radioactive Waste Compact.

42 USC 2021d note. Illinois. Kentucky.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

CENTRAL MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

ARTICLE I–POLICY AND PURPOSE

There is created the Central Midwest Interstate Low-Level Radioactive Waste Compact.

42 USC 2021b note.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 USC 2021), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.[6]

a) It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

1) providing the instrument and the framework for a cooperative effort;

2) providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;

Health. Safety.

3) protecting the health and safety of the citizens of the region;

4) limiting the number of facilities required to manage low-level radioactive waste generated in the region effectively and efficiency;

5) promoting the volume and source reduction of low-level radioactive waste generated in the region;

6) distributing the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states and among generators and other persons who use regional facilities to manage their waste;

7) ensuring the ecological and economical management of low-level radioactive waste, including the prohibition of shallow-land burial of waste; and

[6]Public Law 103-439 (108 Stat. 4607) Nov. 2, 1994

8) promoting the use of above-ground facilities and other disposal technologies providing greater and safer confinement of low-level radioactive waste than shallow-land burial facilities.

Regulations.

b) Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1) expeditious enforcement of federal rules, regulations and laws;

2) imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3) timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a) "Commission" means the Central Midwest Interstate Low-Level Radioactive Waste Commission.

b) "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

c) "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

d) "Eligible" state means either the State of Illinois or the Commonwealth of Kentucky.

e) "Extended care" means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or clean-up necessary to protect public health and the environment from radioactive releases from a regional facility.

f) "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

g) "Generator" means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U. S. Nuclear Regulatory Commission or a party state, to produce or possess such waste.

h) "Host state" means any party state that is designated by the Commission to host a regional facility, provided that a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10 percent of the total volume recorded on such manifests for the region during the same year shall not be designated a host state.

i) "Institutional control" means those activities carried out by the host state to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator to the state or federal government. These activities must include, but need not be limited

to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state, and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state, but institutional control may not be relied upon for more than 100 years following transfer of control of the disposal site to the state or federal government.

j) "Long-term liability" means the financial obligation to compensate any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and to provide for the costs for accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility.

42 USC 2014.

k) "Low-level radioactive waste" or "waste" means radioactive waste not classified as (1) high-level radioactive waste, (2) transuranic waste, (3) spent nuclear fuel, or (4) by-product material as defined in Section 11e.(2) of the Atomic Energy Act of 1954. This definition shall apply notwithstanding any declaration by the federal government, a state or any regulatory agency that any radioactive material is exempt from any regulatory control.[7]

l) "Management plan" means the plan adopted by the Commission for the storage, transportation, treatment and disposal of waste within the region.

m) "Manifest" means a shipping document identifying the generator of waste, the volume of waste, the quantity of radionuclides in the shipment, and such other information as may be required by the appropriate regulatory agency.

n) "Party state" means any eligible state which enacts the compact into law and pays the membership fee.

o) "Person" means any individual, corporation, business enterprise or other legal entity, either public or private, and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity.

p) "Region" means the geographical area of the party states.

q) "Regional facility" means any facility as defined in Article II(f) that is (1) located within the region, and (2) established by a party state pursuant to designation of that state as a host state by the Commission.[8]

r) "Shallow-land burial" means a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth's surface; however, this definition shall not include an enclosed, engineered, strongly structurally enforced and solidified bunker that extends below the earth's surface.

s) "Site" means the geographic location of a facility.

t) "Source reduction" means those administrative practices that reduce the radionuclide levels in low-level radioactive waste or that prevent the generation of additional low-level radioactive waste.

u) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

[7]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section k.
[8]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section q.

v) "Storage" means the temporary holding of waste for treatment or disposal.

w) "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

x) "Volume reduction" means those methods including, but not limited to, biological, chemical, mechanical and thermal methods used to reduce the amount of space that waste materials occupy and to put them into a form suitable for storage or disposal.

y) "Waste management" means the source and volume reduction, storage, transportation, treatment or disposal of waste.

ARTICLE III–THE COMMISSION

Central Midwest Interstate Low-Level Radioactive Waste Commission establishment.

a) There is created the Central Midwest Interstate Low-Level Radioactive Waste Commission. Upon the eligible states becoming party states, the Commission shall consist of two voting Commissioners from each state eligible to be designated a host state under Article VI(b), one voting Commissioner from any other party state, and for each regional facility, one non-voting Commissioner who is an elected official of local government and a resident of the county where that regional facility is located. The Governor of each party state shall notify the Commission in writing of its Commissioners and any alternates.[9]

b) Each voting Commissioner is entitled to one vote. No action of the Commission is binding unless a majority of the voting membership casts its vote in the affirmative. In addition, no agreement by the Commission under Article III(i)(1), Article III(i)(2), or Article III(i)(3) is valid unless all voting Commissioners from the party state in which the facility where waste would be sent cast their votes in the affirmative.[10]

Public information.

c) The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, by-laws and policies that are not inconsistent with this compact, including procedures that conform with the provisions of the Federal Administrative Procedure Act (5 USC ss. 500 to 559) to the greatest extent practicable in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d) The Commission shall meet at least once annually and shall also meet upon the call of any voting Commissioner.[11]

e) All meetings of the Commission and its designated committees shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and

[9]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section a.
[10]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section b.
[11]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section d.

appropriately recorded. A roll call may be required upon request of any voting Commissioner.[12]

f) The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management, waste generation and source and volume reduction.

g) The Office of the Commission shall be in Illinois. The Commission may appoint or contract for and compensate such staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.[13]

Public inspection.
Records.

h) All files, records and data of the Commission shall be open to reasonable public inspection and may be copied upon payment of reasonable fees to be established where appropriate by the Commission, except for information privileged against introduction in judicial proceedings. Such fees may be waived or shall be reduced substantially for not-for-profit organizations.

i) The Commission may:

Contracts.
Prohibitions.

1) Enter into an agreement with any person to allow waste from outside the region to be disposed of at facilities in the region. However, no such agreement shall be effective unless and until ratified by a law enacted by the party state to which the waste would be sent for disposal.

2) Enter into an agreement with any person to allow waste described in Article VII(a)(6) to be treated, stored, or disposed of at regional facilities. However, no such agreement shall be effective unless and until ratified by a law enacted by the host state of the regional facility to which the waste would be sent for treatment, storage, or disposal.

3) Enter into an agreement with any person to allow waste from outside the region to be treated or stored at facilities in the region.

Reports.

However, any such agreement shall be revoked as a matter of law if, within one year of the effective date of the agreement, a law is enacted ordering such revocation by the party state to which the waste would be sent for treatment or storage.

Prohibition.

4) Approve, or enter into an agreement with any person for, the export of waste from the region.

5) Approve the disposal of waste generated within the region at a facility in the region other than a regional facility, subject to the limitations of Articles V(f) and VII(a)(6).

6) Require that waste generated within the region be treated or stored at available regional facilities, subject to the limitations of Articles V(f), VII(a)(3) and VII(a)(6).

7) Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

[12]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section e.
[13]Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section g.

8) Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected, provided that a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10 percent of the total volume recorded on such manifests for the region during the same year shall not be designated a host state or be required to store the region's waste. In determining the 10 percent exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste.

9) Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

10) Suspend the privileges or revoke the membership of a party state.[14]

j) The Commission shall:

Report.

1) Submit within 10 days of its execution to the governor and the appropriate officers of the legislative body of the party state in which any affected facility is located a copy of any agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3).

2) Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission. The annual report shall include a description of the status of the activities taken pursuant to any agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3) and any violation of any provision thereof, and a description of the source, volume, activity, and current status of any waste from outside the region or waste described under Article VII(a)(6) that was treated, stored, or disposed of in the region in the previous year.

3) Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

4) Adopt and amend, as appropriate, a regional management plan that plans for the establishment of needed regional facilities.

5) Adopt an annual budget.[15]

k) Funding of the budget of the Commission shall be provided as follows:

1) Each state, upon becoming a party state, shall pay $50,000 to the Commission which shall be used for the administrative costs of the Commission.

2) Each state hosting a regional facility shall levy surcharges on each user of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

A) be sufficient to cover the annual budget of the Commission; and

[14]Public Law 103-439 (108 Stat. 4609), November 2, 1994, amended section i.
[15]Public Law 103-439 (108 Stat. 4609), November 2, 1994, amended section j.

B) be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection.

Audit. Contracts. Reports.

l) The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of Commission funds and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this Article.

Grants. Report.

m) The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission. The Commission shall establish guidelines for the acceptance of donations, grants, equipment, supplies, materials and services and shall review such guidelines annually.

n) The Commission is not liable for any costs associated with any of the following:

1) the licensing and construction of any facility;
2) the operation of any facility;
3) the stabilization and closure of any facility;
4) the extended care of any facility;
5) the institutional control, after extended care of any facility; or
6) the transportation of waste to any facility.

Transportation.

o) The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Commissioners are not personally liable for actions taken by them in their official capacity.[16]

p) Except as provided under Article III(n), Article III(o), Article VI(p) and Article VI(q), nothing in this compact alters liability for any action, omission, course of conduct or liability resulting from any causal or other relationships.[17]

q) Any person aggrieved by a final decision of the Commission, which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decision.

ARTICLE IV–REGIONAL MANAGEMENT PLAN

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

[16]Public Law 103-439 (108 Stat. 4610), November 2, 1994, changed after the first sentence "Members of the Commission" to "Commissioners."

[17]Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section p.

Health.
Safety.

a) Adopt procedures for determining, consistent with considerations of public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

b) Develop and adopt policies promoting source and volume reduction of waste generated within the region.

c) Develop alternative means for the treatment, storage and disposal of waste, other than shallow-land burial or underground injection well.

d) Prepare a draft regional management plan that shall be made available in a convenient form to the public for comment. The Commission shall conduct one or more public hearings in each party state prior to the adoption of the regional management plan. The regional management plan shall include the Commission's response to public and party state comment.

ARTICLE V–RIGHTS AND OBLIGATIONS OF PARTY STATES

a) Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b) Other than the provisions of Article V(f) and VII(a)(6), each party state has the right to have all wastes generated within borders managed at regional facilities. This right shall be subject to the provisions of this Compact. All party states have an equal right of access to any facility outside the region made available to the region by any agreement entered into by the Commission pursuant to Article III(i)(4).[18]

Exports.

c) Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III(i)(4).[19]

Contracts.
Prohibition.
Regulations.
Transportation.

d) To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this Section shall be construed to require a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.

e) Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

Kentucky.
Prohibition.

f) Waste originating from the Maxey Flats nuclear waste disposal site in Fleming County, Kentucky shall not be shipped to any facility in Illinois for storage, treatment or disposal. Disposition of these wastes shall be the sole responsibility of the Commonwealth of Kentucky and

[18]Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section b.
[19]Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section c.

such waste shall not be subject to the provisions of Articles IX(b)(3) and (4) of this compact.[20]

ARTICLE VI–DEVELOPMENT AND OPERATION OF FACILITIES

a) Any party state may volunteer to become a host state, and the Commission may designate that state as a host state.

b) If all regional facilities required by the regional management plan are not developed pursuant to Article VI(a), or upon notification that an existing regional facility will be closed, the Commission may designate a party state as a host state. A party state shall not be designated as a host state for any regional facility under this Article VI(b) unless that state's total volume of waste recorded on low-level radioactive waste manifests for any year is more than 10% of the total volume recorded on such manifests for the region during the same year. In determining the 10% exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste, or waste described in Article VII(a)(6).[21]

Prohibition.

c) Each party state designated as host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental, engineering and economic viability of possible facility locations.[22]

d) Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders or for other good cause shown and consistent with the purposes of this Compact.[23]

e) After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.[24]

f) To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.[25]

g) The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an

[20]Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section f.

[21]Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section b.

[22]Public Law 103-439 (108 Stat. 4611), November 2, 1994, repealed section c and renumbered section d to section c.

[23]Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended and renumbered section "e" to section "d."

[24]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section f to e.

[25]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section g to f.

additional regional facility is or may be required to meet the needs of the region.[26]

h) Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is shorter. Upon request of a host state, the Commission may modify the period of its designation.[27]

i) A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any costs including, but not limited to, the planning, siting, licensing, operation, pre-closure corrective action or clean-up, monitoring, inspection, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may provide for payment to units of local government affected by a regional facility for costs incurred in connection with such facility. This fee system may also include reasonable revenue beyond the costs incurred for the host state, subject to approval by the Commission. The fee system shall include incentives for source or volume reduction and may be based on the hazard of the waste. A host state shall submit an annual financial audit of the operation of the regional facility to the Commission.[28]

42 USC 10101 note.
Health.
Safety.

j) A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the extended care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured, unless, pursuant to the federal Nuclear Waste Policy Act of 1982, the federal government has assumed title and custody of the regional facility and the federal government thereby has assumed responsibility to provide for the extended care of such facility.[29]

Environmental protection.
Health.
Prohibition.
Safety.

k) A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This Section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within 3 working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.[30]

Prohibition.
Transportation.

l) If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational, provided that the region's waste shall not be stored in a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year which is less than 10% of the total volume recorded on the manifests for the region during the same year. In determining the 10% exclusion, there shall not be included waste

[26]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section h to g.
[27]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section i to h.
[28]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section j to i.
[29]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section k to j.
[30]Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section l and renumbered it to become section k.

recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste, or waste described in Article VII(a)(6).[31]

m) A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.[32]

n) The host state shall create an "Extended Care and Long-Term Liability Fund" and shall allocate sufficient fee revenues, received pursuant to Article VI(i), to provide for the costs of:

1) decommissioning and other procedures required for the proper closure of a regional facility;

2) monitoring, inspection and other procedures required for the proper extended care of a regional facility;

Environmental. Health. Protection. Contracts. Gifts and property. Health. Insurance. Real property.

3) undertaking any corrective action or clean-up necessary to protect human health and the environment from radioactive releases from a regional facility; and

4) compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility; the host state may allocate monies in this Fund in amounts as it deems appropriate to purchase insurance or to make other similar financial protection arrangements consistent with the purposes of this Fund; this Article VI(n) shall in no manner limit the financial responsibilities of the site operator under Article VI(o), the party states under Article VI(p), or any person who sends waste to a regional facility, under Article VI(q).[33]

Health. Real property Insurance.

o) The operator of a regional facility shall purchase an amount of property and third-party liability insurance deemed appropriate by the host state, pay the necessary periodic premiums at all times and make periodic payments to the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) for such amounts as the host state reasonably determines is necessary to provide for future premiums to continue such insurance coverage, in order to pay the costs of compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility. In the event of such costs resulting from radioactive releases from a regional facility, the host state should, to the maximum extent possible, seek to obtain monies from such

[31]Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section m and renumbered it to become section l.

[32]Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section n to m.

[33]Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section "o" and renumbered it to become section n.

insurance prior to using monies from the Extended Care and Long-Term Liability Fund.[34]

Contracts. Prohibition.

p) All party states shall be liable for the cost of extended care and long-term liability in excess of monies available from the Extended Care and Long-Term Liability Fund, as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). A party state may meet such liability for costs by levying surcharges upon generators located in the party state. The extent of such liability shall be based on the proportionate share of the total volume of waste placed in the regional facility by generators located in each such party state. Such liability shall be joint and several among the party states with a right of contribution between the party states. However, this Section shall not apply to a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10% of the total volume recorded on such manifests for the region during the same year.[35]

q) Any person who sends waste from outside the region or waste described in Article VII(a)(6) for treatment, storage or disposal at a regional facility shall be liable for the cost of extended care and long-term liability of that regional facility in excess of the monies available from the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). The extent of the liability for the person shall be based on the proportionate share of the total volume of waste sent by that person to the regional facility.[36]

ARTICLE VII–OTHER LAWS AND REGULATIONS

Prohibitions.

a) Nothing in this compact:

1) abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2) prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3) prohibits any storage or treatment of waste by the generator on its own premises;

4) affects any administrative or judicial proceeding pending on the effective date of this compact;

5) alters the relations between the respective internal responsibility of the government of a party state and its subdivisions;

Research and development.

6) establishes any right to the treatment, storage or disposal at any facility in the region or provides any authority to prohibit export from the region of waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States

[34]Public Law 103-439 (108 Stat. 4612, November 2, 1994, amended section p and renumbered it to become section o.

[35]Public Law 103-439 (108 Stat. 4612), November 2, 1994, amended section q and renumbered it to become section p.

[36]Public Law 103-439 (108 Stat. 4612), November 2, 1994, added a new section q.

Navy, or owned or generated as the result of any research, development, testing or production of any atomic weapon; or.[37]

Taxes.
Transportation.

7) affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any state or its political subdivisions to tax or impose fees on the waste managed at any facility within its borders;

Contracts.

8) requires a party state to enter into an agreement with the U. S. Nuclear Regulatory Commission; or

9) alters or limits liability of transporters of waste and owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.

b) For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

Prohibition.
Regulations.

c) No law, rule, regulation, fee or surcharge of a party state, or of any of its subdivisions or instrumentalities, may be applied in a manner which discriminates against the generators of another party state.

Prohibition.

d) No person who provides a service by arranging for collection, transportation, treatment, storage or disposal of waste from outside the region shall be allowed to dispose of any waste, regardless of origin, in the region unless specifically permitted under an agreement entered into by the Commission in accordance with the requirements of Article III(i)(1).[38]

ARTICLE VIII–ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

Illinois.
Kentucky.

a) Eligible parties to this compact are the State of Illinois and Commonwealth of Kentucky. Eligibility terminates on April 15, 1985.

b) An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in Article III(k)(1).

c) The Commission is formed upon the appointment of the Commissioners and the tender of the membership fee payable to the Commission by the eligible states. The Governor of Illinois shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provisions of this compact.[39]

d) Other than the special circumstances for withdrawal in Section (f) of this Article, either party state may withdraw from this compact at any time by repealing the authorizing legislation, but no withdrawal may take effect until 5 years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of the other state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste

[37]Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section 6.
[38]Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section d.
[39]Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section c.

generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

Effective date.

e) This compact becomes effective July 1, 1984, or at any date subsequent to July 1, 1984, upon enactment by the eligible states. However, Article IX(b) shall not take effect until the Congress has by law consented to this compact. The Congress shall have an opportunity to withdraw such consent every 5 years. Failure of the Congress affirmatively to withdraw its consent has the effect of renewing consent for an additional 5 year period. The consent given to this compact by the Congress shall extend to the power of the region to ban the shipment of waste into the region pursuant to Article III(i)(1) and to prohibit exportation of waste generated within the region under Article III(i)(4).[40]

Exports. Prohibition.

f) A state which has been designated a host state may withdraw from the compact. The option to withdraw must be exercised within 90 days of the date the governor of the designated state receives written notice of the designation. Withdrawal becomes effective immediately after notice is given in the following manner. The governor of the withdrawing state shall give notice in writing to the Commission and to the governor of each party state. A state which withdraws from the compact under this Section forfeits any funds already paid pursuant to this compact. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

Effective date.

ARTICLE IX–PENALTIES

a) Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b) Unless authorized by the Commission pursuant to Article III(i), or otherwise provided in this Compact, after January 1, 1986 it is a violation of this Compact:

1) for any person to deposit at a facility in the region waste from outside the region;

2) for any facility in the region to accept waste from outside the region;

3) for any person to export from the region waste that is generated within the region;

4) for any person to dispose of waste at a facility other than a regional facility;

5) for any person to deposit at a regional facility waste described in Article VII(a)(6); or

[40]Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section e.

6) for any regional facility to accept waste described in Article VII(a)(6).[41]

Regulation.

c) It is a violation of this compact for any person to treat or store waste at a facility other than a regional facility if such treatment or storage is prohibited by the Commission under Article III(i)(6).[42]

(d) Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules or regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

e) Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

ARTICLE X–SEVERABILITY AND CONSTRUCTION

Provisions held invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 225. Midwest Interstate Low-level Radio Active Waste Management Compact.

42 USC 2021d note.
Iowa.
Indiana.
Michigan.
Minnesota.
Missouri.
Ohio.
Wisconsin.

The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-Level Radioactive Waste Management. Such compact is as follows:

MIDWEST INTERSTATE LOW-LEVEL RADIO ACTIVE WASTE MANAGEMENT COMPACT

ARTICLE I–POLICY AND PURPOSE

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

Research and development.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 USC 2021b to 2021d), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states acknowledge that the Congress has declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party

[41]Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section b.

[42]Public Law 103-439 (108 Stat. 4614), November 2, 1994, added new section c, and redesignated the old sections c and d as sections d and e, respectively.

states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;

2. Providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;

Health. Safety.

3. Protecting the health and safety of the citizens of the region;

4. Limiting the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region;

5. Encouraging the reduction of the amounts of low-level radioactive waste generated in the region;

6. Distributing the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and among generators and other persons who use regional facilities to manage their waste; and

7. Ensuring the ecological and economical management of low-level radioactive wastes.

Regulations.

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws;

2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Care" means the continued observation of a facility after closure for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensing and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. "Commission" means the Midwest Interstate Low-Level Radioactive Waste Commission.

c. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

d. "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

e. "Eligible state" means a state qualified to be a party state to this compact as provided in Article VIII.

f. "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or

site, which issued or is being developed for the treatment, storage or disposal of low-level radioactive waste.

g. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U. S. Nuclear Regulatory Commission or a party state, to produce or possess such waste. Generator does not include a person who provides a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region.

h. "Host state" means any state which is designated by the Commission to host a regional facility.

i. "Low-Level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 (42 USC 2014).

j. "Management plan" means the plan adopted by the Commission for the storage, transportation, treatment and disposal of waste within the region.

k. "Party state" means any eligible state which enacts the compact into law.

l. "Person" means any individual, corporation, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, business enterprise or legal entity.

m. "Region" means the area of the party states.

n. "Regional facility" means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the Commission.

o. "Site" means the geographic location of a facility.

p. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

q. "Storage" means the temporary holding of waste for treatment or disposal.

r. "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

s. "Waste management" means the storage, transportation, treatment, or disposal of waste.

ARTICLE III–THE COMMISSION

Midwest Interstate Low-Level Radioactive Waste Commission, establishment.

a. There is hereby created the Midwest Interstate Low-Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

Prohibition.

b. Each Commission member is entitled to one vote. No action of the Commission is binding unless a majority of the total membership cast their vote in the affirmative.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws, and policies which are not inconsistent with this compact, including procedures which substantially conform with the provisions of federal law on administrative procedure compiled at 5 USC 500 to 559 in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or a Commission member.

e. All meetings of the commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

Contracts.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

h. The Commission may:

Contracts.

1. Enter into an agreement with any person, state, or group of states for the right to use regional facilities for waste generated outside of the region and for the right to use facilities outside the region for waste generated within the region. The right of any person to use a regional facility for waste generated outside of the region requires an affirmative vote of a majority of the Commission, including the affirmative vote of the member of the host state in which any affected regional facility is located.

2. Approve the disposal of waste generated within the region at a facility other than a regional facility.

Reports.

3. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

4. Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected.

5. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

6. Suspend the privileges or revoke the membership of a party state by a two-thirds vote of the membership in accordance with Article VIII.

i. The Commission shall:

1. Receive and act on the petition of a nonparty state to become an eligible state.

Report.

2. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.

3. Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

4. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to Article IV, a regional management plan which designates host states for the establishment of needed regional facilities.

5. Adopt an annual budget.

j. Funding of the budget of the Commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay $50,000 or $1,000 per cubic meter of waste shipped from that state in 1980, whichever is lower, to the Commission which shall be used for the administrative costs of the Commission;

2. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

(a) Be sufficient to cover the annual budget of the Commission; and

(b) Represent the financial commitments of all party states to the Commission; and

(c) Be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

Audit.
Contracts.
Report.

k. The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of Commission funds, and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this Article.

Grants.

l. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

Report.

m. The Commission is not liable for any costs associated with any of the following:

1. The licensing and construction of any facility.

2. The operation of any facility,
3. The stabilization and closure of any facility,
4. The care of any facility,
5. The extended institutional control, after care of any facility, or
Transportation. 6. The transportation of waste to any facility.

n. 1. The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the Commission are not liabilities of the party states. Members of the Commission are not personally liable for actions taken by them in their official capacity.

Prohibition. 2. Except as provided under sections m. and n.1. of this article, nothing in this compact alters liability for any act, omission, course of conduct or liability resulting from any causal or other relationships.

o. Any person aggrieved by a final decision of the Commission may obtain judicial review of such decision in any court of competent jurisdiction by filing in such court a petition for review within 60 days after the Commission's final decision.

ARTICLE IV–REGIONAL MANAGEMENT PLAN

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

Health. Safety. a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

b. Develop and consider policies promoting source reduction of waste generated within the region.

c. Develop and adopt procedures and criteria for identifying a party state as a host state for a regional facility. In developing these criteria, the Commission shall consider all the following:

Health. Safety. 1. The health, safety, and welfare of the citizens of the party states.

2. The existence of regional facilities within each party state.

Transportation. 3. The minimization of waste transportation.

4. The volumes and types of wastes generated within each party state.

5. The environmental, economic, and ecological impacts on the air, land and water resources of the party states.

Reports. Studies. d. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed regional facility.

e. Prepare a draft management plan, including procedures, criteria and host states, including alternatives, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption of the management plan. The management plan shall include the Commission's response to public and party state comment.

ARTICLE V–RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Each party state has the right to have all wastes generated within its borders managed at regional facilities subject to the provisions contained in Article IX.c. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to Article III.

Exports.

c. Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III.

Prohibition.
Regulations.
Transportation.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

ARTICLE VI–DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state upon a two-thirds vote of its members.

b. If all regional facilities required by the regional management plan are not developed pursuant to section a., or upon notification that an existing regional facility will be closed, the Commission may designate a host state.

Prohibition.

c. Each party state designated as a host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including but not limited to geological, environmental and economic viability of possible facility locations.

d. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility only upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders.

e. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.

f. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.

g. The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an additional regional facility is or may be required to meet the needs of the region. The Commission shall make this designation following the procedures established under Article IV.

h. Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the Commission may modify the period of its designation.

i. A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any cost, including but not limited to the planning, siting, licensure, operation, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may also include reasonable revenue beyond costs incurred for the host state, subject to approval by the Commission. A host state shall submit an annual financial audit of the operation of the regional facility to the Commission. The fee system may include incentives for source reduction and may be based on the hazard of the waste as well as the volume.

Audit.

Health. Safety.

j. A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

k. A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within three working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

Prohibition.

l. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational.

m. A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

ARTICLE VII–OTHER LAWS AND REGULATIONS

Prohibitions.

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any storage or treatment of waste by the generator on its own premises;

4. Affects any administrative or judicial proceedings pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

Research and development.

6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U. S. Department of Energy or successor agencies or federal research and development activities as described in section 31 of the Atomic Energy Act of 1954 (42 USC 2051); or

Taxes.
Transportation.

7. Affects the rights and powers of any party state or its political subdivisions to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

Contracts.

8. Requires a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.

9. Alters or limits liability of transporters of waste, owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.

b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

Prohibition.
Regulations.

c. No law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

ARTICLE VIII–ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

Delaware.
Illinois.
Indiana.
Iowa.
Kansas.
Kentucky.
Maryland.
Michigan.
Minnesota.
Missouri.
Nebraska.
North Dakota.
Ohio.
South Dakota.
Virginia.
Wisconsin.

a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia and Wisconsin. Eligibility terminates on July 1, 1984.

b. Any state not eligible for membership in the compact may petition the Commission for eligibility. The Commission may establish appropriate eligibility requirements. These requirements may include but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of all host states. Any state becoming eligible upon the approval of the Commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.

c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in Article IIIj.1.

d. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take

action necessary to organize the Commission and implement the provision of this compact.

Prohibition.

e. Any party state may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

f. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges suspended or its membership in the compact revoked by the Commission in accordance with Article III.h.6. Revocation takes effect one year from the date the affected party state receives written notice from the Commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party states's membership in the compact immediately following the vote of the Commission to the governor of the affected party state, all other governors of the party states and the Congress of the United States.

Effective date.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by Congress. The Congress shall have an opportunity to withdraw such consent every five years. Failure of the Congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this article and to the power of the Commission to ban the shipment of waste from the region pursuant to Article III.

h. The withdrawal of a party state from this compact under section e. of this article or the suspension or revocation of a state's membership in this compact under section f. of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the Commission to be a host state has 90 days from receipt by the Governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section e. of this article. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

ARTICLE IX–PENALTIES

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. Unless otherwise authorized by the Commission pursuant to Article III.h. after January 1, 1986, it is a violation of this compact:

1. For any person to deposit at a regional facility waste not generated within the region;

2. For any regional facility to accept waste not generated within the region;

Exports.

3. For any person to export from the region waste which is generated within the region; or

4. For any person to dispose of waste at a facility other than a regional facility.

Regulations.

c. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

d. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

ARTICLE X–SEVERABILITY AND CONSTRUCTION

Provisions held invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 226. Rocky Mountain Low-level Radioactive Waste Compact.

42 USC 2021d note.
Arizona.
Colorado.
Nevada.
New Mexico.
Utah.
Wyoming.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

ARTICLE I–FINDINGS AND PURPOSE

Research and development.

(a) The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities.

42 USC 2021b note.

Moreover, the party states find that the United States Congress, by enacting the "Low-Level Radioactive Waste Policy Act" (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

Health.
Safety.

(b) It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

(a) "Board" means the Rocky Mountain low-level radioactive waste board;

(b) "Carrier" means a person who transports low-level waste;

(c) "Disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

(d) "Facility" means any property, equipment or structure used or to be used for the management of low-level waste;

(e) "Generate" means to produce low-level waste;

(f) "Host state" means a party state in which a regional facility is located or being developed;

(g) "Low-level waste" or "waste" means radioactive waste other than:

(i) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(ii) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(iii) Waste material containing transuranic elements with contamination levels greater than ten (10) nanocuries per gram of waste material;

(iv) By-product material as defined in Section 11e.(2) of the "Atomic Energy Act of 1954," as amended November 8, 1978; or

(v) Wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium.

(h) "Management" means collection, consolidation, storage, treatment, incineration or disposal;

(i) "Operator" means a person who operates a regional facility;

(j) "Person" means an individual, corporation, partnership or other legal entity, whether public or private;

(k) "Region" means the combined geographic area within the boundaries of the party states; and

(l) "Regional facility" means a facility within any party state which either:

(i) has been approved as a regional facility by the board; or

Nevada.

(ii) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE III–RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS

Nevada.

(a) There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one (1) regional facility shall be open and operating in a party state other than Nevada within six (6) years after this compact becomes law in Nevada and in one (1) other state.

Health. Safety.

(b) Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

(c) Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent (20%) or more in cubic feet except as otherwise determined by the board of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection (d) of this article.

(d) A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(i) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article IV before allowing site preparation or physical construction to begin;

Health. Safety.

(ii) Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(iii) Subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(iv) Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

Report.

(v) Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

Report.

(vi) Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

Nevada.

(e) Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under subsection (c) of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

(f) Each party state:

Regulations.
Transportation.

(i) Agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(A) Periodic inspection of packaging and shipping practices;

(B) Periodic inspections of waste containers while in the custody of carriers; and

(C) Appropriate enforcement actions with respect to violations.

Regulations.
Transportation.

(ii) Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(iii) May impose fees to recover the cost of the practices provided for in paragraph (i) and (ii) of this subsection;

(iv) Shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

Regulations.

(v) May impose requirements or regulations more stringent than those required by this subsection.

ARTICLE IV–BOARD APPROVAL OF REGIONAL FACILITIES

(a) Within ninety (90) days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

(b) A regional facility shall be approved by the board if and only if the board determines that:

(i) There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(ii) The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE V–SURCHARGES

(a) The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

(b) A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

ARTICLE VI–THE BOARD

Prohibition.
Rocky Mountain Low-Level Radioactive Waste Board, establishment.

(a) The "Rocky Mountain low-level radioactive waste board", which shall not be an agency or instrumentality of any party state, is created.

(b) The board shall consist of one (1) member from each party state. The governor shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

(c) Each party state is entitled to one (1) vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

(d) The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline or termination of any of its employees.

(e) The board shall pay necessary travel and reasonable per diem expenses of its members, alternates, and advisory committee members.

(f) The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty (30) days. Any action taken by telephone shall be noted in the minutes of the board.

(g) The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

(h) The board may establish its offices in space provided for that purpose by any of the party states, or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

Contracts.

(i) Consistent with available funds, the board may contract for necessary personnel services to carry out its duties. Staff shall be employed without regard for the personnel, civil service, or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

(j) The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

(k) The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

Audit.
Report.

Report.

(l) The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(m) Upon legislative enactment of this compact, each party state shall consider the need to appropriate seventy thousand dollars ($70,000.00) to

the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection (a) of article V of this compact.

Grants.
Report.

(n) The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the board.

(o) In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

Report.

(i) Shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(ii) May assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(iii) Shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(iv) Shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(v) May keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(vi) Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(vii) May develop a regional low-level waste management plan;

(viii) May establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

Contracts.
Prohibition.

(ix) May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(x) Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(xi) Shall prepare contingency plans, with the cooperation and approval of the hose state, for management of low-level waste in the event any regional facility should be closed;

Records.

(xii) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(xiii) Shall have the power to sue; and

(xiv) When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

ARTICLE VII–PROHIBITED ACTS AND PENALTIES

(a) It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

Exports.

(b) After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) The economic impact of the export of the waste on the regional facilities;

(ii) The economic impact on the generator of refusing to permit the export of the waste; and

(iii) The availability of a regional facility appropriate for the disposal of the waste involved.

(c) After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

Imports.

(i) the impact of importing waste on the available capacity and projected life of the regional facilities;

(ii) the economic impact on the regional facilities; and

(iii) the availability of a regional facility appropriate for the disposal of the type of waste involved.

(d) It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) the impact of allowing such management on the available capacity and projected life of the regional facilities;

(ii) the availability of a facility appropriate for the disposal of the type of waste involved;

(iii) the existence of transuranic elements in the waste; and

(iv) the economic impact on the regional facilities.

(e) Any person who violates subsection (a) or (b) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which would have been charged for disposal of the waste at a regional facility.

(f) Any person who violates subsection (c) or (d) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which were charged for management of the waste at a regional facility.

(g) The civil penalties provided for in subsections (e) and (f) of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other

counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

(h) Out of any civil penalty collected for a violation of subsection (a) or (b) of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(i) Any civil penalty collected for a violation of subsection (c) or (d) of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(j) Violations of subsection (a), (b), (c), or (d) of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

Prohibition.

(k) No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

ARTICLE VIII–ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

Arizona.
Colorado.
Nevada.
New Mexico.
Utah.
Wyoming.

(a) Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

(b) An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor this adopting compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

Effective date.

(c) This compact shall take effect when it has been enacted by the legislatures of two (2) eligible states. However, subsections (b) and (c) of article VII shall not take effect until Congress has by law consented to this compact. Every five (5) years after such consent has been given, Congress may by law withdraw its consent.

Nevada.

(d) A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but not such repeal shall take effect until two (2) years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five (5) years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

(e) A party state may be excluded from this compact by a two-thirds (2/3) vote of the members representing the other party states, acting in a

meeting, on the ground that the state to be excluded has failed to carry out its obligation under this compact. Such an exclusion may be terminated upon a two-thirds (2/3) vote of the members acting in a meeting.

ARTICLE IX–CONSTRUCTION AND SEVERABILITY

(a) The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

Prohibition.

(b) Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

Provisions held invalid.

(c) If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

Sec. 227. Northeast Interstate Low-level Radioactive Waste Management Compact.

42 USC 2021d note.
42 USC 2021d.
Connecticut.
Delaware.
Maryland.
New Jersey.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act, the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

ARTICLE I–POLICY AND PURPOSE

Research and development.

There is hereby created the Northeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize that the Congress has declared that each state is responsible for providing for the availability of capacity, either within or outside its borders, for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of atomic energy defense activities of the federal government, as defined in the Low-Level Radioactive Waste Policy Act (P. L. 96-573, "The Act"), or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Act has provided for and encouraged the development of regional low-level radioactive waste compacts to manage such waste. The party states recognize that the long-term, safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

42 USC 2021d note.

Health.
Safety.

In order to promote the health and safety of the region, it is the policy of the party states to: enter into a regional low-level radioactive waste management compact as a means of facilitating an interstate cooperative effort, provide for proper transportation of low-level waste generated in the region, minimize the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits, and obligations of proper low-level radioactive waste management equitably among the party states,

and ensure the environmentally sound and economical management of low-level radioactive waste.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "commission" means the Northeast Interstate Low-Level Radioactive Waste Commission established pursuant to Article IV of this compact;

b. "custodial agency" means the agency the government designated to act on behalf of the government owner of the regional facility;

c. "disposal" means the isolation of low-level radioactive waste from the biosphere inhabited by man and his food chains;

d. "facility" means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level waste, but shall not include on-site treatment or storage by a generator;

e. "generator" means a person who produces or processes low-level waste, but does not include persons who only provide a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region;

f. "high-level waste" means 1) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentration; and 2) any other highly radioactive material determined by the federal government as requiring permanent isolation;

g. "host state" means a party state in which a regional facility is located or being developed;

h. "institutional control" means the continued observation, monitoring, and care of the regional facility following transfer of control of the regional facility from the operator to the custodial agency;

i. "low-level waste" means radioactive waste that 1) is neither high-level waste nor transuranic waste, nor spent nuclear fuel, nor by-product material as defined in section 11e (2) of the Atomic Energy Act of 1954 as amended; and 2) is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in P. L. 96-573, or federal research and development activities;

j. "party state" means any state which is a signatory party in good standing to this compact;

k. "person" means an individual, corporation, business enterprise or other legal entity, either public or private and their legal successors;

l. "post-closure observation and maintenance" means the continued monitoring of a closed regional facility to ensure the integrity and environmental safety of the site through compliance with applicable licensing and regulatory requirements; prevention of unwarranted intrusion, and correction of problems;

m. "region" means the entire area of the party states;

n. "regional facility" means a facility as defined in this section which has been designated or accepted by the Commission;

o. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territory subject to the laws of the United States;

p. "storage" means the holding of waste for treatment or disposal;

q. "transuranic waste" means waste material containing radionuclides with an atomic number greater than 92 which are excluded from shallow land burial by the federal government;

r. "treatment" means any method, technique or process, including storage for decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render such waste safer for transport or disposal, amenable for recovery, convertible to another usable material or reduced in volume;

s. "waste" means low-level radioactive waste as defined in this section;

t. "waste management" means the storage, treatment, transportation, and disposal, where applicable, of waste.

ARTICLE III–RIGHTS AND OBLIGATIONS

a. There shall be provided within the region one or more regional facilities which, together with such other facilities as may be made available to the region, will provide sufficient capacity to manage all wastes generated within the region.

Exports. Prohibition.

1. Regional facilities shall be entitled to waste generated within the region, unless otherwise provided by the Commission. To the extent regional facilities are available, no waste generated within a party state shall be exported to facilities outside the region unless such exportation is approved by the Commission and the affected host state(s).

Prohibition.

2. After January 1, 1986, no person shall deposit at a regional facility waste generated outside the region, and further, no regional facility shall accept waste generated outside the region, unless approved by the Commission and the affected host state(s).

b. The rights, responsibilities and obligations of each party state to this compact are as follows:

1. Each party state shall have the right to have all wastes generated within its borders managed at regional facilities, and shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV(i)(11). The right of access by a generator within a party state to any regional facility is limited by the generator's adherence to applicable state and federal laws and regulations and the provisions of this compact.

Regulations. Transportation.

2. To the extent not prohibited by federal law, each party state shall institute procedures which will require shipments of low-level waste generated within or passing through its borders to be consistent with applicable federal packaging and transportation regulations and applicable host state packaging and transportation regulations for management of low-level waste; provided, however, that these practices shall not impose unreasonable, burdensome impediments to the management of low-level waste in the region. Upon notification by a host state that a generator, shipper, or carrier within the party state is

in violation of applicable packaging or transportation regulations, the party state shall take appropriate action to ensure that such violations do not recur.

3. Each party state may impose reasonable fees upon generators, shippers, or carriers to recover the cost of inspections and other practices under this compact.

4. Each party state shall encourage generators within its borders to minimize the volumes of waste requiring disposal.

5. Each party state has the right to rely on the good faith performance by every other party state of acts which ensure the provision of facilities for regional availability and their use in a manner consistent with this compact.

6. Each party state shall provide to the Commission any data and information necessary for the implementation of the Commission's responsibilities, and shall establish the capability to obtain any data and information necessary to meet its obligation as herein defined.

7. Each party state shall have the capability to host a regional facility in a timely manner and to ensure the post-closure observation and maintenance, and institutional control of any regional facility within its borders.

Prohibition.
Transportation.

8. No non-host party state shall be liable for any injury to persons or property resulting from the operation of a regional facility or the transportation of waste to a regional facility; however, if the host state itself is the operator of the regional facility, its liability shall be that of any private operator.

c. The rights, responsibilities and obligations of a host state are as follows:

1. To the extent not prohibited by federal law, a host state shall ensure the timely development and the safe operation, closure, post-closure observation and maintenance, and institutional control of any regional facility within its borders.

2. In accordance with procedures established in Articles V and IX, the host state shall provide for the establishment of a reasonable structure of fees sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, and institutional control of a regional facility. It may also establish surcharges to cover the regulatory costs, incentives, and compensation associated with a regional facility; provided, however, that without the express approval of the Commission, no distinction in fees or surcharges shall be made between persons of the several states party to this compact.

Prohibition.

Prohibition.
Regulations.

3. To the extent not prohibited by federal law, a host state may establish requirements and regulations pertaining to the management of waste at a regional facility; provided, however, that such requirements shall not impose unreasonable impediments to the management of low-level waste within the region. Nor may a host state or a subdivision impose such restrictive requirements on the siting or operation of a regional facility that, along or as a whole, they serve as unreasonable barriers or prohibitions to the siting or operation of such a facility.

Report.

4. Each host state shall submit to the Commission annually a report concerning each operating regional facility within its borders.

Audit.

The report shall contain projections of the anticipated future capacity and availability of the regional facility, a financial audit of its operations, and other information as may be required by the Commission; and in the case of regional facilities in institutional control or otherwise no longer operating, the host states shall furnish such information as may be required on the facilities still subject to their jurisdiction.

Report.

5. A host state shall notify the Commission immediately if any exigency arises which requires the permanent, temporary, or possible closure of any regional facility located therein at a time earlier than projected in its most recent annual report to the Commission. The

Studies.

Commission may conduct studies, hold hearings, or take such other measures to ensure that the actions taken are necessary and compatible with the obligations of the host state under this compact.

ARTICLE IV–THE COMMISSION

Northeast Interstate Low-Level Radioactive Waste Commission, establishment.

a. There is hereby created the Northeast Interstate Low-Level Radioactive Waste Commission. The Commission shall consist of one member from each party state to be appointed by the Governor according to procedures of each party state, except that a host state shall have two members during the period that it has an operating regional Governor shall notify the Commission in writing of the identity of the facility. The member and one alternate, who may act on behalf of the member only in the member's absence.

Prohibition.

b. Each Commission member shall be entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative.

Regulations.

c. The Commission shall elect annually from among its members a presiding officer and such other officers as it deems appropriate. The Commission shall adopt and publish, in convenient form, such rules and regulations as are necessary for due process in the performance of its duties and powers under this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the presiding officer, or upon the call of a party state member.

e. All meetings of the Commission shall be open to the public with reasonable prior public notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal matters. All Commission actions and decisions shall be made in open meetings and appropriately recorded. A roll call vote may be required upon request of any party state or the presiding officer.

f. The Commission may establish such committees as it deems necessary.

Contracts.

g. The commission may appoint, contract for, and compensate such limited staff as it determines necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission.

h. The Commission shall adopt an annual budget for its operations.

i. The Commission shall have the following duties and powers:

1. The Commission shall receive and act on the application of a non-party state to become an eligible state in accordance with Article VII(e).

2. The Commission shall receive and act on the application of an eligible state to become a party state in accordance with Article VII(b).

Report.

3. The commission shall submit an annual report to and otherwise communicate with the governors and the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.

4. Upon request of party states, the Commission shall meditate disputes which arise between the party states regarding this compact.

5. The Commission shall develop, adopt and maintain a regional management plan to ensure safe and effective management of waste within the region, pursuant to Article V.

Report.
Studies.

6. The Commission may conduct such legislative or adjudicatory hearings, and require such reports, studies, evidence and testimony as are necessary to perform its duties and functions.

Regulation.

7. The Commission shall establish by regulation, after public notice and opportunity for comment, such procedural regulations as deemed necessary to ensure efficient operation, the orderly gathering of information, and the protection of the rights of due process of affected persons.

8. In accordance with the procedures and criteria set forth in Article V, the Commission shall accept a host state's proposed facility as a regional facility.

9. In accordance with the procedures and criteria set forth in Article V, the Commission may designate, by a two-thirds vote, host states for the establishment of needed regional facilities. The

Prohibition.

Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facilities.

10. The commission may require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary for the implementation of Commission responsibilities.

Contracts.
Imports.

11. The Commission may enter into agreements with any person, state, regional body, or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of the representatives of the host state in which any affected regional facility is located. This shall be done only after the Commission and the host state have made an assessment of the affected facilities' capability to handle such wastes and of relevant environmental, economic, and public health factors, as defined by the appropriate regulatory authorities.

Exports.

12. The Commission may, upon petition, grant an individual generator or group of generators in the region the right to export wastes to a facility located outside the region. Such grant of right shall be for a period of time and amount of waste and on such other

terms and conditions as determined by the Commission and approved by the affected host states.

13. The Commission may appear as an intervenor or party in interest before any court of law, federal, state or local agency, board or commission that has jurisdiction over the management of wastes. Such authority to intervene or otherwise appear shall be exercised only after a two-thirds vote of the Commission. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation as it deems necessary.

Report.

14. The Commission may impose sanctions, including but not limited to, fines, suspension of privileges and revocation of the membership of a party state in accordance with Article VII. The Commission shall have the authority to revoke, in accordance with Article VII(g), the membership of a party state that creates unreasonable barriers to the siting of a needed regional facility or refuses to accept host state responsibilities upon designation by the Commission.

Regulation.

15. The Commission shall establish by regulation criteria for and shall review the fee and surcharge systems in accordance with Articles V and IX.

16. The Commission shall review the capability of party states to ensure the siting, operation, post-closure observation and maintenance, and institutional control of any facility within its borders.

17. The Commission shall review the compact legislation every five years prior to federal congressional review provided for in the Act, and may recommend legislative action.

Regulations.

18. The Commission has the authority to develop and provide to party states such rules, regulations and guidelines as it deems appropriate for the efficient, consistent, fair and reasonable implementation of the compact.

j. There is hereby established a Commission operating account. The Commission is authorized to expend monies from such account for the expenses of any staff and consultants designated under section (g) of this Article and for official Commission business. Financial support of the Commission account shall be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay $70,000 to the Commission, which shall be used for administrative cost of the Commission.

2. The commission shall impose a "commission surcharge" per unit of waste received at any regional facility as provided in Article V.

3. Until such time as at least one regional facility is in operation and accepting waste for management, or to the extent that revenues under paragraphs (1) and (2) of this section are unavailable or insufficient to cover the approved annual budget of the Commission, each party state shall pay an apportioned amount of the difference between the funds available and the total budget in accordance with the following formula:

(a) 20 percent in equal shares;

(b) 30 percent in the proportion that the population of the party state bears to the total population of all party states, according to the most recent U. S. census;

(c) 50 percent in the proportion that the waste generated for management in each party state bears to the total waste generated for management in the region for the most recent calendar year in which reliable data are available, as determined by the Commission.

k. The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission accounts and funds and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV(i)(3).

Audit.
Report.

l. The Commission may accept, receive, utilize and dispose for any of this purposes and functions any and all donations, loans, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation, loans, or grant accepted pursuant to this paragraph, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission. The Commission shall by rule establish guidelines for the acceptance of donations, loans, grants of money, equipment, supplies, materials and services. This shall provide that no donor, grantor or lender may derive unfair or unreasonable advantage in any proceeding before the Commission.

Grants.
Loans.
Report.

m. The Commission herein established is a body corporate and politic, separate and distinct from the party states and shall be so liable for its own actions. Liabilities of the Commission shall not be deemed liabilities of the party states, nor shall members of the Commission be personally liable for action taken by them in their official capacity.

Prohibitions.

1. The Commission shall not be responsible for any costs or expenses associated with the creation, operation, closure, post-closure observation and maintenance, and institutional control of any regional facility, or any associated regulatory activities of the party states.

2. Except as otherwise provided herein, this compact shall not be construed to alter the incidence of liability of any kind for any act, omission, or course of conduct. Generators, shippers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

n. The United States district courts in the District of Columbia shall have original jurisdiction of all actions brought by or against the Commission. Any such action initiated in a state court shall be removed to the designated United States district court in the manner provided by Act of June 25, 1948 as amended (28 USC 14446). This section shall not alter the jurisdiction of the United States Court of Appeals for the District of Columbia Circuit to review the final administrative decisions of the Commission as set forth in the paragraph below.

Courts, U.S. District of Columbia.
Prohibition.

o. The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the final administrative decisions of the Commission.

Courts, U.S.

1. Any person aggrieved by a final administrative decision may obtain review of the decision by filing a petition for review within 60 days after the Commission's final decision.

2. In the event that review is sought of the Commission's decision relative to the designation of a host state, the Court of Appeals shall accord the matter an expedited review, and, if the Court does not rule within 90 days after a petition for review has been filed, the Commission's decision shall be deemed to be affirmed.

Prohibition.

3. The courts shall not substitute their judgement for that of the Commission as to the decisions of policy or weight of the evidence on questions of fact. The Court may affirm the decision of the Commission or remand the case for further proceedings if it finds that the petitioners has been aggrieved because the finding, inferences, conclusions or decisions of the Commission are:

a. in violation of the Constitution of the United States;

b. in excess of the authority granted to the Commission by this compact;

c. made upon unlawful procedure to the detriment of any person;

d. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Regulations.

4. The Commission shall be deemed to be acting in a legislative capacity except in those instances where it decides, pursuant to its rules and regulations, that its determinations are adjudicatory in nature.

ARTICLE V–HOST STATE SELECTION AND DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

a. The Commission shall develop, adopt, maintain, and implement a regional management plan to ensure the safe and efficient management of waste within the region. The plan shall include the following:

1. a current inventory of all generators within the region;

2. a current inventory of all facilities within the region, including information on the size, capacity, location, specific waste being handled, and projected useful life of each facility;

Health.
Safety.

3. consistent with considerations for public health and safety as defined by appropriate regulatory authorities, a determination of the type and number of regional facilities which are presently necessary and projected to be necessary to manage waste generated within the region;

4. reference guidelines, as defined by appropriate regulatory authorities, for the party states for establishing the criteria and procedures to evaluate locations for regional facilities.

b. The Commission shall develop and adopt criteria and procedures for reviewing a party state which volunteers to host a regional facility within its borders. These criteria shall be developed with public notice and shall include the following factors: the capability of the volunteering party state to host a regional facility in a timely manner and to ensure its post-closure observation and maintenance, and institutional control; and the anticipated economic feasibility of the proposed facility.

1. Any party state may volunteer to host a regional facility within its borders. The Commission may set terms and conditions to encourage a party state to volunteer to be the first host state.

2. Consistent with the review required above, the Commission shall, upon a two-thirds affirmative vote, designate a volunteering party state to serve as a host state.

c. If all regional facilities required by the regional management plan are not developed pursuant to section (b), or upon notification that an existing facility will be closed, or upon determination that an additional regional facility is or may be required, the Commission shall convene to consider designation of a host state.

1. The Commission shall develop and adopt procedures for designating a party state to be a host state for a regional facility. The Commission shall base its decision on the following criteria:

Health. Safety.

a. the health, safety and welfare of citizens of the party states as defined by the appropriate regulatory authorities;

b. the environmental, economic, and social effects of a regional facility on the party states;

The Commission shall also base its decision on the following criteria:

c. economic benefits and costs;

d. the volumes and types of waste generated within each party state;

Transportation.

e. the minimization of waste transportation; and

f. the existence of regional facilities within the party states.

2. Following its established criteria and procedures, the Commission shall designate by a two-thirds affirmative vote a party state to serve as a host state. A current host state shall have the right of first refusal for a succeeding regional facility.

Studies.

3. The Commission shall conduct such hearings and studies, and take such evidence and testimony as is required by its approved procedures prior to designating a host state. Public hearings shall be held upon request in each candidate host state prior to final evaluation and selection.

4. A party state which has been designated as a host state by the Commission and which fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

d. Each host state shall be responsible for the timely identification of a site and the time development and operation of a regional facility. The proposed facility shall meet geologic, environmental and economic criteria which shall not conflict with applicable federal and host state laws and regulations.

1. To the extent not prohibited by federal law, a host state may regulate and license any facility within its borders.

Report.

2. To the extent not prohibited by federal law, a host state shall ensure the safe operation, closure, post-closure observation and maintenance, and institutional control of a facility, including adequate financial assurances by the operator and adequate emergency response procedures. It shall periodically review and report to the Commission on the status of the post-closure and institutional control funds and the remaining useful life of the facility.

3. A host state shall solicit comments from each party state and the Commission regarding the siting, operation, financial assurances, closure, post-closure observation and maintenance, and institutional control of a regional facility.

e. A host state intending to close a regional facility within its borders shall notify the Commission in writing of its intention and reasons therefore.

1. Except as otherwise provided, such notification shall be given to the Commission at least five years prior to the scheduled date of closure.

Health. Safety.

2. A host state may close a regional facility within its borders in the event of an emergency of if a condition exists which constitutes a substantial threat to public health and safety. A host state shall notify the Commission in writing within three days of its action and shall within 30 working days, show justification for the closing.

3. In the event that a regional facility closes before an additional or new facility becomes operational, the Commission shall make interim arrangements for the storage or disposal of waste generated within the region until such time that a new regional facility is operational.

f. Fees and surcharges shall be imposed equitably upon all users of a regional facility, based upon criteria established by the Commission.

Regulations.

1. A host state shall, according to its lawful administrative procedures, approve fee schedules to be charged to all users of the regional facility within its borders. Except as provided herein, such fee schedules shall be established by the operator of a regional facility, under applicable state regulations, and shall be reasonable and sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, institutional control of the regional facility. The host state shall determine a schedule for contributions to the post-closure observation and maintenance, and institutional control funds. Such fee schedules shall not be approved unless the Commission has been given reasonable opportunity to review and make recommendations on the proposed fee schedules.

Regulation.

2. A host state may, according to its lawful administrative procedures impose a state surcharge per unit of waste received at any regional facility within its borders. The state surcharge shall be in addition to the fees charged for waste management. The surcharge shall be sufficient to cover all reasonable costs associated with administration and regulation of the facility. The surcharge shall not be established unless the Commission has been provided reasonable opportunity to review and make recommendations on the proposed state surcharge.

3. The Commission shall impose a commission surcharge per unit of waste received at any regional facility. The total monies collected shall be adequate to pay the cost and expenses of the Commission and shall be remitted to the Commission on a timely basis as determined by the Commission. The surcharge may be increased or decreased as the Commission deems necessary.

4. Nothing herein shall be construed to limit the ability of the host state, or the political subdivision in which the regional facility is

situated, to impose surcharges for purposes including, but not limited to, host community compensation and host community development incentives. Such surcharges shall be reasonable and shall not be imposed unless the Commission has been provided reasonable opportunity to review and make recommendations on the proposed surcharge. Such surcharge may be recovered through the approved fee and surcharge schedules provided for in this section.

ARTICLE VI–OTHER LAWS AND REGULATIONS

42 USC 2021. Prohibition.

a. Nothing in this compact shall be construed to abrogate or limit the regulatory responsibility or authority of the U.S. Nuclear Regulatory Commission or of an Agreement State under Section 274 of the Atomic Energy Act of 1954, as amended.

b. The laws or portions of those laws of a party state that are not inconsistent with this compact remain in full force.

Prohibition.

c. Nothing in this compact shall make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective.

Prohibition.

d. No judicial or administrative proceeding pending on the effective date of the compact shall be affected by the compact.

Prohibition.

e. Except as provided for in Article III(b)(2) and (c)(3), this compact shall not affect the relations between and the respective internal responsibilities of the government of a party state and its subdivisions.

42 USC 2021b note. Research and development.

f. The generation, treatment, storage, transportation, or disposal of waste generated by the atomic energy defense activities of the federal government, as defined in P.L. 96-573, or federal research and development activities are not affected by this compact.

Taxes. Transportation.

g. To the extent that the rights and powers of any state or political subdivision to license and regulate any facility within its borders and to impose taxes, fees, and surcharges on the waste managed at that regional facility do not operate as an unreasonable impediment to the transportation, treatment or disposal of waste, such rights and powers shall not be diminished by this compact.

Prohibition.

h. No party state shall enact any law or regulation or attempt to enforce any measure which is inconsistent with this compact. Such measures may provide the basis for the Commission to suspend or terminate a party state's membership and privileges under this compact.

i. All laws and regulations, or parts thereof of any party state or subdivision or instrumentality thereof which are inconsistent with this compact are hereby repealed and declared null and void. Any legal right, obligation, violation or penalty arising under such laws or regulations prior to the enactment of this compact, or not in conflict with it, shall not be affected.

Prohibition.

j. Subject to Article III(c)(2), no law or regulation of a party state or subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

Prohibition.

k. No law, ordinance, or regulation of any party state or any subdivision or instrumentality thereof shall prohibit, suspend, or unreasonably delay, limit or restrict the operation of a siting or licensing agency in the designation, siting, or licensing of a regional facility. Any

such provision in existence at the time of ratification of this compact is hereby repealed.

ARTICLE VII–ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

Connecticut.
Delaware.
Maine.
Maryland.
Massachusetts.
New Hampshire.
New Jersey.
New York.
Pennsylvania.
Rhode Island.
Vermont.

a. The initially eligible parties to this compact shall be the eleven states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Initial eligibility will expire June 30, 1984.

b. Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state, repeal of all statutes or statutory provisions that pose unreasonable impediments to the capability of the state to host a regional facility in a timely manner, and upon payment of the fees required by Article IV(j)(1). An eligible state may become a party to this compact by an executive order by the governor of the state and upon payment of the fees required by Article IV(j)(1). However, any state which becomes a party state by executive order shall cease to be a party state upon the final adjournment of the next general or regular session of its legislature, unless this compact has by then been enacted as a statute by the state and all statutes and statutory provisions that conflict with the compact have been repealed.

Effective date.

c. The compact shall become effective in a party state upon enactment by that state. It shall not become initially effective in the region until enacted into law by three party states and consent given to it by the Congress.

d. The first three states eligible to become party states to this compact which adopt this compact into law as required in Article VII(b) shall immediately, upon the appointment of their Commission members, constitute themselves as the Northeast Interstate Low-Level Radioactive Waste Commission. They shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

1. The Commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and of the laws of the party states relating to the enactment of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (b) of this Article.

e. Any state not expressly declared eligible to become a party state to this compact in section (a) of this Article may petition the Commission to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact pursuant to the provisions of this section, including a public hearing on the application. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of the representatives of the host states in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact

and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

Prohibition.

f. No state holding membership in any other regional compact for the management of low-level radioactive waste may become a member of this compact.

g. Any party state which fails to comply with the provisions of this compact or to fulfill its obligations hereunder may have its privileges suspended or, upon a two-thirds vote of the Commission, after full opportunity for hearing and comment, have its membership in the compact revoked. Revocation shall take effect one year from the date the affected party state receives written notice from the Commission of its action. All legal rights of the affected party state established under this compact shall cease upon the effective date of revocation, except that any legal obligations of that party state arising prior to revocation will not cease until they have been fulfilled. As soon as practicable after a Commission decision suspending or revoking party state status, the Commission shall provide written notice of the action and a copy of the resolution to the governors and the presiding officer of each body of the state legislatures of the party states, and to chairmen of the appropriate committees of the Congress.

h. Any party state may withdraw from this compact by repealing its authorization legislation, and all legal rights under this compact of the party state cease upon repeal. However, no such withdrawal shall take effect until five years after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Commission and to the governor of each party state. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to that time.

1. Upon receipt of the notification, the Commission shall, as soon as practicable, provide copies to the governors and the presiding officer of each body of the state legislatures of the party states, and to the chairmen of the appropriate committees of the Congress.

2. A regional facility in a withdrawing state shall remain available to the region for five years after the date the Commission receives written notification of the intent to withdraw or until the prescheduled dates of closure, whichever occurs first.

i. This compact may be terminated only by the affirmative action of the Congress or by the repeal of all laws enacting the compact in each party state. The Congress may by law withdraw its consent every five years after the compact takes effect.

1. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections (b) and (e) of this Article.

2. The withdrawal of a party state from this compact under section (h) or the revocation of a state's membership in this compact under section (g) of this Article shall not affect the applicability of the compact to the remaining party states.

ARTICLE VIII–PENALTIES

a. Each party state, consistent with federal and host state regulations and laws, shall enforce penalties against any person not acting as an official of a party state for violation of this compact in the party state. Each party state acknowledges that the shipment to a host state of waste

packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the host state. These sanctions may include, but are not limited to, suspension or revocation of the violator's rights of access to the facility in the host state.

Regulations.

b. Without the express approval of the Commission, it shall be unlawful for any person to dispose of any low-level waste within the region except at a regional facility; provided, however, that this restriction shall not apply to waste which is permitted by applicable federal or state regulations to be discarded without regard to its radioactivity.

c. Unless specifically approved by the Commission and affected host state(s) pursuant to Article IV, it shall be a violation of this compact for: 1) any person to deposit at a regional facility waste not generated within the region; 2) any regional facility to accept waste not generated within the region; and 3) any person to export from the region waste generated within the region.

d. Primary responsibility for enforcing provisions of the law will rest with the affected state or states. The Commission, upon a two-thirds vote of its members, may bring action to seek enforcement or appropriate remedies against violators of the provisions and regulations for this compact as provided for in Article IV.

ARTICLE IX–COMPENSATION PROVISIONS

a. The responsibility for ensuring compensation and clean-up during the operational and post-closure periods rests with the host state, as set forth herein.

1. The host state shall ensure the availability of funds and procedures for compensation of injured persons, including facility employees, and property damage (except any possible claims for diminution of property values) due to the existence and operation of a regional facility, and for clean-up and restoration of the facility and surrounding areas.

2. The state may satisfy this obligation by requiring bonds, insurance, compensation funds, or any other means or combination of means, imposed either on the facility operator or assumed by the state itself, or both. Nothing in this article alters the liability of any person or governmental entity under applicable state and federal laws.

Prohibition.

b. The Commission shall provide a means of compensation for persons injured or property damaged during the institutional control period due to the radioactive and waste management nature of the regional facility. This responsibility may be met by a special fund, insurance, or other means.

Contracts.
Insurance.

1. The Commission is authorized, at its discretion, to impose a waste management surcharge, to be collected by the operator or owner of the regional facility; to establish a separate insurance entity, formed by but separate from the Commission itself, but under such terms and conditions as it decides, and exempt from state insurance regulation; to contract with this company or other entity for coverage; or to take any other measures, or combination of measures, to implement the goals of this section.

Regulations.

2. The existence of this fund or other means of compensation shall not imply liability by the Commission, the non-host party states, or any of their officials and staff, which are exempted from liability by

other provisions of this compact. Claims or suits for compensation shall be directed against the fund, the insurance company, or other entity, unless the Commission, by regulation, directs otherwise.

c. Not withstanding any other provisions, the Commission fund, insurance, or other means of compensation shall also be available for third party relief during the operational and post-closure periods, as the Commission may direct, but only to the extent that no other funds, insurance, tort compensation, or other means are available from the host state or other entities, under section a. of this Article or otherwise; provided, that this Commission contribution shall not apply to clean-up or restoration of the regional facility and its environs during the operational and post-closure period.

d. The liability of the Commission's fund, insurance entity, or any other means of compensation shall be limited to the amount currently contained therein; provided that the Commission may set some lower limit to ensure the integrity and availability of the fund or other entity for liability.

ARTICLE X–SEVERABILITY AND CONSTRUCTION

Provisions held invalid.

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared by a federal court of competent jurisdiction to be contrary to the Constitution of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. The provisions of this compact shall be liberally construed to give effect to the purpose thereof.[43]

Approved January 15, 1986.

[43]Amends Public Law 96-573 by striking out sections 1, 2, 3, 4 and inserting in lieu thereof Public Law 99-240.

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APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT CONSENT ACT

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APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT CONSENT ACT

Public Law 100-319 102 Stat. 471

May 19, 1988

An Act

Appalachian States Low-Level Radioactive Waste Compact Consent Act.

To grant the consent of the Congress to the Appalachian States Low-Level Radioactive Waste Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

42 USC 2021d note.

This Act may be cited as the "Appalachian States Low-Level Radioactive Waste Compact Consent Act."

Sec. 2. Congressional Finding.

42 USC 2021d note.

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act.

Sec. 3. Conditions of Consent to Compact.

42 USC 2021d note.

The consent of the Congress to the compact set forth in section 5–

(1) shall become effective on the date of the enactment of this Act,

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, and

(3) is granted only for so long as the Appalachian States Low-Level Radioactive Waste Commission, advisory committees, and regional boards established in the compact comply with all the provisions of such Act.

Sec. 4. Congressional Review.

42 USC 2021d note.

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided for in such compact.

Sec. 5. Appalachian States Low-level Radioactive Waste Compact.

42 USC 2021d note. Delaware. Maryland. Pennsylvania. West Virginia. Waste disposal.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2)), the consent of Congress is given to the States of Pennsylvania, West Virginia, and any eligible States as defined in Article 5(A) of the Appalachian States Low-Level Radioactive Waste Compact to enter into such compact. Such compact is substantially as follows:

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

PREAMBLE

Whereas, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 USC §§2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

Public health and safety.

Whereas, Under section 4(a)(1)(A) of the Low-Level Radioactive Waste Policy Act (42 USC § 2021d(a)(1)(A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders;

Whereas, To promote the health, safety and welfare of residents within, the Commonwealth of Pennsylvania and other eligible states as defined in Article 5(A) of this compact shall enter into a compact for the regional management and disposal of low-level radioactive waste.

Now, therefore, the Commonwealth of Pennsylvania and the state of West Virginia and other eligible states hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

ARTICLE I–DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

(a) "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) "Carrier" means a person who transports low-level waste to a regional facility.

(c) "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

(d) "Disposal" means the isolation of low-level waste from the biosphere.

(e) "Facility" means any real personal property within the region, and improvements thereof or thereon, and any and all plant structures, machinery and equipment acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) "Generate" means to produce low-level waste requiring disposal.

(g) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(h) "Hazardous life" means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by Federal law or by standards to be set by a host state, whichever is more restrictive.

(i) "Host state" means Pennsylvania or other party state so designated by the Commission in accordance with Article 3 of this compact.

(j) "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) "Low-level waste" means radioactive waste that:

(1) is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 as amended; and

(2) is classified by the Federal Government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal

Government, as defined in Public Law 96-573, or Federal research and development activities.

(l) "Management" means the reproduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) "Operator" means a person who operates a regional facility.

(n) "Party state" means any state that has become a party in accordance with Article 5 of this compact.

(o) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(p) "Region" means the combined geographic area within the boundaries of the party states.

(q) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) "Shallow land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the Federal Government.

Establishment.

(A) Creation and Organization.

(1) Creation–There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

(2) Commission Membership–The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one-half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

(3) Compensation–Members of the Commission and alternates shall serve without compensation from the Commission but may be

reimbursed for necessary expenses incurred in and incident to the performance of their duties.

(4) Voting Power–Each Commission member is entitled to one vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

(5) Organization and –

(a) The Commission shall provide for its own organization and procedures and shall adopt by-laws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

Public information.

(b) All meetings of the Commission shall be open to the public with at least 14 days' advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Administrative Procedure Act (5 U.S.C. Ch. 5, Subch. II, and Ch. 7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of or hearing complaints or charges brought against an employee or other public agents unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least 14 days prior to the Executive Session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting shall be null and void.

Records.
Public Information.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened Executive Session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 USC §552) and applicable Pennsylvania law and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision

of law, the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

(B) Powers and Duties.

The Commission:

Regulations. Research and development.

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by Federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by Federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and Federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

Contracts.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

Records.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article (2)(A)(5)(e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available, to the party states and to the public, information concerning low-level waste management and disposal needs, technologies, and problems.

Records.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

Records.

(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

Reports.

(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.

Contracts.

(n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

Regulations.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any Federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

(C) Budget and Operation.

(1) Fiscal Year–The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

(2) Current Expense Budget–Upon legislative enactment of this compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000.

Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such cost will not exceed $100,000.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such

amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

(3) Annual Budget Request–For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2(B)(k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) Annual Report to Include Budget–The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit–

(a) As soon as practible after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees.

Reports.

The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

Public information.

(b) Each signatory party, by its duly authorized officers, shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

ARTICLE III–RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF PARTY STATES

(A) Regional Facilities.

There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable Federal laws and regulations.

(B) Equal Access to Regional Facilities.

Public health and safety.

Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing

within three (3) days of this action and shall, within thirty (30) working days, provide in writing the reasons for the closing.

(C) Initial Host State.

Pennsylvania and party states which generate 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the three years 1982 through 1984, are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Exemption From Being Initial Host State.

Party states which generate less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the years 1982 through 1984, shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less that 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Useful Life of Regional Facilities.

Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a 30-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the Federal Government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

(F) Duties of Host State.

Each host state shall:

(a) Cause a regional facility to be sited and developed on a timely basis.

Environmental protection. Public health and safety.

(b) Ensure by law, consistent with applicable state and Federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by Federal law, a host state may adopt more stringent laws, rules or regulations than required by Federal law.

(c) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of

its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

(d) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

Reports.

(e) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

(f) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

(g) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(h) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

(i) Establish by law, to the extent not prohibited by Federal law, requirements for financial responsibility, including, but not limited to:

(i) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(ii) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventative or corrective measures of low-level waste to the regional facility; and

(iii) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

(G) Duties of Party State.

Each party state:

(a) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2(C)(2) and (3).

(b) To the extent authorized by Federal law shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

(iii) Appropriate enforcement actions with respect to violations.

(c) To the extent authorized by Federal law, shall, after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the

violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

Records.

(d) Shall maintain a registry of all generators and quantities generated within the state.

(H) Liability.

In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

Claims.

(I) Failure of Party State to Fulfill Obligations.

A party state which fails to fulfill its obligations, including timely funding of the Commission, may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal equitable remedies available to the party states.

ARTICLE IV–PROHIBITED ACTS AND PENALTIES

(A) Prohibition.

It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) Waste Disposed of Within Region.

After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purpose of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

Public health and safety.

(a) The impact on the health, safety and environmental quality of the citizens of the party states;

Environmental protection.

(b) The impact of importing waste on the available capacity and projected life of the regional facility;

(c) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Waste Generated Within Region.

Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Liability.

Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or Federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state the ability and willingness to comply with the law.

(E) Conflict of Interest.

(1) Prohibitions–

No commissioner, officer or employee shall:

(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him by the Commission for services performed within the scope of his official duties.

(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

Employment and unemployment.

(2) Forfeiture of Office or Employment–Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

Contracts.

(3) Agreement Void–Any contract or agreement knowingly made in contravention of this section is void.

(4) Criminal and Civil Sanctions–

Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

ARTICLE V–ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL

(A) Eligibility.

Delaware.
Maryland
Pennsylvania.
West Virginia.

Only the States of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this compact.

(B) Entry into Effect.

An eligible state may become a party state by legislative enactment of this compact or by executive order of the governor adopting this compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first federal session of its legislature convened thereafter, unless the legislature shall have enacted this compact before such adjournment.

(C) Congressional Consent.

Effective dates.

This compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article 4 (B) and (C) shall not take effect until Congress has consented to this compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) Withdrawal.

A party state may withdraw from the compact by repealing the enactment of this compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

ARTICLE VI–CONSTRUCTION AND SEVERABILITY

(A) Construction.

The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

(B) Severability.

If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

Approved May 19, 1988

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SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

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SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

Public Law 100-712 102 Stat. 4773

Nov. 23, 1988

An Act

Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act.

To grant the consent of the Congress to the Southwestern Low-Level Radioactive Waste Disposal Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

42 USC 2021d note.

Sec. 1. Short Title.

This Act may be cited as the "Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act."

Environmental protection.

42 USC 2021d note.

Sec. 2. Congressional Finding.

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act.

42 USC 2021d note.

Sec. 3. Conditions of Consent to Compact.

The consent of the Congress to the compact set forth in section 5–

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act; and

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

42 USC 2021d note.

Sec. 4. Congressional Review.

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of enactment of this Act, and at such intervals thereafter as may be provided in such compact.

State listing.

Sec. 5. Southwestern Low-Level Radioactive Waste Compact.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of Congress is given to the states of Arizona, California, and any eligible states, as defined in article VII of the Southwestern Low-Level Radioactive Waste Disposal Compact, to enter into such compact. Such compact is substantially as follows:

ARTICLE I–COMPACT POLICY AND FORMATION

The party states hereby find and declare all of the following :

(A) The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC sec. 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

Public health and safety.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the Nuclear Regulatory Commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

ARTICLE II–DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the Southwestern Low-Level Radioactive Waste Commission established in article III of this compact.

(B) "Compact region" or "region" means the combined geographical area with the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if the state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 USC sec. 2014(e)(2)).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the Federal Government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC Sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K)"Major generator state" means a party state which generates 10 percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten percent of the total amount, "Major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with article VII of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a non-Federal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

ARTICLE III–THE COMMISSION

Establishment.

(A) There is hereby established the Southwestern Low-Level Radioactive Waste Commission.

(1) The Commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The

appointing authority of each party state shall notify the Commission in writing of the identity of the member and any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the Commission which is necessary for the host state's members to compose at least 51 percent of the membership on the Commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the Commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the members of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party and shall serve at the pleasure of the governor of the host state.

(B) The Commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the Commission shall not be personally liable for actions taken in their official capacity. The liabilities of the Commission shall not be deemed liabilities of the party states.

(C) The Commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of Commission action shall be governed by the laws of the host state. The Commission shall be located in the capital city of the host state in which the regional disposal facility is located.

Public information. Records.

(D) The Commission's records shall be subject to the host state's public records law, and the meetings of the Commission shall be open and public in accordance with the host state's open meeting law.

(E) The Commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The Commission members shall be compensated according to the appointing state's law.

(F) Each Commission member is entitled to one vote. A majority of the Commission constitutes a quorum. Unless otherwise provided in this

capacity, a majority of the total number of votes on the Commission is necessary for the Commission to take any action.

(G) The Commission has all of the following duties and authority:

(1) The Commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The Commission shall meet at least once a year and otherwise as business requires.

(3) The Commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility.

The host state shall set, and the Commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the Commission and Commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the Commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article IV shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The Commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

Records.

(6) The Commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the Commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the Commission.

Reports.

(7) The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

Gifts and property.

(8) The Commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant or other resources accepted pursuant to this paragraph

and the identity of the donor or grantor shall be detailed in the annual report of the Commission.

However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the Secretary of Energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.

Reports.

(9) The Commission shall submit communications to the governors to the presiding officers of the legislatures of the party states regarding the activities of the Commission, including an annual report to be submitted on or before January 15 of each year. The Commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

Public information.

(10) The Commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

Records.

(11) The Commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

Records.

(12) The Commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The Commission may establish advisory committees for the purpose of advising the Commission on the disposal and management of low-level radioactive waste.

(14) The Commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the Commission shall bind a party state.

(15) The Commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The Commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The Commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the Commission may hire or retain, or both, legal counsel.

(18) The Commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The Commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met–

(a) The Commission approves the importation agreement by a two-thirds vote of the Commission.

(b) The Commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The Commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The Commission may approve the petition only by a two-thirds vote of the Commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the Commission.

(21) The Commission may approve, only by a two-thirds vote of the Commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The Commission shall, not later than 10 years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

ARTICLE IV–RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C)(1) Upon the effective date of this compact, the State of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least 30 years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the State of California.

If the State of California does not extend this obligation, the party state, other than the State of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

Public health and safety.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

Public health and safety.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

Reports.

(4) Submit an annual report to the Commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the Commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

Commerce and trade.
Transportation.
Utilities.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respects to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

Records.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the Commission with any data and information necessary for the implementation of the Commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article III.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

ARTICLE V–APPROVAL OF REGIONAL FACILITIES

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the Commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

ARTICLE VI–PROHIBITED ACTS AND PENALTIES

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article III.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article III.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the Commission or the host state.

ARTICLE VII–ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

(A) The States of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the Commission and

ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the Commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

Effective date.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the State of California and at least 1 other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every 5 years after its effective date, pursuant to federal law.

ARTICLE VIII–CONSTRUCTION AND SEVERABILITY

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provision or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 USC sec. 2011 et seq.).

(2) An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 USC sec. 2021).

(E) Nothing in this compact confers any new authority on the states or Commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the Nuclear Regulatory Commission.

Approved November 23, 1988

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TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

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TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

Public Law 105-236 112 Stat. 1542

September 20, 1998

An Act

To grant the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact.

Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title.

42 USC 2021d note.

This Act may be cited as the "Texas Low-Level Radioactive Waste Disposal Compact Consent Act."

Sec. 2. Congressional Finding.

42 USC 2021d note.

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act (42 USC 2021b et seq.).

Sec. 3. Conditions of Consent to Compact.

42 USC 2021d note.

Effective date.

The Consent of the Congress to the compact set forth in section 5–

(1) shall become effect on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 USC 2021b et seq.); and

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

Sec. 4. Congressional Review.

42 USC 2021d note.

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided in such compact.

Sec. 5. Texas Low-Level Radioactive Waste Compact.

42 USC 2021d note.

Maine, Vermont.

(a) CONSENT OF CONGRESS.–In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of Congress is given to the States of Texas, Maine, and Vermont to enter into the compact set forth in subsection (b).

ARTICLE I. POLICY AND PURPOSE

SEC. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive water. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the

economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

ARTICLE II. DEFINITIONS

SEC. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Act" means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC 2021b-2021j).

(2) "Commission" means the Texas Low-Level Radioactive Waste Disposal compact Commission established in Article III of this compact.

(3) "Compact facility" or "facility" means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) "Generate" when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

(7) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(8) "Host state" means a party state in which a compact facility is located or is being developed. The State of Texas is the host state under this compact.

(9) "Institutional control period" means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) "Low-Level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Act (42 USC 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) "Management" means collection, consolidation, storage, packaging, or treatment.

(12) "Operator" means a person who operates a disposal facility.

(13) "Party state" means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and Vermont are initial party states under this compact.

(14) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(15) "Transporter" means a person who transports low-level radioactive waste.

ARTICLE III. THE COMMISSION

Establishment.

SEC. 3.01. There is hereby established the Texas Low-Level Radioactive Waste disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

SEC. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

SEC. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

SEC. 3.04. The Commission shall:

(1) Compensate its members according to the host state's law.

Records.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the non-host party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

Records.

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement continency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a non-host party state to store low-level radioactive waste generated outside of the state.

Reports.
Deadlines.

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of

the commission, including an annual report to be submitted on or before January 31 of each year.

Public information.

(9) Assembly and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

Records.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

Deadlines.

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the non-host party states in order to assure that over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

SEC 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition , if any, of any donation, grant or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level waste

to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material, which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

SEC. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY

SEC. 4.01. The host state shall develop and have full administrative control over the development, management and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the non-host party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

SEC. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

SEC. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

SEC. 4.04. The host state shall do the following

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

Notification.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402,272 and 402,273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host

state and in the non-host party states. Fees shall also be sufficient to reasonably support the activities of the Commission.

Reports.

(5) Submit an annual report to the commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

Notification.

(6) Notify the Commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at non-compact facilities.

Notification.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

SEC. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each non-host party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by Congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the commission's activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section 7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The

determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 USC Sections 1 to 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the commission and host state–

(A) an accounting of waste shipped and proposed be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

SEC. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

ARTICLE V. PARTY STATE CONTRIBUTIONS

SEC. 5.01. Each party state, except the host state, shall contribute a total of $25 million to the host state. Payments shall be deposited in the host state treasure to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60th day after the date of congressional ratification of this compact, each non-host party state shall pay to the host state $12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each non-host party state shall pay to the host state an additional $12.5 million.

Deadline.

SEC. 5.02. As an alternative, the host state and the non-host states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this article.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

SEC. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III..

SEC. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR Part 20.302.

SEC. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

ARTICLE VII. ELIGIBILITY, ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

SEC. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial non-host party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states names in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the composition of the commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

SEC. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this compact.

SEC. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state's legislature, without the consent of the non-host party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission, provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

Effective Date.

SEC. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the non-host party states may continue to use the facility during that time. The financial obligation of the non-host party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any non-host party state payment under Sections 4.05(5) and (6) of Article IV or Article V, the non-host party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the non-host party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

Effective date.

SEC. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party

state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the two-year period, and shall not be entitled to any refund of payments previously made.

SEC. 7.06. Any party state that substantially fails to comply with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), except that a party state may appeal the commission's revocation decision to the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from date such party state receives written notice from the commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

Effective date.

Notice.

Effective date.

SEC. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro-rata share of the commission's expenses.

SEC. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of Congress every five years after its date, pursuant to federal law.

SEC. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the non-host party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health & Safety Code, as long as the modification does not impair the rights of the initial non-hose party states.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

SEC. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

SEC. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

SEC. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care or any other activity relating to the compact facility. No non-host party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as

otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners and operators of the facility shall be liable for their acts, omissions, conduct or relationships in accordance with applicable law. By entering. into this compact and securing the ratification by Congress of its terms, no party state acquires a potential liability under Section 5(d)(2)(C) of the Act (42 USC Sec. 202le(d)(2)(C)) that did not exist prior to entering into this compact.

SEC. 8.04. If a party state withdraws from the compact pursuant to Section 7.03 of Article VII or has its membership in this compact revoked pursuant to Section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

SEC. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

SEC. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 USC Sec. 2011 *et. seq.*).

(2) An agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 USC 2021).

SEC. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission.

Approved September 20, 1998

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SELECTED SECTIONS OF THE CLEAN AIR ACT OF 1977, AS AMENDED

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SELECTED SECTIONS OF THE CLEAN AIR ACT OF 1977, AS AMENDED

(Including amendments made by)

Public Law 101-549 104 Stat. 2399

November, 14, 1990

Sec. 302. Definitions

When used in this chapter

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term "interstate air pollution control agency" means–

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.

(l) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution (characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term "applicable implementation plan" means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and

services provided by the United States to Indians because of their status as Indians.

(s) VOC

The term "VOC" means volatile organic compound, as defined by the Administrator.

(t) PM-10

The term "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG

The term "NAAQS" means national ambient air quality standard. The term "CTG" means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x

The term "NO_x" means oxides of nitrogen.

(w) CO

The term "CO" means carbon monoxide.

(x) SMALL SOURCE

The term "small source" means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN

The term "Federal implementation plan" means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE

The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title[1].

TITLE III

Sec. 301. Hazardous Air Pollutants

42 USC 7412. Section 112 of the Clean Air Act is amended to read as follows:

Sec. 112. Hazardous Air Pollutants

(a) DEFINITIONS.–For purposes of this section, except subsection (r)–

(1) Major Source.–The term "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit

[1]July 14, 1955, c. 360, Title III, 302, formerly 9, as added Dec. 17, 1963, Pub.L. 88-206, 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub.L. 89-272, Title I, 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90-48, 2, 81 Stat. 504; Dec. 31, 1970, Pub.L. 91-604, 15(a)(1), (c)(1), 84 Stat. 1710, 1713; Aug. 7, 1977, Pub.L. 95-95, Title II, 218(c), Title III, 301, 91 Stat. 761, 769; Nov. 16, 1977, Publ. 95-190, 14(a)(76), 91 Stat. 1404, Publ. 101-549. Title I, 101(d)(4), 107(a), (b), 108(i), 109(b), Title III, 302(e), Title VII, 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.

considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source.–The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or non-road vehicles subject to regulation under title II.

(3) Stationary Source.–The term "stationary source" shall have the same meaning as such term has under section 111(a).

(4) New Source.–The term "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification.–The term "modification" means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous Air Pollutant.–The term "hazardous air pollutant" means any air pollutant listed pursuant to subsection (b).

(7) Adverse Environmental Effect.–The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric Utility Steam Generating Unit.–The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or Operator.–The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing Source.–The term "existing source" means any stationary source other than a new source.

(11) Carcinogenic Effect.–Unless revised, the term "carcinogenic effect" shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) LIST OF POLLUTANTS.–

(1) Initial List.–The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

* * * *

0 Radionuclides (including radon)[2]

* * * *

(2) Revision Of The List.–The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under title VI of this act shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions To Modify The List.–

(A) Beginning at any time after 6 months after the date of enactment of the Clean Air Act Amendments of 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions,

[2]A type of atom which spontaneously undergoes radioactive decay.

ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of the date of enactment of the Clean Air Act Amendments of 1990.

(4) Further Information.–If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test Methods.–The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention Of Significant Deterioration.–The provisions of part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead.–The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) LIST OF SOURCE CATEGORIES.–

(1) In General.–Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for Emissions Standards.–For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

Regulations.

(3) Area Sources.–The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the

aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after such date of enactment.

(4) Previously Regulated Categories.–The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(5) Additional Categories.–In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after the date of enactment of the Clean Air Act Amendments of 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

* * * *

(9) Deletions From This List.–

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from this list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of

safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) EMISSION STANDARDS.–

(1) In General.–The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

(2) Standards And Methods.–Emissions standard promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which–

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) are a combination of the above,

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 114(c), in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New And Existing Sources.–The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than–

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health Threshold.–With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative Standard For Area Sources.–With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review And Revision.–The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other Requirements Preserved.–No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, or other authority of this Act or a standard issued under State authority.

* * * *

(9) Sources Licensed By The Nuclear Regulatory Commission.–No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is

more stringent than the standard or limitation in effect under section 111 or this section.

(10) Effective Date.–Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

* * * *

(q) SAVINGS PROVISION.–

(1) Standard Previously Promulgated.–Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special Rule.–Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other Categories.–Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical Facilities.–Notwithstanding paragraph (1), no standard promulgated under this section prior to the date of enactment of the Clean Air Act Amendments of 1990 with respect to medical research or treatment facilities shall take effect for two years following the date of enactment of the Clean Air Act Amendments of 1990, unless the Administrator makes a determination pursuant to a rulemaking under section 112(d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such

facilities does not provide an ample margin of safety to protect public health, the requirements of section 112 shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in section 112(d)(9).

(r) PREVENTION OF ACCIDENTAL RELEASES.–

(1) Purpose And General Duty.–It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 304 shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions.–

(A) The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(3) List Of Substances.–The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The

initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases.

Regulations.

Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

(4) Factors To Be Considered.–In listing substances under paragraph (3), the Administrator shall consider each of the following criteria–

(A) the severity of any acute adverse health effects associated with accidental releases of the substance.

(B) the likelihood of accidental releases of the substance; and

(C) the potential magnitude of human exposure to accidental releases of the substance.

(5) Threshold Quantity.–At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

* * * *

(11) State Authority.–Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

* * * *

(7) Accident Prevention.–

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present

at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

Regulations.

(B)(i) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c). The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or

requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 113, 114, 116, 120, 304, and 307 and other enforcement provisions of this Act, be treated as a standard in effect under subsection (d).

(F) Notwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.[3]

Sec. 116. Retention of State Authority

Except as otherwise provided in sections 1857c-10(e), (e), and (ff) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or 7412, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.[4]

Sec. 122. Listing of Certain Unregulated Pollutants

(a) Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A), or take any combination of such actions.

(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

[3]July 14, 1955, ch. 360, title I, 112, as added Dec. 31, 1970, Pub.L. 91-604, 4(a), 84 Stat. 1685, and amended Aug. 7, 1977, Pub.L. 95-95, title I, 109(d)(2), 110, title 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Pub.L. 95- 623, 13(b), 92 Stat. 3458; Nov. 15, 1990, Pub.L. 101-549, title III, 301, 104 Stat. 2531.

[4]July 14, 1955, ch. 360, title I, §116, formerly §109, as added Nov. 21, 1967, P.L. 90-148, § 2,81 Stat. 497, renumbered and amended Dec. 31, 1970, P.L. 91-604, §4(a),(c), 84 Stat. 1678, 1689; June 22, 1974, P.L. 93-319, §6(b), 88 Stat. 259, Nov. 16, 1978, P.L. 95-190, §14(a)(24), 91 Stat. 1400.

(c)(1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this Act, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this Act respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this Act or by any State (or the Administrator) under any applicable implementation plan under this Act, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.[5]

TITLE IV

Sec. 501. Permits.

Add the following new title after title IV:

TITLE V

Sec. 501. Definitions.
Sec. 502. Permit programs.
Sec. 503. Permit applications.
Sec. 504. Permit requirements and conditions.
Sec. 505. Notification to Administrator and contiguous States.
Sec. 506. Other authorities.
Sec. 507. Small business stationary source technical and environmental compliance assistance program.

Sec. 501. Definitions.

42 USC 7661.

As used in this title–

(1) Affected source.–The term "affected source" shall have the meaning given such term in title IV.

(2) Major source.–The term "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 112.

(B) A major stationary source as defined in section 302 or part D of title I.

[5]July 14, 1955, ch. 360, title I, §122, as added Aug. 7, 1977, P.L. 95-95, title I, §120(a), 91 Stat. 720.

(3) Schedule of compliance.–The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority.–The term "permitting authority" means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

Sec. 502. Permit Programs.

42 USC 7661a.

(a) VIOLATIONS.–After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements in impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) REGULATIONS.–The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including section 507, including the reasonable costs of–

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,
(v) modeling, analyses, and demonstrations, and
(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause–

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering

the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury or licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6)

to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) SINGLE PERMIT.–A single permit may be issued for a facility with multiple sources.

(d) SUBMISSION AND APPROVAL.–(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program

submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

(e) SUSPENSION.–The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) PROHIBITION.–No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

(1) All requirements established under title IV applicable to affected sources.

(2) All requirements established under section 112 applicable to major sources, area sources, and new sources.

(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

(g) INTERIM APPROVAL.–If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2

years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) EFFECTIVE DATE.–The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) ADMINISTRATION AND ENFORCEMENT.–(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

Sec. 503. Permit Applications.

42 USC 7661b.

(a) APPLICABLE DATE.–Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates–

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 502(a).

(b) COMPLIANCE PLAN.–(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which

Reports.

the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) DEADLINE.–Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

(d) TIMELY AND COMPLETE APPLICATIONS.–Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

Public information.

(e) COPIES; AVAILABILITY.–A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

Sec. 504. Permit Requirements and Conditions.

42 USC 7661c.

(a) CONDITIONS.–Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with

applicable requirements of this Act, including the requirements of the applicable implementation plan.

(b) MONITORING AND ANALYSIS.–The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.–Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) GENERAL PERMITS.–The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

(e) TEMPORARY SOURCES.–The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) PERMIT SHIELD.–Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if–

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

Sec. 505. Notification to Administrator and Contiguous States.

42 USC 7661d.

(a) TRANSMISSION AND NOTICE.–(1) Each permitting authority–

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States–

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) OBJECTION BY EPA.–(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable

implementation plan. Any denial of such petition shall be subject to judicial review under section 307. The Administrator shall include in regulations under this title provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

(c) ISSUANCE OR DENIAL.–If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this title. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) WAIVER OF NOTIFICATION REQUIREMENTS.–(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this title for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoke or modified by the Administrator by rule.

(e) REFUSAL OF PERMITTING AUTHORITY TO TERMINATE, MODIFY, OR REVOKE AND REISSUE.–If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this title, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

Sec. 506. Other Authorities.

42 USC 7661e.

(a) IN GENERAL.–Nothing in this title shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this Act.

(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.–The provisions of this title, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of title IV except as modified by that title.

Sec. 507. Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

42 USC 7661f.

(Text not reprinted.)[6] [7]

Approved November 14, 1990

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[6]See P.L. 101-549.

[7]July 14, 1955, ch. 360, title V, 507, as added Nov. 15, 1990, Pub. L 101-549, 501, 105 Stat. 2645.

SECTION 511 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972

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SECTION 511 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972

Sec. 511. Other Affected Authority

30 Stat. 1151. (a) This act shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this Act; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or (3) affecting or impairing the provisions of any treaty of the United States.

33 USC 1371. **72 Stat. 970.** (b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 USC 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 USC 441-451b) shall be regulated pursuant to this Act, and not subject to such Act of 1910 and Act of 1888 except to effect on navigation and anchorage.

(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act, and the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852); and 42 USC 4321 note.

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to–

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act.

(d) Not withstanding this Act or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in title II of this Act), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking.[1]

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[1]Public Law 93-243 (87 Stat. 1069)(1974) sec. 3, added subsec. (d).

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

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NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

Public Law 91-190 83 Stat. 852

January 1, 1970

An Act

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. (Short Title)

National Environmental Policy Act of 1969.

That this Act may be cited as the "National Environmental Policy Act of 1969"

Sec. 2. Purpose

Policies and goals.

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

Sec. 101. Declaration of National Environmental Policy

(a) The Congress, recognizing the profound impact of man's activity in the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. (Interpretation and Administration)

Administration.

The Congress authorizes and directs that, to the fullest extent possible (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment; a detailed statement by the responsible official on–

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United

Copies of statements, etc.; availability.

States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or officials, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any alternative, thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. (Review)

Review.

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary

[1]Public Law 94-83 (89 Stat. 424) (1975) amended Sec. 102 (2) by redesignating subparagraphs (D), (E) (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and added a new subparagraph (D).

to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. (Statutory Obligations)

Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. (Policy and Goals)

The polices and goals set forth in this Act are supplementary to those set forth in existing authorization of Federal agencies.

TITLE II

Sec. 201. Council on Environmental Quality (Report to Congress)

Report to Congress.

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and non-governmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. (Council on Environmental Quality)

Council on Environmental Quality.
Report to Congress

There is created in the Executive Office of the President a council on Environmental Quality (hereinafter referred to as the "Council"). The council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. (Employment/compensation)

(a)[2] The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Voluntary and uncompensated services.

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.[3]

Sec. 204. (Duties and Functions)

80 Stat. 416.
Duties and functions.

It shall be the duty and function of the Council–

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. (Power)

See 34 F.R. 8693.

In exercising its powers, functions, and duties under this Act, the council shall–

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

[2]Public Law 94-52 (89 Stat. 258) (1975), Sec. 2 added (a) immediately after Sec. 203.
[3]Public Law 94-52 (89 Stat. 258) (1975), Sec. 2 added a new subsec. (b).

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. (Tenure and Compensation)

80 Stat. 460.
80 Stat. 461.
81 Stat. 638.
Tenure and compensation.

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 USC 5313). The other members of the council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 USC 5315).

Sec. 207. Acceptance of Travel Reimbursement

42 USC 4346a.

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.[4] [5]

Sec. 208. Expenditures or International Travel

42 USC 4346b.

The Council may make expenditures in support of its international activities, including expenditures for; (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209. (Appropriations)

Appropriations.

There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.[6]

Approved January 1, 1970

[4]Public Law 94-52 (89 Stat. 258) (1975), Sec. 3 redesignated Sec. 207 as Sec. 209.
[5]Public Law 94-52 (89 Stat. 258) (1975), Sec. 3 added new subsections 207 and 208.
[6]Public Law 94-52 (89 Stat. 258) (1975), Sec. 3 redesignated Sec. 207 as Sec. 209.

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WEST VALLEY DEMONSTRATION PROJECT ACT

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WEST VALLEY DEMONSTRATION PROJECT ACT

Public Law 96-368 94 Stat. 1347

October 1, 1980

An Act

To authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

42 USC 2021a note.
West Valley Demonstration Project Act.

Section 1. Title

This Act may be cited as the "West Valley Demonstration Project Act."

42 USC 2021a note.
Activities.

Sec. 2. Purpose

(a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

(2) The Secretary shall develop containers suitable for the permanent disposal for the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission–

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

Hearings.

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(3) The Secretary shall–

(A) undertake detailed engineering and cost estimates for the project.

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques.

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

41 USC 501 note.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

State costs, percentage.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

Licensing amendment application.

(D) Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

(c) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project: *Provided,* That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law. The agreement shall provide for the following:

42 USC 2011 note.
42 USC 5801 note.

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste.

Publications in Federal Register.

In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan; the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

Reports and other information to Commission.

(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

Consultation with EPA and others.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

Sec. 3. Appropriation/Authorization

42 USC 2021a note. Appropriation authorization.

(a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

Sec. 4. Report

42 USC 2021a note. Report to Speaker of the House and President pro tempore of the Senate.

Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

Sec. 5. Rights and Obligations

42 USC 2021a note.

(a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center,

42 USC 2011 note.

the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the

operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

42 USC 5801 note.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

Sec. 6. Definitions

42 USC 2021a note. Definitions.

For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for the purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

42 USC 2014.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

Approved October 1, 1980

* * * *

Other Provisions: Reduction in Funding for West Valley Demonstration Project.

Act November 12, 2001, Public Law 107–66, Title III, 115 Stat. 503, provides:

Funding for the West Valley Demonstration Project shall be reduced in subsequent fiscal years to the minimum necessary to maintain the project in a safe and stable condition, unless not later than September 30, 2002, the Secretary:

(1) provides written notification to the Committees on Appropriations of the House of Representatives and the Senate

that agreement has been reached with the State of New York on the final scope of Federal activities at the West Valley site and on the respective Federal and State cost shares for those activities;

(2) submits a written copy of that agreement to the Committees on Appropriations of the House of Representatives and the Senate; and

(3) provides a written certification that the Federal actions proposed in the agreement will be in full compliance with all relevant Federal statutes and are in the best interest of the Federal Government.

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NUCLEAR NON-PROLIFERATION ACT OF 1978

Public Law 95-242 92 Stat. 120

March 10, 1978

An Act

To provide for more efficient and effective control over the proliferation of nuclear explosive capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(Sec. 1. Short Title)

22 USC 3201 note. Nuclear Non-Proliferation Act of 1978.

That this Act may be cited as the "Nuclear Non-Proliferation Act of 1978."

Sec. 2. Statement of Policy

22 USC 3201.

The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continue international progress toward world peace and development. Recent events emphasize the urgency of this threat and the imperative need to increase the effectiveness of international safeguards and controls on peaceful nuclear activities to prevent proliferation. Accordingly, it is the policy of the United States to

(a) actively pursue through international initiatives mechanisms for fuel supply assurances and the establishment of more effective international controls over the transfer and use of nuclear materials and equipment and nuclear technology for peaceful purposes in order to prevent proliferation, including the establishment of common international sanctions;

(b) take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses;

(c) strongly encourage nations which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons to do so at the earliest possible date; and

(d) cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

Sec. 3. Statement of Purpose

22 USC 3202.

It is the purpose of this Act to promote the policies set forth above by–

(a) establishing a more effective framework for international cooperation to meet the energy needs of all nations and to ensure that the worldwide development of peaceful nuclear activities and the export by any nation of nuclear materials and equipment and nuclear technology intended for use in peaceful nuclear activities do not contribute to proliferation;

(b) authorizing the United States to take such actions as are required to ensure that it will act reliably in meeting its commitment to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

(c) providing incentives to the other nations of the world to join in such international cooperative efforts and to ratify the Treaty; and

(d) ensuring effective controls by the United States over its exports of nuclear materials and equipment and of nuclear technology.

Sec. 4. Definitions

(a) As used in this Act, the term–

22 USC 3203.

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "IAEA" means International Atomic Energy Agency;[1]

(3) "nuclear materials and equipment" means source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to subsection 109b. of the 1954 Act;

Post, p. 141.

(4) "physical security measures" means measures to reasonably ensure that source or special nuclear material will only be used for authorized purposes and to prevent theft and sabotage;

(5) "sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment of nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the 1954 Act;

42 USC 2011 note.

(6) "1954 Act" means the Atomic Energy Act of 1954, as amended; and

(7) "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons.

(b) All other terms used in this Act not defined in this section shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974, and the Treaty.

TITLE I–UNITED STATES INITIATIVES TO PROVIDE ADEQUATE NUCLEAR FUEL SUPPLY

Sec. 101. Policy

22 USC 3221.
42 USC 5801 note.

The United States, as a matter of national policy, shall take such actions and institute such measures as may be necessary and feasible to assure other nations and groups of nations that may seek to utilize the benefits of atomic energy for peaceful purposes that it will provide a reliable supply of nuclear fuel to those nations and groups of nations which adhere to policies designed to prevent proliferation. Such nuclear fuel shall be provided under agreements entered into pursuant to section 161 of the 1954 Act or as otherwise authorized by law. The United States shall ensure that it will have available the capacity on a long-term basis to enter into new fuel supply commitments consistent with its nonproliferation policies and domestic energy needs. The Commission

42 USC 2201.

[1]P.L. 105-277, Div. G, Title XII, sec. 1225(e)(1), (112 Stat. 2681-775), Oct. 21,1998.

shall, on a timely basis, authorize the export of nuclear materials and equipment when all the applicable statutory requirements are met.

Sec. 102. Uranium Enrichment Capacity

22 USC 3222.

The Secretary of Energy is directed to initiate construction planning and design, construction, and operation activities for expansion of uranium enrichment capacity, as elsewhere provided by law. Further the Secretary as well as the Nuclear Regulatory Commission, and the Secretary of State[2] are directed to establish and implement procedures which will ensure to the maximum extent feasible, consistent with this Act, orderly processing of subsequent arrangements and export licenses with minimum time delay.

Sec. 103. Report

22 USC 3222 note. Study.

Report to Congress.

The President shall promptly undertake a study to determine the need for additional United States enrichment capacity to meet domestic and foreign needs and to promote United States non-proliferation objectives abroad. The President shall report to the Congress on the results of this study within twelve months after the date of enactment of this Act.

Sec. 104. International Undertaking

22 USC 3223. Discussions and negotiations.

(a) Consistent with section 105 of this Act, the President shall institute prompt discussions with other nations and groups of nations, including both supplier and recipient nations, to develop international approaches for meeting future worldwide nuclear fuel needs. In particular, the President is authorized and urged to seek to negotiate as soon as practicable with nations possessing nuclear fuel production facilities or material, and such other nations and groups of nations, such as the IAEA, as may be deemed appropriate, with a view toward the timely establishment of binding international undertakings providing for–

(1) the establishment of an international nuclear fuel authority (INFA) with responsibility for providing agreed fuel services and allocating agreed upon quantities of fuel resources to ensure fuel supply on reasonable terms in accordance with agreements between INFA and supplier and recipient nations;

(2) a set of conditions consistent with subsection (d) under which international fuel assurances under INFA auspices will be provided to recipient nations. including conditions which will ensure that the transferred materials will not be used for nuclear explosive devices;

(3) devising, consistent with the policy goals set forth in section 403 of this Act, feasible and environmentally sound approaches for the siting, development, and management under effective international auspices and inspection of facilities for the provision of nuclear fuel services, including the storage of special nuclear material;

(4) the establishment of repositories for the storage of spent nuclear reactor fuel under effective international auspices and inspection;

(5) the establishment of arrangements under which nations placing spent fuel in such repositories would receive appropriate compensation for the energy content of such spent fuel if recovery of such energy content is deemed necessary or desirable; and

(6) sanctions for violations of the provisions of or for abrogation of such binding international undertakings.

[2]P.L. 105-277, Div. G, Title XII, sec. 1225(e)(2), (112 Stat. 2681-775), Oct. 26, 1998.

Proposals, submitted to Congress.

(b) The President shall submit to Congress not later than six months after the date of enactment of this Act proposals for initial fuel assurances, including creation of an interim stockpile of uranium enriched to less than 20 percent in the uranium isotope 235 (low-enriched uranium) to be available for transfer pursuant to a sales arrangement to nations which adhere to strict policies designed to prevent proliferation when and if necessary to ensure continuity of nuclear fuel supply to such nations. Such submission shall include proposals for the transfer of low-enriched uranium up to an amount sufficient to produce 100,000 NWe years of power from light water nuclear reactors, and shall also include proposals for seeking contributions from other supplier nations to such an interim stockpile pending the establishment of INFA.

(c) The President shall, in the report required by section 103, also address the desirability of and options for foreign participation, including investment, in new United States uranium enrichment facilities. This report shall also address the arrangements that would be required to implement such participation and the commitments that would be required as a condition of such participation. This report shall be accompanied by any proposed legislation to implement these arrangements.

Proposed legislation.

(d) The fuel assurances contemplated by this section shall be for the benefit of nations that adhere to policies designed to prevent proliferation. In negotiating the binding international undertakings called for in this section, the President shall, in particular, seek to ensure that the benefits of such undertakings are available to non-nuclear-

weapon states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device; do not establish any new enrichment or reprocessing facilities under their de facto or de jure control, and place any such existing facilities under effective international auspices and inspection.

(e) The report required by section 601 shall include information on the progress made in any negotiations pursuant to this section.

(f)(1) The President may not enter into any binding international undertaking negotiated pursuant to subsection (a) which is not a treaty until such time as such proposed undertaking has been submitted to the Congress and has been approved by concurrent resolution.

(2) The proposals prepared pursuant to subsection (b) shall be submitted to the Congress as part of an annual authorization Act for the Department of Energy.

Sec. 105. Reevaluation of Nuclear Fuel Cycle

22 USC 3224.

The President shall take immediate initiatives to invite all nuclear supplier and recipient nations to reevaluate all aspects of the nuclear fuel cycle, with emphasis on alternatives to an economy based on the separation of pure plutonium or the presence of high enriched uranium, methods to deal with spent fuel storage, and methods to improve the safeguards for existing nuclear technology. The President shall, in the first report required by section 601, detail the progress of such international reevaluation.

TITLE II–UNITED STATES INITIATIVES TO STRENGTHEN THE INTERNATIONAL SAFEGUARDS SYSTEM

Sec. 201. Policy

22 USC 3241.

The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to–

(a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;

(b) ensure that the IAEA has the resources to carry out the provisions of Article XII of the Statute of the IAEA;

(c) improve the IAEA safeguards system (including accountability) to ensure–

(1) the timely detection of a possible diversion of source or special nuclear materials which could be used for nuclear explosive devices;

(2) the timely dissemination of information regarding such diversion; and

(3) the timely implementation of internationally agreed procedures in the event of such diversion;

(d) ensure that the IAEA receives on a timely basis the data needed for it to administer an effective comprehensive international safeguards program and that the IAEA provides timely notice to the world community of any evidence of a violation of any safeguards agreement to which it is a party; and

(e) encourage the IAEA, to the maximum degree consistent with the Statute, to provide nations which supply nuclear materials and equipment with the data needed to assure such nations of adherence to bilateral commitments applicable to such supply.

Sec. 202. Training Program

22 USC 3242.

The Department of Energy, in consultation with the Commission, shall establish and operate a safeguards and physical security training program to be made available to persons from nations and groups of nations which have developed or acquired, or may be expected to develop or acquire, nuclear materials and equipment for use for peaceful purposes. Any such program shall include training in the most advanced safeguards and physical security techniques and technology consistent with the national security interests of the United States.

Sec. 203. Negotiations

22 USC 3243.

The United States shall seek to negotiate with other nations and groups of nations to–

(1) adopt general principles and procedures, including common international sanctions, to be followed in the event that a nation violates any material obligation with respect to the peaceful use of nuclear materials and equipment or nuclear technology, or in the event that any nation violates the principles of the Treaty, including the detonation by a non-nuclear-weapon state of a nuclear explosive device; and

(2) establish international procedures to be followed in the event of diversion, theft, or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen, or obtained or used by a nation or by any person or group in contravention of the principles of the Treaty.

TITLE III–EXPORT ORGANIZATION AND CRITERIA

Sec. 301. Government-to-Government Transfers

42 USC 2074.
Post, p. 131.

(a) Section 54 of the 1954 Act is amended by adding a new subsection d. thereof as follows:

d. The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

42 USC 2094.

(b) Section 64 of the 1954 Act is amended by inserting the following immediately after the second sentence thereof: "The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient."

(c) Chapter 10 of the 1954 Act is amended by adding a new section 111 as follows:

42 USC 2141.

Sec. 111.a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided.* That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

42 USC 2112.
Supra.

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any applicable criteria in subsection 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

Post, p. 136.
Post, p. 137.

Sec. 302. (Special Nuclear Material Production)

Special nuclear material, production.

Subsection 57b. of the 1954 Act is amended to read as follows:

b. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided.* That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of interagency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978 shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further,* That the export of component parts as defined in subsection 11v.(2) or 11cc.(2) shall be governed by sections 109 and 126 of this Act: *Provided further,* That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54d., section 64, or section 111b.

42 USC 2077.
Standards and criteria.
Technology transfers. *Post*, p. 127. *Post*, p. 142.

Authorization requests, procedures.

Trade secrets, protection.

42 USC 2014.
Post, pp. 131, 141.
42 USC 7172.

Ante, p. 125.
42 USC 2074.
42 USC 2094.

Sec. 303. Subsequent Arrangements

(a) Chapter 11 of the 1954 Act, as amended by sections 304, 305, 306, 307, and 308, is further amended by adding at the end thereof the following:

42 USC 2160.

Sec. 131. SUBSEQUENT ARRANGEMENTS.–

Consultation.

a. (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Director, the Commission, and the Secretary of Defense: *Provided,* That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Director declares that he intends to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the Director's declaration shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

42 USC 2121.
42 USC 2164.

Notice, publication in the Federal Register.

Nuclear Proliferation Assessment Statement.

(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the "subsequent arrangement" will not be used to further any military or nuclear explosive purpose.

Subsequent arrangements.

For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving–

Contracts.

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

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

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

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

(D) arrangements for physical security;

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

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

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

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

Post, p. 142.

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

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

Report to congressional committees.

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

Post, p. 139.

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost

consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

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

Nuclear materials, reprocessing or transfer procedures.

c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provisions for necessary administrative actions and interagency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process.

Controversial requests, identification.

Potentially controversial requests be should identified as quickly as possible so that any required policy or decisions diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly as necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedure shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Director shall so declare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Director's request the President waives the sixty-day requirement and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section shall not be delayed pending the development

Standards and criteria.

Nuclear Proliferation Assessment Statement.

Presidential waiver.

Notice to congressional committees.

and establishment of procedures to implement the requirements of this section.

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

42 USC 7172.

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

Presidential plan, submittal to Congress.

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

Post, p. 139.

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

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

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

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

Notice to congressional committees.

(2) Subsection (1) shall apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this

Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on International Relations and Science and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

Plan, contents.

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

Foreign spent nuclear fuel.

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

(b)(1) Section 54 of the 1954 Act is amended by adding new subsection e. as follows,

Ante, p. 125.

e. The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a.(2)(E) shall be subject to the requirements of section 131.

42 USC 2075.
Ante, p. 127.

(2) Section 55 of the 1954 Act is amended by adding a proviso at the end of the section as follows, "*Providing,* That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a.(2)(E) shall be subject to the requirements of section 131."

Sec. 304. Export Licensing Procedures

(a) Chapter 11 of the 1954 Act is amended by adding a new section 126 as follows:

Sec 126.Export Licensing Procedures.–

42 USC 2155.
Exemption.
Ante, p. 125.
Supra.
42 USC 2112.

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

Executive branch judgment, notice to Commission.

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of

Procedures.

Energy, Defense, and Commerce, the Nuclear Regulatory Commission,[3] and the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and interagency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

Contents.

Standards and criteria.

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

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

Post, p. 136.

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 127 of this Act will be applied by another nuclear supplier nation or group of nations to the proposed United States

[3]Public Law 105–277, Division G, Title XII, Chapter 3, sec. 1225(d)(5), as amended, 112 Stat. 2681-774; October 21, 1998.

export, and whether in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States. The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be ; and

Data and recommendations.

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other applicable statutory requirements, are met: *Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section: *Provided further,* That, if upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year, increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act: *And additionally provided*, That the Commission is authorized to–

42 USC 2154.

Extension, notice to Congress.

Post, p. 139.

Findings.

(A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, or similar significance for nuclear explosive purposes and under reasonably similar circumstances, and

(B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all

applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission.

Judicial review, exception.

The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

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

Presidential review.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any any such export, the President shall submit the Executive order, together with his explanation of why in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130g.) and shall be referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further*, That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the

Report to Congress and congressional committees.

Post, p.139.

Review.

Concerns and requests, transmittal to executive branch.

projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorization under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or–within sixty days after receipt of the executive branch judgment on the proposed export–the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further*, That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a.(1) of this section.

Referral to congressional committees.

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

42 USC 2155a.
Post, p. 139.
Regulations.

(b) Within one hundred and twenty days of the date of enactment of this Act, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act, including such public hearings and access to information as the Commission deems appropriate: *Provided*, That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion

accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further*, That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

42 USC 2155a.
42 USC 2239.
Hearings.

(c) The procedures to be established pursuant to subsection (b) shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 189a. of the 1954 Act, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

42 USC 2156a.
Regulations.

(d) Within sixty days of the date of enactment of this Act, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, and the Secretary of Defense, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgment are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 127 of the 1954 Act taking into consideration variations in risks to security as appropriate.[4]

Post, p. 136.

Sec. 305. Criteria Governing United States Nuclear Exports

Chapter 11 of the 1954 Act, as a amended by section 304, is further amended by adding at the end thereof the following:

42 USC 2156.

Sec. 127. CRITERIA GOVERNING UNITED STATES NUCLEAR EXPORTS–

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

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

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

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

[4]As amended, Public Law 105-277, Div. G, Title XII, Ch. 3, sec. 1225(e)(3), (112 Stat. 2681-775), Oct. 21, 1998.

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

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

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

Sec. 306. Additional Export Criterion and Procedures

Chapter 11 of the 1954 Act, as amended by sections 304 and 305, is further amended by adding at the end thereof the following:

42 USC 2157.

Sec. 128. ADDITIONAL EXPORT CRITERIA AND PROCEDURES–

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

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

Export applications, criterion enforcement.

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

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided*, That no such export of any production or utilization facility or of any source of special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the

Report to congressional committees.

reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

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

Congressional disapproval, resolution.

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

Export authorizations, congressional review.

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

Sec. 307. Conduct Resulting in Termination of Nuclear Exports

Export terminations, criterion.
42 USC 2158.

Chapter 11 of the 1954 Act, as amended by sections 304, 305, and 306, is further amended by adding at the end thereof:

Sec. 129. Conduct Resulting In Termination Of Nuclear Exports–

No nuclear materials and equipment or sensitive nuclear technology shall be export to–

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

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

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

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

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

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

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes; unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

Report to Congress.

Infra.

Sec. 308. Congressional Review Procedures

Chapter 11 of the 1954 Act, as amended by sections 304, 305, 306, and 307, is further amended by adding at the end thereof the following:

42 USC 2159.

Sec. 130. CONGRESSIONAL REVIEW PROCEDURES–

Congressional committee reports.

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 123d., 126a.(2), 126b.(2), 128b., 129, 131a.(3), or 131f.(1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, shall each submit a report

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

42 USC 2121.
42 USC 2164.

to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

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

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

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

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

Resolution.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: That the Congress (does or does not) favor the _____ transmitted to the Congress by the President on, _____ , _____, the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

Continuous session of Congress, computation.

g. For the purposes of this section–

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

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

h. This section is enacted by Congress–

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

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

Sec. 309. Component and Other Parts of Facilities

42 USC 2139.

(a) Section 109 of the 1954 Act is amended to read as follows:

Sec. 109. Component And Other Parts Of Facilities–

Domestic activities licenses, issuance authorization.
42 USC 2139.

a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11v.(2) or 11cc.(2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

Export licenses.

b. After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in subsection 11v.(2) or 11cc.(2) and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b.(2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other

Ante, p. 131.

nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.[5]

c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126a., that the export would be inimical to the common defense and security of the United States.

42 USC 2139a. Regulations.

(b) The Commission, not later than one hundred and twenty days after the date of the enactment of this Act, shall publish regulations to implement the provisions of subsections b. and c. of section 109 of the 1954 Act. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

Supra.

42 USC 2139a. Export control procedures, Presidential publications.

(c) The President, within not more than one hundred and twenty days after the date of enactment of the Act, shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations, as required, by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

42 USC 2139 note. *Ante*, p. 141. Savings provisions.

(d) The amendments to section 109 of the 1954 Act made by this section shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments.

TITLE IV–NEGOTIATION OF FURTHER EXPORT CONTROLS

Sec. 401. Cooperation with Other Nations

42 USC 2153.

Section 123 of the 1954 Act is amended to read as follows:

Sec. 123. Cooperation With Other Nations–

[5]P.L. 105-277, Div. G, Title XII, Ch. 3, sec. 1225(d)(2), (112 Stat. 2681-774).

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

No cooperation with any nation, group of nations or regional defense organizations pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until–"a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

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

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

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

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

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

42 USC 2121.
42 USC 2164.

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

production facility, or utilization facility transferred pursuant to such agreement;

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

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

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144c., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

42 USC 2121.
42 USC 2164.
Agreement requirements, Presidential exemptions.
Nuclear Proliferation Assessment Statement.
Proposed cooperation agreements, submitted to President.

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

purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144d., which are to be implemented by the Department of Defense, by the Secretary of Defense;

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

Submittal to congressional committees.

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

Ante, p. 139.

42 USC 2073.
42 USC 2074.
42 USC 2133.
42 USC 2073.
42 USC 2074.
42 USC 2133.
42 USC 2134.

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

recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130i. of this Act.

42 USC 2121.
42 USC 2164.
Agency views to congressional committees.

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

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

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

Sec. 402. Additional Requirements

42 USC 2153a.
Nuclear material enrichment, approval.

(a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided,* That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 131 of the 1954 Act, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further,* That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after the date of enactment of this Act, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

Ante, p. 127.

42 USC 2121.
42 USC 2164.
Enrichment facility components, export prohibition.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (exempt an agreement for cooperation pursuant to subsection 91c., 144b., 144c. of the 1954 Act) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any component part or group of

Major critical component.

component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

Sec. 403. Peaceful Nuclear Activities

42 USC 2153b. Export policies.

The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that–

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under control of any non-nuclear-weapon state;

(3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear-activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

42 USC 2104. Enriched nuclear material and sources, prohibition. Proposed international agreements.

(b)(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in paragraph AA.(2) of section 11 of the 1954 Act) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than

the host country to sensitive nuclear technology associated with such facilities.

Enriched nuclear material, short-term storage. International inspection.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

Sec. 404. Renegotiation of Agreements for Cooperation

42 USC 2153c.

(a) The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on the date of enactment of this Act, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreement under the 1954 Act. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 127 of the 1954 Act with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 123a. of the 1954 Act, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in the 1954 Act shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on the date of enactment of this Act.

Ante, p. 136.

Antep, .142.

Ante, p. 142.

Export agreement conditions and policy, goals, Presidential review.

(b) The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 123a. of the 1954 Act and the export policy goals set forth in section 401 to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies

which are not already being applied as export criteria to be enacted as additional export criteria.

Presidential export criteria proposals, submittal to Congress.

(c) If Presidential export criteria proposals, submittal to Congress. the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) If the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to subsection 130b. through g. of the 1954 Act.

Ante, p. 139.

Sec. 405. Authority to Continue Agreements

42 USC 2153d. Savings provision.

(a) The amendments to section 123 of the 1954 Act made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to the date of enactment of this Act.

(b) Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement of Cooperation.

Sec. 406. Review

42 USC 2160a.

No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act.

Sec. 407. Protection of the Environment

42 USC 2153e.

The president shall endeavor to provide in any agreement entered into pursuant to section 123 of the 1954 Act for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

TITLE V–UNITED STATES ASSISTANCE TO DEVELOPING COUNTRIES

Sec. 501. Policy: Report

22 USC 3261. Nuclear and non-nuclear energy, resource development.

The United States shall endeavor to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources, to cooperate with both developing and industrialized nations in protecting the international environment from contamination arising from both nuclear and non-nuclear energy activities, and shall seek to cooperate with and aid developing countries in meeting their energy needs through the development of such resources and the application of non-nuclear technologies consistent with the economic factors, the material resources

of those countries, and environmental protection. The United States shall additionally seek to encourage other industrialized nations and groups of nations to make commitments for similar cooperation and aid to developing countries. The President shall report annually to Congress on the level of other nations' and groups of nations' commitments under such program and the relation of any such commitments to United States efforts under this title. In cooperating with and providing such assistance to developing countries, the United States shall give priority to parties to the Treaty.

Sec. 502. Programs

Developing countries, energy development programs.

(a) The United States shall initiate a program, consistent with the aims of section 501, to cooperate with developing countries for the purpose of–

(1) meeting the energy needs required for the development of such countries;

(2) reducing the dependence of such countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources; and

(3) expanding the energy alternatives available to such countries.

Assessment and cooperative projects.

(b) Such program shall include cooperation in evaluating the energy alternatives of developing countries, facilitating international trade in energy commodities, developing energy resources, and applying suitable energy technologies. The program shall include both general and country-specific energy assessments and cooperative projects in resource exploration and production, training, research and development.

Experts, exchange.

(c) As an integral part of such program, the Department of Energy, under the general policy guidance of the Department of State and in cooperation with the Agency for International Development and other Federal agencies as appropriate, shall initiate, as soon as practicable, a program for the exchange of United States scientists, technicians, and energy experts with those of developing countries to implement the purposes of this section.

Appropriation authorization.

(d) For the purposes of carrying out this section, there is authorized to be appropriated such sums as are contained in annual authorization Acts for the Department of Energy, including such sums which have been authorized for such purposes under previous legislation.

22 USC 2151a.
22 USC 2151d.
22 USC 2151q.

(e) Under the direction of the President, the Secretary of State shall ensure the coordination of the activities authorized by this title with other related activities of the United States conducted abroad, including the programs authorized by sections 103(c), 106(a)(2), and 119 of the Foreign Assistance Act of 1961.

Sec. 503. Report

22 USC 3262 note.
Presidential report to Congress.

Not later than twelve months after the date of enactment of this Act, the President shall report to the Congress on the feasibility of expanding the cooperative activities established pursuant to section 502(c) into an international cooperative effort to include a scientific peace corps designed to encourage large numbers of technically trained volunteers to live and work in developing countries for varying periods of time for the purpose of engaging in projects to aid in meeting the energy needs of such countries through the search for and utilization of indigenous energy resources and the application of suitable technology, including the widespread utilization of renewable and unconventional energy

technologies. Such report shall also include a discussion of other mechanisms to conduct a coordinated international effort to develop, demonstrate, and encourage the utilization of such technologies in developing countries.

TITLE VI–EXECUTIVE REPORTING

Sec. 601. Reports of the President

22 USC 3281. Governmental nuclear non-proliferation activities.

(a) The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to–

(1) a description of the progress made toward–

(A) negotiating the initiatives contemplated in sections 104 and 105 of this Act;

(B) negotiating the international arrangements or other mutual undertakings contemplated in section 403 of this Act;

(C) encouraging non-nuclear-weapons states that are not party to the Treaty to adhere to the Treaty or, pending such adherence, to enter into comparable agreements with respect to safeguards and to forswear the development of any nuclear explosive devices, and discouraging nuclear exports to non-nuclear-weapon states which have not taken such steps;

(D) strengthening the safeguards of the IAEA as contemplated in section 201 of this Act; and

(E) renegotiating agreements for cooperation as contemplated in section 404(a) of this Act;

(2) an assessment of the impact of the progress, described in paragraph (1) on the non-proliferation policy of the United States; an explanation of the precise reasons why progress has not been made on any particular point and recommendations with respect to appropriate measures to encourage progress; and a statement of what legislative modifications, if any, are necessary in his judgment to achieve the non-proliferation policy of the United States;

(3) a determination as to which non-nuclear-weapon states with which the United States has an agreement for cooperation in effect or under negotiation, if any, have–

(A) detonated a nuclear device; or

(B) refused to accept the safeguards of the IAEA on all of their peaceful nuclear activities; or

(C) refused to give specific assurances that they will not manufacture or otherwise acquire any nuclear explosive device; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices;

(4) an assessment of whether any of the policies set forth in this Act have, on balance, been counterproductive from the standpoint of preventing proliferation;

(5) a description of the progress made toward establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses in order to enhance the

reliability of the Unites States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

Current civil agreements, analysis.

(b) In the first report required by this section, the President shall analyze each civil agreement for cooperation negotiated pursuant to section 123 of the 1954 Act, and shall discuss the scope and adequacy of the requirements and obligations relating to safeguards and other control therein.

(6) a description of the implementation of nuclear and nuclear-related dual-use export controls in the preceding calendar year, including a summary by type of commodity and destination of–

(A) all transactions for which–

(i) an export license was issued for any good controlled under section 309(c) of this Act;

(ii) an export license was issued under section 109b. of the 1954 Act;

(iii) approvals were issued under the Export Administration Act of 1979, or section 109b.(3) of the 1954 Act, for the retransfer of any item, technical data, component, or substance; or

(iv) authorizations were made as required by section 57b.(2) of the 1954 Act to engage, directly or indirectly, in the production of special nuclear material;

(B) each instance in which–

(i) a sanction has been imposed under section 821(a) or section 824 of the Nuclear Proliferation Prevention Act of 1994 or section 102(b)(1) of the Arms Export Control Act;

(ii) sales or leases have been denied under section 3(f) of the Arms Export Control Act or transactions prohibited by reason of acts relating to proliferation of nuclear explosive devices as described in section 40(d) of that Act;

(iii) a sanction has not been imposed by reason of section 821(c)(2) of the Nuclear Proliferation Prevention Act of 1994 or the imposition of a sanction has been delayed under section 102(b)(4) of the Arms Export Control Act; or

(iv) a waiver of a sanction has been made under–

(I) section 821(f) or section 824 of the Nuclear Proliferation Prevention Act of 1994,

(II) section 620E(d) of the Foreign Assistance Act of 1961, or paragraph (5) or (6)(B) of section 102(b) of the Arms Export Control Act,

(III) section 40(g) of the Arms Export Control Act with respect to the last sentence of section 40(d) of that Act, or

(IV) section 614 of the Foreign Assistance Act of 1961 with respect to section 620E of that Act or section 3(f), the last sentence of section 40(d), or 102(b)(1) of the Arms Export Control Act; and

(C) the progress of those independent states of the former Soviet Union that are non-nuclear-weapon states and of the Baltic states towards achieving the objective of applying full scope safeguards to all their peaceful nuclear activities. Portions of the information required by paragraph (6) may be submitted in

classified form, as necessary. Any such information that may not be published or disclosed under section 12(c)(1) of the Export Administration Act of 1979 shall be submitted as confidential.

(a) DETERMINATION BY THE PRESIDENT.–

(1) IN GENERAL.–Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the President determines in writing that, on or after the effective date of this part, a foreign person or a United States person has materially and with requisite knowledge contributed, through the export from the United States or any other country of any goods or technology (as defined in section 830(2)), to the efforts by any individual, group, or non-nuclear-weapon state to acquire unsafeguarded special nuclear material or to use, develop, produce, stockpile, or otherwise acquire any nuclear explosive device.

(2) PERSONS AGAINST WHICH THE SANCTION IS TO BE IMPOSED.–The sanction shall be imposed pursuant to paragraph (1) on–

(A) the foreign person or United States person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person or United States person;

(C) any foreign person or United States person that is a parent or subsidiary of that person if that parent or subsidiary materially and with requisite knowledge assisted in the activities which were the basis of that determination; and

(D) any foreign person or United States person that is an affiliate of that person if that affiliate materially and with requisite knowledge assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that person.

(3) OTHER SANCTIONS AVAILABLE.–The sanction which is required to be imposed for activities described in this subsection is in addition to any other sanction which may be imposed for the same activities under any other provision of law.

(4) DEFINITION.–For purposes of this subsection, the term "requisite knowledge" means situations in which a person "knows", as "knowing" is defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 USC 78dd-2).

(b) CONSULTATION WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.–

(1) CONSULTATIONS.–If the President makes a determination described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of the sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.–In order to pursue such consultations with that government, the President may delay imposition of the sanction pursuant to this section for up to 90 days. Following these consultations, the President shall impose the sanction unless the President determines and certifies in writing to the Congress that that government has taken specific and effective

actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay the imposition of the sanction for up to an additional 90 days if the President determines and certifies in writing to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.–Not later than 90 days after making a determination under subsection (a)(1), the President shall submit to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTION.–

(1) DESCRIPTION OF SANCTION.–The sanction to be imposed pursuant to subsection (a)(1) is, except as provided in paragraph (2) of this subsection, that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(2).

(2) EXCEPTIONS.–The President shall not be required to apply or maintain the sanction under this section–

(A) in the case of procurement of defense articles or defense services–

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines in writing that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanction;

(C) to–

(i) spare parts which are essential to United States productsor production;

(ii) component parts, but not finished products, essential to United States products or production; or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) ADVISORY OPINIONS.–Upon the request of any person, the Secretary of State may, in consultation with the Secretary of Defense,

issue in writing an advisory opinion to that person as to whether a proposed activity by that person would subject that person to the sanction under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanction, and any person who thereafter engages in such activity, may not be made subject to such sanction on account of such activity.

(e) TERMINATION OF THE SANCTION.–The sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies in writing to the Congress that–

(1) reliable information indicates that the foreign person or United States person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in that subsection; and

(2) the President has received reliable assurances from the foreign person or United States person, as the case may be, that such person will not, in the future, aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in subsection (a)(1).

(f) WAIVER.–

(1) CRITERION FOR WAIVER.–The President may waive the application of the sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies in writing to the Congress that the continued imposition of the sanction would have a serious adverse effect on vital United States interests.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.–If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.[6]

Sec. 602. Additional Reports

22 USC 3282. Governmental nuclear non-proliferation activities. Reports to Congress.

(a) The annual report to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications so advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.

(b) The reporting requirements of this title are in addition to and not to lieu of any other reporting requirements under applicable law.

[6]Sec. 6 was added by P.L. 103-236 (108 Stat. 507-511); April 30, 1994.

(c)(1) The Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Commission, and, with regard to subparagraph (B), the Director of Central Intelligence, shall keep the Committees on Foreign Relations and Governmental Affairs of the Senate and the Committee on International Relations of the House of Representatives fully and currently informed with respect to–

(A) their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, including the proliferation of nuclear, chemical, or biological weapons, or their means of delivery; and

(B) the current activities of foreign nations which are of significance from the proliferation standpoint.

(2) For the purposes of this subsection with respect to paragraph (1)(B), the phrase 'fully and currently informed' means the transmittal of credible information not later than 60 days after becoming aware of the activity concerned.[7]

(d) Any classified portions of the reports required by this Act shall be submitted to the Senate Foreign Relations Committee and the House of International Relations Committee.

Nuclear non-proliferation policies, study. Reports to Congress.

(e) Three years after enactment of this Act, the Comptroller General shall complete a study and report to the Congress on the implementation and impact of this Act on the nuclear non-proliferation policies, purposes, and objectives of this Act. The Secretaries of State, Energy, Defense, and Commerce and the Commission and the Director shall cooperate with the Comptroller General in the conduct of the study. The report shall contain such recommendations as the Comptroller General deems necessary to support the nuclear non-proliferation policies, purposes, and objectives of this Act.

(f) (1) The Secretary of Defense shall have access, on a timely basis, to all information regarding nuclear proliferation matters which the Secretary of State or the Secretary of Energy has or is entitled to have. Such access shall include access to all communications, materials, documents and records relating to nuclear proliferation matters.

(2) This subsection does not apply to any intra-departmental document of the Department of State or the Department of Energy, or any portion of such document, that is solely concerned with internal, confidential advice on policy concerning the conduct of interagency deliberations on nuclear proliferation matters.[8]

Sec. 603. Savings Clause

42 USC 2153f.

(a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges–

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

[7]Public Law 99-661 (100 Stat. 4004) (1986) amended Sec. 602(c) and added (f).
[8]Public Law 99-661 (100 Stat. 4004) (1986) amended Sec. 602(c) and added (f).

42 USC 2153f.
42 USC 2121.
42 USC 2164.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to sections 91c., 144b., or 144c. of the 1954 Act or arrangements pursuant thereto as it was in effect immediately prior to the date of enactment of this Act.

22 USC 3201 note.
Effective date.

(c) Except where otherwise provided, the provisions of this Act shall take effect immediately upon enactment regardless of any requirement for the pumulgation of regulations to implement such provisions.

Approved March 10, 1978

* * * *

Other Provisions: Provision of Certain Information to Congress.

(a) REQUIREMENT TO PROVIDE INFORMATION.–The head of each department and agency described in section 602(c) of the Nuclear Non–Proliferation Act of 1978 (22 USC 3282(c)) shall promptly provide information to the chairman and ranking minority member of the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives in meeting the requirements of subsection (c) or (d) of section 602 of such Act.

(b) ISSUANCE OF DIRECTIVES.–Not later than February 1, 2000, the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of Central Intelligence, and the Chairman of the Nuclear Regulatory Commission shall issue directives, which shall provide access to information, including information contained in special access programs, to implement their responsibilities under subsections (c) and (d) of section 602 of the Nuclear Non–Proliferation Act of 1978 (22 USC 3282(c) and (d)). Copies of such directive shall be forwarded promptly to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives upon the issuance of the directives.[9]

[9]Public Law 106–113, Division B, sec. 1000(a)(7), (113 Stat. 1536), (enacting into law sec. 1134 of Subtitle B of Title XI of Division B of H.R. 3427 (113 Stat. 1501A–494), as introduced on November 17, 1999).

INTERNATIONAL ATOMIC ENERGY AGENCY PARTICIPATION ACT OF 1957

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INTERNATIONAL ATOMIC ENERGY AGENCY PARTICIPATION ACT OF 1957

Public Law 85-177 71 Stat. 5899

August 28, 1957

An Act

To provide for the appointment of representatives of the United States of the organs of the International Atomic Energy Agency, and to make other provisions with respect to the participation of the United States in that Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(Sec. 1. Short Title)

That this Act may be cited as the "International Atomic Energy Agency Participation Act of 1957."

Sec. 2. (Representatives)

(a) The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the International Atomic Energy Agency (hereinafter referred to as the "Agency"), who shall hold office at the pleasure of the President. Such representative and deputy representative shall represent the United States on the Board of Governors of the Agency, may represent the United States at the General Conference, and may serve exofficio as United States representative on any organ of that Agency, and shall perform such other functions in connection with the participation of the United States in the Agency as the President may from time to time direct.

(b) The President, by and with the advice and consent of the Senate, may appoint or designate from time to time to attend a specified session or specified sessions of the General Conference of the Agency a representative of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Conference.

(c) The President may also appoint or designate from time to time such other persons as he may deem necessary to represent the United States in the organs of the Agency. The President may designate any officer of the United States Government, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States on the Board of Governors or to the General Conference of the Agency in the absence or disability of the representative and deputy representative appointed under section 2(a) or in lieu of such representative in connection with a specified subject matter.

(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 USC 866, 867), for Chiefs of Mission and Foreign Service officers occupying positions of equivalent importance, except that

no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not the exceed those received by Chiefs of Mission and Foreign Service officers occupying positions of equivalent importance.

Sec. 3. (Participation)

The participation of the United States in the International Atomic Energy Agency shall be consistent with and in furtherance of the purposes of the Agency set forth in its Statute and the policy concerning the development, use, and control of atomic energy set forth in the Atomic Energy Act of 1954, as amended. [The President shall, from time to time as occasion may require, but not less that once each year, make reports to the Congress on the activities of the International Atomic Energy Agency and on the participation of the United States therein.][1] In addition to any other requirements of law the Department of State and the Atomic Energy Commission shall keep the Joint Committee on Atomic Energy, the House Committee on Foreign Affairs, and the Senate Committee on Foreign Relations, as appropriate, currently informed with respect to the activities of the Agency and the participation of the United States therein.

Sec. 4. (Voting)

The representatives provided for in section 2 hereof, when representing the United States in the organs of the Agency, shall, at all times, act in accordance with the instructions of the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Statute of the International Atomic Energy Agency.

Sec. 5. (Salaries and Expenses)

5 USC 5101.
5 USC 5701.
5 USC 5731.
22 USC 801 note.
TIAS 3873.

There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the Statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended, travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of 1946, as amended, or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of 1946, as amended; services as

[1]Public Law 89-348 (79 Stat. 1310), sec. 1(20), amended Public Law 85-177 by repealing the requirement of a report to the Congress by the President not less than once each year on the activities of the International Atomic Energy Agency and on the participation of the United States therein.

authorized by section 15 of the Act of August 2, 1946 (5 USC 55a);[2] translating and other services, by contract; hire of passenger motor vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 USC 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the Statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

Sec. 6. (CSR/FEGLI Status)

5 USC 8301.
5 USC 8701.

(a) Notwithstanding any other provision of law, Executive order or regulation, a Federal employee who, with the approval of the Federal agency or the head of the department by which he is employed, leaves his position to enter the employ of the Agency shall not be considered for the purposes of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, as separated from his Federal position during such employment with the Agency but not to extend beyond the first three consecutive years of his entering the employ of the Agency: *Provided;* (1) That he shall pay to the Civil Service Commission within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency, and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group life Insurance Act of 1954, as amended, shall be made during the term of his employment with the International Atomic Energy Agency. If such employee, within three years from the date of his employment with the Agency, and within ninety days from the date he is separated without prejudice from the Agency, applies to be restored to his Federal position, he shall within thirty days of such application be restored to such position or to a position of like seniority, status and pay.[3]

(b) Notwithstanding any other provision of law, Executive order or regulation, and Presidential appointee or elected officer who leaves his position to enter, or who within ninety days after the termination of his position enters, the employ of the Agency, shall be entitled to the coverage and benefits of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life insurance Act of 1954, as amended, but not beyond the earlier of either the termination of his employment with the Agency or the expiration of three years from the date he entered employment with the Agency: *Provided,* (1) That he shall pay to the Civil Service Commission within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as

[2]Public Law 89-554 (80 Stat. 416) codified sec. 15 of the Act of August 2, 1946, as 5 USC 3109.

[3]Sec. 7 of Public Law 85-795 (72 Stat. 959), approved Aug. 28, 1958, repealed sec. 6(a), "except that it shall be considered to remain in effect with respect to any employee subject thereto who is serving as an employee of the International Atomic Energy Agency on the date of enactment of this Act and who does not make the election referred to in section 6 and for the purposes of any rights and benefits vested thereunder prior to such date."

amended, shall be made during the term of his employment with the Agency.

(c) The President is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section and to protect the retirement, insurance and such other civil service rights and privileges as the President may find appropriate.

Sec. 7. (Special Nuclear Material Compensation)

Section 54 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new sentences: "Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such periods of time as are authorized by Congress: *Provided, however,* That, notwithstanding this provision, the Commission is hereby authorized subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium 235, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to July 1, 1960."

Sec. 8. (Authority Termination)

In the event of an amendment to the Statute of the Agency being adopted in accordance with article XVIII-C of the Statute to which the Senate by formal vote shall refuse its advice and consent, upon notification by the Senate to the President of such refusal to advise and consent, all further authority under sections 2, 3, 4, and 5 of this Act, as amended, shall terminate: *Provided, however,* That the Secretary of State, under such regulations as the President shall promulgate, shall have the necessary authority to complete the prompt and orderly settlement of obligations and commitments to the Agency already incurred and pay salaries, allowances, travel expenses, and other expenses required for a prompt and orderly termination of United States participation in the Agency: *And provided further,* That the representative and the deputy representative of the United States to the Agency, and such other officers or employees representing the United States in the Agency, under such regulations as the President shall promulgate, shall retain their authority under this Act for such time as may be necessary to complete the settlement of matters arising out of the United States participation in the Agency.

Approved August 28, 1957

STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

ARTICLE I–ESTABLISHMENT OF THE AGENCY

The Parties hereto establish an International Atomic Energy Agency (hereinafter referred to as "the Agency" upon the terms and conditions hereinafter set forth.

ARTICLE II–OBJECTIVES

The Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

ARTICLE III–FUNCTION

A. The Agency is authorized:

1. To encourage and assist research on, and development and practical applications of, atomic energy for peaceful uses throughout the world; and, if requested to do so, to act as an intermediary for the purposes of securing the performance of services or the supplying of materials, equipment, or facilities by one member of the Agency for another; and to perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes.

2. To make provision, in accordance with this Statute, for materials. services, equipment, and facilities to meet the needs of research on, and development and practical application of, atomic energy for peaceful purposes, including the production of electric power, with due consideration for the needs of the underdeveloped areas of the world.;

3. To foster the exchange of scientific and technical information on peaceful use of atomic energy;

4. To encourage the exchange of scientific and training of scientists and experts in the field of peaceful uses of atomic energy;

5. To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in a way as to further any military purposes; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy;

6. To establish or adopt, in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions), and to provide for the applications of these standards to its own operations as well as to the operations making use of materials, services, equipment, facilities, and information made available by the Agency or at its request or under its control or supervision; and to provide for the application of these standards, at the request of the parties, to operations under any bilateral or multilateral

arrangement, or, at the request of a State, to any of that State's activities in the field of atomic energy;

7. To acquire or establish any facilities, plant and equipment useful in carrying out its authorized functions, whenever the facilities, plant, and equipment otherwise available to it in the area concerned are inadequate or available only on terms it deems unsatisfactory.

B. In carrying out its functions, the Agency shall:

1. Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international cooperation, and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies;

2. Establish control over the use of special fissionable materials received by the Agency, in order to ensure that these materials are used only for peaceful purposes;

3. Allocate its resources in such a manner as to secure efficient utilization and the greatest possible general benefit in all areas of the world, bearing in mind the special needs of the underdeveloped areas of the world;

4. Submit reports on the activities annually to the General Assembly of the United Nations and, when appropriate, to the Security Council, if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security, and may also take the measures open to it under this Statute, including those provided in paragraph C of Article XII;

5. Submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of these organs.

C. In carrying out its functions, the Agency shall not make assistance to members subject to any political, economic, military, or other conditions incompatible with the provisions of this Statute.

D. Subject to the provisions of this Statute and to the terms of agreement concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States.

ARTICLE IV–MEMBERSHIP

A. The initial members of the agency shall be those States Members of the Untied Nations or of any of the specialized agencies which shall have signed this Statute within ninety days after it is opened for signature and shall have deposited an instrument or ratification.

B. Other members of the Agency shall be those States, whether or not Members of the United Nations or of any of the specialized agencies, which deposit an instrument of acceptance of this Statute after their membership has been approved by the General Conference upon the recommendation of the Board of Governors. In recommending and approving a State for membership, the Board of Governors and the General Conference shall determine that the State is able and willing to

carry out the obligations of membership in the Agency, giving due consideration to its ability and willingness to act in accordance with the purposes and principles of the Charter of the United Nations.

C. The Agency is based on the principle of the sovereign equality of all its members, and all members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with this Statute.

ARTICLE V–GENERAL CONFERENCE

A. A General Conference consisting of representatives of all members shall meet in regular annual session and in such special sessions as shall be convened by the District General at the request of the Board of Governors or of a majority of members. The sessions shall take place at the headquarters of the Agency unless otherwise determined by the General Conference.

B. At such sessions, each member shall be represented by one delegate who may be accompanied by alternates and by advisers. The cost of attendance of any delegation shall be borne by the member concerned.

C. The General Conference shall elect a President and such other officers as may be required at the beginning of each session. They shall hold office for the duration of the session. The General Conference, subject to the provisions of this Statute, shall adopt its own rules of procedure. Each member shall have one vote. Decisions pursuant to paragraph H of Article XIV, paragraph C of article XVIII, and paragraph B of Article XIX shall be made by a two-thirds majority of the members present and voting. Decisions on other questions, including the determination of additional questions or categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting. A majority of members shall constitute a quorum.

D. The General Conference may discuss any questions or any matters within the scope of this Statute or relating to the powers and functions of any organs provided for in this Statute, and may make recommendations to the membership of the Agency or to the Board of Governors or to both on any such questions or matters.

E. The General Conference shall:

1. Elect members of the Board of Governors in accordance with article VI;

2. Approve States for membership in accordance with article IV;

3. Suspend a member from the privileges and rights of membership in accordance with Article XIX;

4. Consider the annual report of the Board;

5. In accordance with Article XIV, approve the budget of the Agency recommended by the Board or return it with recommendations as to its entirety or parts to the Board, for resubmission to the General Conference;

6. Approve reports to be submitted to the United Nations as required by the relationship agreement between the Agency and the United Nations, except report referred to in paragraph C of Article XII, or return them to the Board with its recommendations;

7. Approve any agreement or agreements between the Agency and the United Nations and other organizations as provided in Article XVI or return such agreements with its recommendations to the Board, for resubmission to the General Conference;

8. Approve rules and limitations regarding the exercise of borrowing powers by the Board, in accordance with paragraph G of Article XIV; approve rules regarding the acceptance of voluntary contributions to the Agency; and approve, in accordance with paragraph F of Article XIV, the manner in which the general fund referred to in that paragraph may be used;

9. Approve amendments to this Statute in accordance with paragraph C of Article XVIII.

10. Approve the appointment of the Director General in accordance with paragraph A of Article VII.

F. The General Conference shall have the authority:

1. To take decisions on any matter specifically referred to the General Conference for this purpose by the Board;

2. To propose matters for consideration by the Board and request from the Board reports on any matter relating to the functions of the Agency.

ARTICLE VI–BOARD OF GOVERNORS

A. The Board of Governors shall be composed as follows:

1. The outgoing Board of Governors shall designate for membership on the Board the ten members most advanced in the technology of atomic energy including the production of source materials, and the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas in which none of the aforesaid ten is located:

(1) North America
(2) Latin America
(3) Western Europe
(4) Eastern Europe
(5) Africa
(6) Middle East and South Asia
(7) South East Asia and the Pacific
(8) Far East

2. The outgoing Board of Governors (or in the case of the first Board, the Preparatory Commission referred to in Annex I) shall designate for membership on the Board two members from among the following other producers of source materials: Belgium, Czechoslovakia, Poland, and Portugal; and shall also designate for membership on the Board one other member as a supplier of technical assistance. No member in this category in any one year will be eligible for redesignation in the same category for the following year.

3. The General Conference shall elect ten members to membership on the Board of Governors, with due regard to equitable representation on the Board as a whole of the members in the areas listed in subparagraph A-1 of this article, so that the Board shall at all times include in this category a representative of each of those areas except North America. Except for the five members chosen for a term of one year in accordance with paragraph D of this article, no member in this category in any one

term of office will be eligible for reelection in this same category for the following term of office.

B. The designations provided for in subparagraphs A-1 and A-2 of this article shall take place not less that sixty days before each regular annual session of the General Conference. The elections provided for in subparagraph A-3 of this article shall take place at regular annual sessions of the General Conference.

C. Members represented on the Board of Governors in accordance with subparagraph A-1 and A-2 of this article shall hold office from the end of the next regular annual session of the General Conference after their designation until the end of the following regular annual session for the General Conference.

D. Members represented on the Board of Governors in accordance with subparagraph A-3 of this Article shall hold office from the end of the regular annual session of the General Conference at which they are elected until the end of the second regular annual session of the General Conference thereafter. In the election of these members for the first Board, however, five shall be chosen for a term of one year.

E. Each member of the Board of Governors shall have one vote. Decisions on the amount of the Agency's budget shall be made by a two-thirds majority of those present and voting, as provided in paragraph H of Article XIV. Decisions on other questions, including the determination of additional questions or categories of questions to be decided by a two-thirds majority, shall be made by a majority of those present and voting. Two-thirds of all members of the Board shall constitute a quorum.

F. The Board of Governors shall have authority to carry out the functions of the Agency in accordance with this Statute, subject to its responsibilities to the General Conference as provided in the Statute.

G. The Board of Governors shall meet at such times as it may determine. The meetings shall take place at the headquarters of the Agency unless otherwise determined by the Board.

H. The Board of Governors shall elect a Chairman and other officers from among its members and, subject to the provisions of this Statute, shall adopt its own rules of procedure.

I. The Board of Governors may establish such committees as it deems advisable. The Board may appoint persons to represent it in its relations with other organizations.

J. The Board of Governors shall prepare an annual report to the General Conference concerning the affairs of the Agency and any projects approved by the Agency. The Board shall also prepare for submission to the General Conference such reports as the Agency is or may be required to make to the United Nations or to any other organization the work of which is related to that of the Agency. These reports, along with the annual reports, shall be submitted to members of the Agency at least one month before the regular annual session of the General Conference.

ARTICLE VII–STAFF

A. The staff of the Agency shall be headed by a Director General. The Director General shall be appointed by the Board of Governors with the approval of the General Conference for a term of four years. He shall be the chief administrative officer of the Agency.

B. The Director General shall be responsible for the appointment, organization, and functioning of the staff and shall be under the authority of and subject to the control of the Board of Governors. He shall perform his duties in accordance with regulations adopted by the Board.

C. The staff shall include such qualified scientific and technical and other personnel as may be required to fulfill the objectives and functions of the Agency. The Agency shall be guided by the principal that its permanent staff shall be kept to a minimum.

D. The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be to secure employees of the highest standards of efficiency, technical competence, and integrity. Subject to this consideration, due regard shall be paid to the contributions of members of the Agency and to the importance of recruiting the staff on as wide a geographical basis as possible.

E. The terms and conditions on which the staff shall be appointed, renumerated, and dismissed shall be in accordance with regulations made by the Board of Governors, subject to provisions of this Statute and to general rules approved by the General Conference on the recommendation of the Board.

F. In the performance of their duties, the Director General and the staff shall not seek or receive instruction from any source external to the Agency. They shall refrain from any action which might reflect on their position as officials of the Agency; subject to their responsibilities to the Agency, they shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency. Each member undertakes to respect the international character of the responsibilities of the Director General and the staff shall not seek to influence them in the discharge of their duties.

G. In this article the term "staff" includes guards.

ARTICLE VIII–EXCHANGE OF INFORMATION

A. Each member should make available such information as would, in the judgment of the member, be helpful to the Agency.

B. Each member shall make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to article XI.

C. The Agency shall assemble and make available in an accessible form the information made available to it under paragraphs A and B of this article. It shall take positive steps to encourage the exchange among its members of information relating to the nature and peaceful uses of atomic energy and shall serve as an intermediary among its members for this purpose.

ARTICLE IX–SUPPLYING OF MATERIALS

A. Members may make available to the Agency such quantities of special fissionable materials, as they deem advisable and on such terms as shall be agreed with the Agency. The materials made available to the Agency may, at the discretion of the member making them available, be stored either by the member concerned or, with the agreement of the Agency, in the Agency's depots.

B. Members may also make available to the Agency source materials as defined in article XX and other materials. The Board of Governors shall determine the quantities of such materials which the Agency will accept under agreements provided for in article XIII.

C. Each member shall notify the Agency of the quantities, form, and composition of special fissionable materials, source materials, and other materials which that member is prepared, in conformity with its laws, to make available immediately or during a period specified by the Board of Governors.

D. On request of the Agency a member shall, from the materials which it has made available, without delay deliver to another member or group of members such quantities of such materials as the Agency may specify, and shall without delay deliver to the Agency itself such quantities of such materials as are really necessary for operations and scientific research in the facilities of the Agency.

E. The quantities, form and composition of materials made available by any member may be changed at any time by the member with the approval of the Board of Governors.

F. An initial notification in accordance with paragraph C of this article shall be made within three months of the entry into force of this Statute with respect to the member concerned. In the absence of a contrary decision of the Board of Governors, the materials initially made available shall be for the period of the calendar year succeeding the year when this Statute takes effect with respect to the member concerned. Subsequent notifications shall likewise, in the absence of a contrary action by the Board, relate to the period of the calendar year following the notification and shall be made no later than the first day of November of each year.

G. The Agency shall specify the place and method of delivery and, where appropriate, the form and composition, of materials which it has requested a member to deliver from the amounts which that member has notified the Agency it is prepared to make available. The Agency shall also verify the quantities of materials delivered and shall report those quantities periodically to the members.

The Agency shall be responsible for storing and protecting materials in its possession. The Agency shall ensure that these materials shall be safeguarded against (1) hazards of the weather, (2) unauthorized removal or diversion, (3) damage or destruction, including sabotage, and (4) forcible seizure. In storing special fissionable materials in its possession, the Agency shall ensure the geographical distribution of these materials in any one country or region of the world.

I. The Agency shall as soon as practicable establish or acquire such of the following as may be necessary:

1. Plant, equipment, and facilities for the receipt, storage, and issue of materials;
2. Physical safeguards;
3. Adequate health and safety measures;
4. Control laboratories for the analysis and verification of materials received;
5. Housing and administrative facilities for any staff required for the foregoing.

J. The materials made available pursuant to this article shall be used as determined by the Board of Governors in accordance with the provisions of this Statute. No member shall have the right to require that the materials it makes available to the Agency be kept separately by the Agency or to designate the specific project in which they must be used.

ARTICLE X–SERVICES, EQUIPMENT, AND FACILITIES

Members may make available to the Agency services, equipment, and facilities which may be of assistance in fulfilling the Agency's objectives and functions.

ARTICLE XI–AGENCY PROJECTS

A. Any member or group of members of the Agency desiring to set up any project for research on, or development or practical application of atomic energy for peaceful purposes may request the assistance of the Agency in securing special fissionable and other materials, services, equipment, and facilities necessary for this purpose. Any such request shall be accompanied by an explanation of the purpose and extent of the project and shall be considered by the Board of Governors.

B. Upon request, the Agency may also assist any member or group of members to make arrangements to secure necessary financing from outside sources to carry out such projects. In extending this assistance, the Agency will not be required to provide any guarantees or to assume any financial responsibility for the project.

C. The Agency may arrange for the supplying of any materials, services, equipment, and facilities necessary for the project by one or more members or may itself undertake to provide any or all of these directly, taking into consideration the wishes of the member or members making the request.

D. For the purpose of considering the request, the Agency may send into the territory of the member or group of members making the request a person or persons qualified to examine the project. For this purpose the Agency may, with the approval of the member or group of members making the request, use members of its own staff or employ suitably qualified nationals of any member.

E. Before approving a project under this article, the Board of Governors shall give due consideration to:

1. The usefulness of the project, including its scientific and technical feasibility;
2. The adequacy of plans, funds, and technical personnel to assure the effective execution of the project;
3. The adequacy of proposed health and safety standards for handling and storing materials and for operating facilities;
4. The inability of the member or group of members making the request to secure the necessary finances, materials, facilities, equipment, and services;
5. The equitable distribution of materials and other resources available to the Agency;
6. The special needs of the underdeveloped areas of the world;
7. Such other matters as may be relevant.

F. Upon approving a project, the Agency shall enter into an agreement with the member or group of members submitting the project, which agreement shall:

1. Provide for allocation to the project of any required special fissionable or other materials;

2. Provide for transfer of special fissionable materials from their then place of custody, whether the materials be in the custody of the Agency or of the member making them available for use in Agency projects, to the member or group of members submitting the project, under conditions which ensure the safety of any shipment required and meet applicable health and safety standards;

3. Set forth the terms and conditions, including charges, on which any materials, services, equipment, and facilities are to be provided by the Agency itself, and, if any such materials, services, equipment, and facilities are to be provided by a member, the terms and conditions as arranged for by the member or group of members submitting the project and the supplying member;

4. Include undertakings by the member or group of members submitting the project: (a) that the assistance provided shall not be used in such a way as to further any military purpose; and (b) that the project shall be subject to the safeguards provided for in article XII, the relevant safeguards being specified in the agreement;

5. Make appropriate provisions regarding the rights and interests of the Agency and the member or members concerned in any inventions or discoveries, or any patents therein, arising from the project;

6. Make appropriate provision regarding settlement of disputes;

7. Include such other provisions as may be appropriate.

G. The provisions of this article shall also apply where appropriate to a request for materials, services, facilities, or equipment in connection with an existing project.

ARTICLE XII–AGENCY SAFEGUARDS

A. With respect to any Agency project, or other arrangement where the Agency is requested by the parties concerned to apply safeguards, the Agency shall have the following rights and responsibilities to the extent relevant to the project or arrangement:

1. To examine the design of specialized equipment and facilities, including nuclear reactors, and to approve it only from the viewpoint of assuring that it will not further any military purpose, that it complies with applicable health and safety standards, and that it will permit effective application of the safeguards provided for in this article;

2. To require the observance of any health and safety measures prescribed by the Agency;

3. To require the maintenance and production of operating records to assist in ensuring accountability for source and special fissionable materials used or produced in the project or arrangement;

4. To call for and receive progress reports;

5. To approve the means to be used for the chemical processing of irradiated materials solely to ensure that this chemical processing will not lend itself to diversion of materials for military purposes and will comply with applicable health and safety standards; to require that special fissionable materials recovered or produced as a by-product be used for

peaceful purposes under, continuing Agency safeguards for research or in reactors, existing or under construction, specified by the member or members concerned; and to require deposit with the Agency of any excess of any special fissionable materials recovered or produced as a by-product over what is needed for the above-stated uses in order to prevent stockpiling of these materials, provided that thereafter at the request of the member or members concerned special fissionable materials so deposited with the Agency shall be returned promptly to the member or members concerned for use under the same provisions as stated as above;

6. To send into the territory of the recipient State or States inspectors, designated by the Agency after consultation with the State or States concerned, who shall have access at all times to all places and data and to any person who by reason of his occupation deals with materials, equipment, or facilities which are required by this Statute to be safeguarded, as necessary to account for source and special fissionable materials supplied and fissionable products and to determine whether there is a compliance with the undertaking against use in furtherance of any military purpose referred to in subparagraph F-4 of article XI, with the health and safety measures referred to in subparagraph A-2 of this article, and with any other conditions prescribed in the agreement between the Agency and the State or States concerned. Inspectors designated by the Agency shall be accompanied by representatives of the authorities of the State concerned, if that State so requests, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

7. In the event of noncompliance and failure by the recipient State or States to take requested corrective steps within a reasonable time, to suspend or terminate assistance and withdraw any materials and equipment made available by the Agency or a member in furtherance of the project.

B. The Agency shall, as necessary, establish a staff of inspectors. The staff of inspectors shall have the responsibility of examining all operations conducted by the Agency itself to determine whether the Agency is complying with the health and safety measures prescribed by it for application to projects subject to its approval, supervision or control, and whether the Agency is taking adequate measures to prevent the source and special fissionable materials in its custody or used or produced in its own operations from being used in furtherance of any military purpose. The Agency shall take remedial action forthwith to correct any noncompliance or failure to take adequate measures.

C. The staff of inspectors shall also have the responsibility of obtaining and verifying the accounting referred to in subparagraph A-6 of this article and of determining whether there is compliance with the undertaking referred to in subparagraph A-2 of this article, and with all other conditions of the project prescribed in the agreement between the Agency and the State or States concerned. The inspectors shall report any noncompliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any noncompliance which it finds to have occurred. The Board shall report the noncompliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully

corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient members or groups of members. The Agency may also, in accordance with article XIX, suspend any noncomplying member from the exercise of the privileges and rights of membership.

ARTICLE XIII–REIMBURSEMENT OF MEMBERS

Unless otherwise agreed upon between the Board of Governors and the members furnishing to the Agency materials, services, equipment, or facilities, the Board shall enter into an agreement with such member providing for reimbursement for the items furnished.

ARTICLE XIV–FINANCE

A. The Board of Governors shall submit to the General Conference the annual budget estimates for the expenses of the Agency. To facilitate the work of the Board in this regard, the Director General shall initially prepare the budget estimates. If the General Conference does not approve the estimates, it shall return them together with its recommendations to the Board. The Board shall then submit further estimates to the General Conference for its approval.

B. Expenditures of the Agency shall be classified under the following categories:

1. Administrative expenses: These shall include:

(a) Costs of the staff of the Agency other than the staff employed in connection with materials, services, equipment, and facilities referred to in subparagraph B-2 below; costs of meetings; and expenditures required for the preparation of Agency projects and for the distribution of information;

(b) Costs of implementing the safeguards referred to in Article XII in relation to agency projects or, under subparagraph A-5 of article III, in relation to any bilateral or multilateral arrangement, together with the costs of handling and storage of special fissionable material by the Agency other than the storage and handling charges referred to in paragraph E below;

2. Expenses, other than those included in subparagraph 1 of this paragraph in connection with any materials, facilities, plant, and equipment acquired or established by the Agency in carrying out its authorized functions, and the costs of materials, services, equipment, and facilities provided by it under agreements with one or more members.

C. In fixing the expenditures under subparagraph B-1(b) above, the Board of Governors shall deduct such amounts as are recoverable under agreements regarding the application of safeguards between the Agency and parties to bilateral or multilateral arrangements.

D. The Board of Governors shall apportion the expenses referred to in subparagraph B-1 above, among members in accordance with a scale to be fixed by the General Conference. In fixing the scale the General Conference shall be guided by the principles adopted by the United Nations in assessing contributions of Member States to the regular budget of the United Nations.

E. The Board of Governors shall establish periodically a scale of charges, including reasonable uniform storage and handling charges, for materials, services, equipment, and facilities furnished to members by the Agency. The scale shall be designed to produce revenues for the Agency adequate to meet the expenses and costs referred to in subparagraph B-2 above, less any voluntary contributions which the Board of Governors may, in accordance with paragraph F, apply for this purpose. The proceeds of such charges shall be placed in a separate fund which shall be used to pay members for any materials, services, equipment, or facilities furnished by them and to meet other expenses referred to in subparagraph B-2 above, which may be incurred by the Agency itself.

F. Any excess of revenues referred to in paragraph E over the expenses and costs there referred to, and any voluntary contributions to the Agency, shall be placed in a general fund which may be used as the Board of Governors, with the approval of the General Conference, may determine.

G. Subject to rules and limitations approved by the General Conference, the Board of Governors shall have the authority to exercise borrowing powers on behalf of the Agency without, however, imposing on members of the Agency any liability in respect of loans entered into pursuant to this authority, and to accept voluntary contributions made to the Agency.

H. Decisions of the General Conference on financial questions and of the Board of Governors on the amount of the Agency's budget shall require a two-thirds majority of those present and voting.

ARTICLE XV–PRIVILEGES AND IMMUNITIES

A. The Agency shall enjoy in the territory of each member such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

B. Delegates of members together with their alternates and advisers, Governors appointed to the Board together with their alternates and advisers, and the Director General and the staff of the Agency, shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Agency.

C. The legal capacity, privileges and immunities referred to in this article shall be defined in a separate agreement or agreements between the Agency, represented for this purpose by the Director General acting under instructions of the Board of Governors, and the members.

ARTICLE XVI–RELATIONSHIP WITH OTHER ORGANIZATIONS

A. The Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between the Agency and the United Nations and any other organizations the work of which is related to that of the Agency.

B. The agreement or agreements establishing the relationship of the Agency and the United Nations shall provide for:

1. Submission by the Agency of reports as provided for in subparagraphs B-4 and B-5 of Article III;

2. Consideration by the Agency of resolutions relating to it adopted by the General Assembly or any of the Councils of the United Nations and the submission of reports, when requested, to the appropriate organ of the United Nations on the action taken by the Agency or by its members in accordance with this Statute as a result of such consideration.

ARTICLE XVII–SETTLEMENT OF DISPUTES

A. Any question or dispute concerning the interpretation or application of this Statute which is not settled by negotiation shall be referred to the International Court of Justice in conformity with the Statute of the Court unless the parties concerned agree on another mode of settlement.

B. The General Conference and the Board of Governors are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities.

ARTICLE XVIII–AMENDMENTS AND WITHDRAWALS

A. Amendments to this Statute may be proposed by any member. Certified copies of the text of any amendment proposed shall be prepared by the Director General and communicated by him to all members at least ninety days in advance of its consideration by the General Conference.

B. At the fifth annual session of the General Conference following the coming into force of this Statute, the question of a general review of the provisions of this Statute shall be placed on the agenda of that session. On approval by a majority of the members present and voting, the review will take place at the following General Conference. Thereafter, proposals on the question of a general review of this Statute may be submitted for decision by the General Conference under the same procedure.

C. Amendments shall come into force for all members when:

(i) Approved by the General Conference by a two-thirds majority of those present and voting after consideration of observations submitted by the Board of Governors on each proposed amendment, and

(ii) Accepted by two-thirds of all the members in accordance with their respective constitutional processes. Acceptance by a member shall be effected by the deposit of an instrument of acceptance with the depository Government referred to in paragraph C of Article XXI.

D. At any time after five years from the date when this Statute shall take effect in accordance with paragraph E of Article XXI or whenever a member is unwilling to accept an amendment to this Statute, it may withdraw from the Agency by notice in writing to that effect given to the depository Government referred to in paragraph C of Article XXI, which shall promptly inform the Board of Governors and all members.

E. Withdrawal by a member from the Agency shall not affect its contractual obligations entered into pursuant to Article XI or its budgetary obligations for the year in which it withdraws.

ARTICLE XIX–SUSPENSION OF PRIVILEGES

A. A member of the Agency which is in arrears in the payment of its financial contributions to the agency shall have no vote in the Agency if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years. The General Conference may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

B. A member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference acting by a two-thirds majority of the members present and voting upon recommendation by the Board of Governors.

ARTICLE XX–DEFINITIONS

As used in this Statute:

1. The term "special fissionable materials" means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term "special fissionable material" does not include source material.

2. The term "uranium enriched in the isotopes 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such as the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. The term "source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one of more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other materials as the Board of Governors shall from time to time determine.

ARTICLE XXI–SIGNATURE, ACCEPTANCE, AND ENTRY INTO FORCE

5 USC 5101.
5 USC 5701.
5 USC 5731.

A. This Statute shall be open for signature on 26 October 1956 by all States Members of the United Nations or of any of the specialized agencies and shall remain open for signature by those States for a period of ninety days.

B. The signatory States shall become parties to this Statute by deposit of an instrument of ratification.

C. Instruments of ratification by signatory States and instruments of acceptance by States whose membership has been approved under paragraph B of article IV of this Statute shall be deposited with the Government of the United States of America, hereby designated as depository Government.

D. Ratification or acceptance of this Statute shall be effected by States in accordance with their respective constitutional processes.

E. This Statute, apart from the Annex, shall come into force when eighteen States have deposited instruments of ratification in accordance with paragraph B of this article, provided that such eighteen States shall include at least three of the following States: Canada, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Instruments of ratification and instruments of acceptance deposited thereafter shall take effect on the date of their receipt.

F. The depository Government shall promptly inform all States signatory to this Statute of the date of each deposit of ratification and the date of entry into force of the Statute. The depository Government shall promptly inform all signatories and members of the dates on which States subsequently become parties thereto.

G. The Annex to this Statute shall come into force on the first day this Statute is open for signature.

ARTICLE XXII–REGISTRATION WITH THE UNITED NATIONS

A. This Statute shall be registered by the depository Government pursuant to Article 102 of the Charter of the United Nations.

B. Agreements between the Agency and any member or members, agreements between the Agency and any organization or other organizations, and agreements between members subject to approval of the Agency, shall be registered with the Agency. Such agreements shall be registered by the Agency with the United Nations if registration is required under Article 102 of the Charter of the United Nations.

ARTICLE XXIII–AUTHENTIC TEXTS AND CERTIFIED COPIES

This Statute, done in the Chinese, English, French, Russian and Spanish languages, each being equally authentic, shall be deposited in the archives of the depository Government. Duly certified copies of this Statute shall be transmitted by the depository Government to the Governments of the other signatory States and to the Governments of States admitted to membership under paragraph B of Article IV.

In witness whereof the undersigned, duly authorized, have signed this Statute.

Done at the Headquarters of the United Nations, this twenty-sixth day of October, one thousand nine hundred and fifty-six.

ANNEX I–PREPARATORY COMMISSION

A. A Preparatory Commission shall come into existence on the first day this Statute is open for signature. It shall be composed of one representative each of Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Portugal, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and United States of America, and one representative each of six other States to be chosen by the International Conference on the Statute of the International Atomic Energy Agency. The Preparatory commission shall remain in existence until this Statute comes into force

and thereafter until the general Conference has convened and a Board of Governors has been selected in accordance with Article VI.

B. The expenses of the Preparatory Commission may be met by a loan provided by the United Nations and for this purpose the Preparatory Commission shall make the necessary arrangements with the appropriate authorities of the United Nations, including arrangements for repayment of the loan by the Agency. Should these funds be insufficient, the Preparatory Commission may accept advances from Governments. Such advances may be set off against the contributions of the Governments concerned to the Agency.

C. Preparatory commission shall–

1. Elect its own officers, adopt its own rules of procedure, meet as often as necessary, determine its own place of meeting and establish such committees as it deems necessary.

2. Appoint an executive secretary and staff as shall be necessary, who shall exercise such powers and performs such duties as the Commission may determine;

3. Make arrangements for the first session of the General Conference, including the preparation of a provisional agenda and draft rules of procedure, such session to be held as soon as possible after the entry into force of this Statute;

4. Make designations for membership on the first Board of Governors in accordance with subparagraph A-1 and A-2 and paragraph B of Article VI;

5. Make studies, reports, and recommendations for the first session of the General conference and for the first meeting of the Board of Governors on subjects of concern to the Agency requiring immediate attention, including (a) the financing of the Agency; (b) the programs and budget for the first year of the Agency; (c) technical problems relevant to advance planning of Agency operations; (d) the establishment of a permanent Agency staff; and (e) the location of the permanent headquarters of the Agency;

6. Make recommendations for the first meeting of the Board of Governors concerning the provisions of a headquarters agreement defining the status of the Agency and the rights and obligations which will exist in the relationship between the Agency and the host Government;

7. (a) Enter into negotiations with the United Nations with a view to the preparation of a draft agreement in accordance with Article XVI of this Statute, such draft agreement to be submitted to the first session of the general Conference and to the first meeting of the Board of Governors; and (b) make recommendations to the first session of the General Conference and to the first meeting of the Board of Governors concerning the relationship of the Agency to other international organizations as contemplated in article XVI of this Statute.

SUMMARY OF THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

ARTICLES I AND II

The statute upon its entry into force will establish the International Atomic Energy Agency, the basic objective of which is to seek to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world without at the same time furthering any military purpose.

ARTICLE III

The functions of the Agency set forth in article III of the statute are (a) to encourage and assist research on, and development and practical application of, atomic energy for peaceful purposes throughout the world; (b) to make provisions for materials, services, equipment, and facilities needed to carry out the foregoing purposes; (c) to foster the exchange of scientific and technical information on, and the exchange and training of scientist and experts in, the peaceful uses of atomic energy; (d) to establish and administer safeguards to ensure that fissionable or other materials, services, equipment, facilities, and information with which the Agency deals are not uses to further any military purpose; (e) to participate in the establishment, adoption, and application of standards of safety for the protection of health and the minimization of danger to life and property from activities in the field of atomic energy; and (f) to acquire or establish any facilities, plant, and equipment useful in carrying out its authorized functions.

In carrying out its functions, the Agency is required by the statute (a) to conduct its activities in accordance with the purposes and principals of the United Nations and, in particular in conformity with United Nations policies furthering the establishment of a safeguarded worldwide disarmament; (b) to control the use of such fissionable materials as are received by the Agency so as to ensure that they are used only for peaceful purposes; (c) to allocate its resources so as to secure efficient utilization and wide distribution of their benefits throughout the world, bearing in mind the special needs of the underdeveloped areas; (d) to submit annual reports on its activities to the General Assembly of the United Nations; (e) when appropriate, to submit reports and information to the Security Council, Economic and Social Council, and other organs of the United Nations; (f) to refuse to give assistance to member countries under political economic, military, or other conditions that are inconsistent with the statute; and (g) subject to the terms of any agreements that may be made between a state or group of states and the Agency, to give due observance to the sovereign rights of states.

ARTICLE IV

Initial members of the Agency are to be states members of the United Nations or of any of the specialized agencies which signed the statute within 90 days after it was opened for signature and which deposit instruments of ratification. The following 30 states signed the statute during the period it was open for signature: (From Oct. 26, 1956 for a period of 90 days.)

NOTE:
While the list of 30 initial member states is not provided here, eighteen ratifications were required to bring the IAEA's Statute into force. By July 29, 1957, the States in *italics*–as well as the former Czechoslovakia–had ratified the Statute. By the end of 1957, the following states had signed the Statute: (Names of States are not necessarily their historical designations.)

Afghanistan	Albania
Argentina	*Australia*
Austria	*Belarus*
Brazil	Bulgaria
Canada	Cuba
Denmark	Dominican Republic
Egypt	El Salvador
Ethiopia	*France*
Germany	Greece
Guatemala	Haiti
Holy See	Hungary
Iceland	*India*
Indonesia	*Israel*
Italy	*Japan*
Republic of Korea	Monaco
Morocco	Myanmar
Netherlands	New Zealand
Norway	*Pakistan*
Paraguay	Peru
Poland	*Portugal*
Romania	*Russian Federation*
South Africa	Spain
Sri Lanka	*Sweden*
Switzerland	Thailand
Tunisia	*Turkey*
Ukraine	*United Kingdom*
United States	Venezuela
Viet Nam	Yugoslavia

INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976

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INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976

Public Law 94-329 90 Stat. 729

June 30, 1976

An Act

To amend the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International Security Assistance and Arms Export Control Act of 1976.

That this Act may be cited as the "International Security Assistance and Arms Export Control Act of 1976."

TITLE II

22 USC 2778.

Sec. 38. Control of Arms Exports and Imports

(a) Presidential Control of Exports and Imports of Defense Articles and Services, Guidance of Policy, Etc.; Designation of United States Munitions List; Issuance of Export Licenses; Condition for Export; Negotiations Information

(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreement or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this chapter as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services; exceptions.

(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the united States Government acting in an official capacity) who engages in the

business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(1)(A)(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of brokering activities with respect to the manufacturing, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(1)(A)(ii)(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(1)(A)(ii)(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this Act, except that no license shall be required for such activities undertaken by or for an agency of the United States Government–

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(1)(A)(ii)(IV) For purposes of this clause, the term" "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.[1]

(c) CRIMINAL VIOLATIONS; PUNISHMENT

Any person who willfully violates any provision of this section or section 2779 of this title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to

[1]As amended by P.L. 105-277, Div G, Title XII, Ch. 3, sec. 1225(a)(2), (112 Stat. 2681).

state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than ten years, or both.

(d) REPEALED. PUB. L. 96-70, TITLE III, § 3303(a)(4), SEPT. 27, 1979, 93 STAT. 499.

(e) ENFORCEMENT POWERS OF PRESIDENT.

In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979 [50 App. USC 2410(c), (d), (e), and (g)], and by subsections (a) and (c) of section 12 of such Act [50 App. USC 2411(a) and (c)], subject to the same terms and conditions as are applicable to such powers under such Act [50 App. USC 2401 et seq.]. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(g)[2] IDENTIFICATION OF PERSONS CONVICTED OR SUBJECT TO INDICTMENT FOR VIOLATIONS OF CERTAIN PROVISION

(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section–

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under–

(i) this section,

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 USC 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(xi) section 603 (b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 USC 5113(b) and (c));

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines–

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government, the President may disapprove the application. The President shall consider

[2]Pub. L. 99-64 substituted (g) for (f).

requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person–

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government, except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection–

(A) the term "foreign corporation" means a corporation that is not incorporated in the United States;

(B) the term "foreign government" includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term "foreign person" means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and includes foreign corporations, international organizations, and foreign governments;

(D) the term "party to the export" means–

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.[3]

22 USC 2778a. EXPORTATION OF URANIUM DEPLETED IN THE ISOTOPE 235.–

Upon finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 [42 USC 2011 et seq.] and of the Nuclear Non-Proliferation Act of 1978 [22 USC 3201 et seq.] when such exports are subject to the controls established under the Arms Export Control Act [22 USC 2751 et seq.] or the Export Administration Act of 1979 [50 App. USC 2401 et seq][4]

CODIFICATION

Section was enacted as part of the International Security and Development Cooperation Act of 1980, and not as part of the Arms Export Control Act which comprises this chapter.

AMENDMENTS

1987 - Subsec. (b)(1). Pub. L. 100-204, w 1255(b), designated existing provisions as subpar. (A) and added subpar. (B) relating to review by Secretary of the Treasury of munitions control registrations.

Pub. L. 100-202 designated existing provisions as subpar. (A) and added subpar. (B) relating to allowance of return to United States of certain military firearms, etc., under certain circumstances.

Subsec. (b) (3). Pub. L. 100-204, § 1255(c), added par. (3). Subsec. (g).

1985 - Subsec. (c), Pub. L. 99-83, § 119(a), inserted "for each violation" before "not more" and substituted "$1,000,000" for $100,000" and "ten" for "two."

Subsec. (e). Pub. L. 99-83, § 119(b), inserted provisions relating to civil penalty for each violation.

1981 - Subsec. (b)(3), Pub. L. 97-113, § 106, struck out par. (3), which placed a $100,000,000 ceiling on commercial arms exports of major defense equipment to all countries other than NATO countries, Japan, Australia, and New Zealand.

Subsec. (f), Pub. L. 97-113, § 107, added subsec. (f).

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[3]Pub. L. 90-629, ch. 3, § 38, as added Pub. L. 94-329, title II, §212(a) (1), June 30, 1976, 90 Stat. 744, and amended Pub. L. 95-92, § 20, Aug. 4, 1977, 91 Stat. 623; Pub. L. 96-70, title III, § 3303(a)(4), Sept. 27, 1979, 93 Stat. 499; Pub. L. 96-72, § 22(a), Sept. 29, 1979, 93 Stat. 535; Pub. L. 96-92, § 21, Oct. 29, 1979, 93 Stat. 710; Pub. L. 96-533, title I, § 107(a), (c), Dec. 16, 1980, 94 Stat. 3136; Pub. L. 97-113, title I §§ 106, 107, Dec. 29, 1981, 95 Stat. 1522; Pub. L. 99-64, title I, § 123(a), July 12, 1985, 99 Stat. 156; Pub. L. 99-83, title I, § 119(a), (b), Aug. 8, 1985, 99 Stat. 203, 204; Pub. L. 100-202, § 101(b) [title VIII § 8142(a)], Dec. 22, 1987, 101 Stat. 1329-43, 1329-88; Pub. L. 100-204, title XII.§ 1255, Dec. 22, 1987, 101 Stat 1429; Pub. L. 101-222 §§ 3(a), b, Dec. 12 1989, 103 Stat. 1896, 1899.)

[4]Pub. L. 96-533, title I, § 110, Dec. 16, 1980. 94 Stat. 3138.

1980 - Subsec. (a)(3). Pub. L. 96-533, § 107(c), added para. (3).

Subsec. (b)(3). Pub. L. 96-533, § 107(a), increased the limitation in the sale of major defense equipment exports to $100,000,000 from $35,000,000.

1979 - Subsec. (b) (3), Pub. L. 96-92 increased the limitation in the sale of major defense equipment exports to $35,000,000 from $25,000,000.

Subsec. (d). Pub. L. 96-70 struck out subsec. (d), which provided that this section applies to and within the Canal Zone.

Subsec. (e). Pub. L. 96-72 substituted "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act" for "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969."

1977 - Subsec. (b)(3). Pub. L. 95-92 added provisions relating to exceptions to prohibitions against issuance of licenses under this section and procedures applicable for implementation of such exceptions.

TITLE III–GENERAL LIMITATIONS

Sec. 669. Nuclear Enrichment and Reprocessing Transfers: Nuclear Detonations

22 USC 2304 note.
22 USC 2429.
22 USC 2751 note.
Assistance, agreements and safeguards.

Nuclear Enrichment Transfers.[5]–(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic

[5]Public Law 95-92 (91 Stat. 620) (1977) sec. 12, struck out old sec. 669 and inserted new sec. 669. Before amendment, old sec. 669 read as follows:

Sec. 669. NUCLEAR TRANSFERS.-(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of--

(1) providing economic assistance;

(2) providing military or security supporting assistance or military education and training; or

(3) extending military credits or making guarantees; to any country which--

(A) delivers nuclear reprocessing or enrichment equipment, materials, or technology to any other country, or

(B) receives such equipment, materials or technology from any other country; unless before such delivery--

(i) the supplying country and receiving country have reached agreement to place all such equipment, materials, and technology, upon delivery, under multilateral auspices and management when available; and

(ii) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) (1) Notwithstanding the provisions of subsection (a) of this section, the President may, by Executive Order effective not less than 30 days following its date of promulgation, furnish assistance which would otherwise be prohibited under paragraph (1), (2), or (3) of such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that--

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and (b) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2) (A) The Congress may by join resolution terminate or restrict assistance described in paragraphs (1) through (3) of subsection (a) with respect to a country to which the prohibition in such subsection applies or take any other action with respect to such assistance for such country as it deems appropriate.

(B) Any such joint resolution with respect to a country shall, if introduced within 30 days after the transmittal of a certification under paragraph (1) with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

assistance (including assistance under chapter 4 of part II)[6] providing military assistance or grant military education and training, providing assistance under chapter 6 of part II,[7] or extending military credits or making guarantees, to any country which, on or after the date of enactment of the International Security Assistance Act of 1977, delivers nuclear enrichment equipment, materials, or technology to any other country, or receives such equipment, materials, or technology from any other country, unless before such delivery–

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

Presidential cerification transmittal to Speaker of the House and congressional committee.

(b) (1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that–

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so. Such certification shall set forth the reasons supporting such determination in each particular case.

Joint resolution.

(2) Any joint resolution which would terminate or restrict assistance described in subsection (a) with respect to a country to which the prohibition in such subsection applies shall, if introduced within thirty days after the transmittal of a certification under paragraph (1) of this subsection with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

Sec. 670. Nuclear Reprocessing Transfers And Nuclear Detonations

22 USC 2429a.

–(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance, (including assistance under chapter 4 of part II) providing military or security supporting assistance or grant military education and training, providing assistance under chapter 6 of part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977–

(1) delivers nuclear reprocessing equipment, materials, or technology to any other country or receives such equipment, materials, or technology from any other country (except for the transfer of reprocessing technology associated with the investigation, under

[6]Public Law 95-384 (92 Stat. 734) (1978) sec. 534(a)(4), added the words "(including assistance under chapter 4 of part II)" and striking "or security supporting."

[7]Public Law 95-384 (92 Stat. 734) (1978) sec. 554(3), added the words: providing assistance under chapter 6 of part 11.

international evaluation programs in which the United States participates, or technologies which are alternatives to pure plutonium reprocessing); or

(2) is not a nuclear-weapon state as defined in Article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons and which detonates a nuclear explosive device.

Presidential certification, submitted to Speaker of the House and congressional committee.

(b) (1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

Joint resolution.

(2) Any joint resolution which would terminate or restrict assistance described in subsection (a) with respect to a country to which the prohibition in such subsection applies shall, if introduced within thirty days after the transmittal of a certification under paragraph (1) of this subsection with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.[8]

Approved June 30, 1976

[8]Public Law 95-92 (91 Stat. 620) (1977) sec. 12, added new sec. 670.

INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1980

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INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1980

Public Law 96-533 94 Stat. 3131

December 16, 1980

An Act

To authorize appropriations for the fiscal year 1981 for international security and development assistance, the Peace Corps, and refugee assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

22 USC 2151 note. International Security and Development Cooperation Act of 1980.

Sec. 1. Short Title

This Act may be cited as the "International Security and Development Cooperation Act of 1980."

TITLE I–MILITARY AND RELATED ASSISTANCE AND SALES PROGRAMS

22 USC 2751 note. 22 USC 2778a. 22 USC 3201 note. 42 USC 2011 note.

Sec. 110. Exportation of Uranium Depleted in the Isotope 235

Upon a finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 and of the Nuclear Non-Proliferation Act of 1978 when such exports are subject to the controls established under theArms Export Control Act or the Export Administration Act of 1979.

Approved December 16, 1980

INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1981

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INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1981

Public Law 97-113 95 Stat. 1519

December 29, 1981

An Act

To authorize appropriations for the fiscal years 1982 and 1983 for international security and development assistance and for the Peace Corps, to establish the Peace Corps as an autonomous agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

22 USC 2151 note. International Security and Development Cooperation Act of 1981.

This Act may be cited as the "International Security and Development Cooperation Act of 1981.

TITLE VII–MISCELLANEOUS PROVISIONS

Sec. 735. Report on Nuclear Activities

22 USC 2429a-1. Report to Congress.

Beginning with the fiscal year 1983 and for each fiscal year thereafter, the President shall prepare and transmit to the Congress, as part of the presentation materials for foreign assistance programs proposed for that fiscal year, a classified report describing the nuclear programs and related activities of any country for which a waiver of section 669 or 670 of the Foreign Assistance Act of 1961 is in effect, including an assessment of–

22 USC 2429. 22 USC 2429a.

(1) the extent and effectiveness of International Atomic Energy Agency safeguards at that country's nuclear facilities; and

(2) the capability, actions, and intentions of the government of that country with respect to the manufacture or acquisition of a nuclear explosive device.

Sec. 737. Prohibitions Relating to Nuclear Transfers and Nuclear Detonations

22 USC 2429a note.

(a) The Congress finds that any transfer of a nuclear explosive device to a non-nuclear-weapon state or, in the case of a non-nuclear-weapon state, any receipt or detonation of a nuclear explosive device would cause grave damage to bilateral relations between the United States and that country.

22 USC 2429.

(b) Section 669(b)(2) of the Foreign Assistance Act of 1961 is amended to read as follows:

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress adopts a concurrent resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the adoption of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

90 Stat. 765.

(B) Any concurrent resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) For the purpose of expediting the consideration and adoption of concurrent resolutions under this paragraph, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

22 USC 2429a.

(c) Section 670 of such Act is amended to read as follows:

Sec. 670. Nuclear Reprocessing Transfers, Transfers Of Nuclear Explosive Devices, And Nuclear Detonations

22 USC 2151 note.
22 USC 2346.
22 USC 2348.
22 USC 2751 note.
22 USC 2751 note.

(a)(1) Except as provided in paragraph (2) of this subsection, no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977 delivers nuclear reprocessing equipment, materials, or technology to any other country or receives such equipment, materials, or technology from any other country (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing).

Transmittal of certification to Congress.

(2) Notwithstanding paragraph (1) of this subsection, the President may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

Congressional disapproval.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress adopts a concurrent resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the adoption of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any concurrent resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

90 Stat. 765.

(C) For the purpose of expediting the consideration and adoption of concurrent resolutions under this paragraph, a motion to proceed to the consideration of any such resolution after it has

been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977–

22 USC 2346.
22 USC 2458.
22 USC 2751 note.
22 USC 2151 note.

(A) transfers a nuclear explosive device to a non-nuclear-weapon state, or

(B) is a non-nuclear-weapon state and either–

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device.

Transmittal of certification to Congress.

(2)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, furnish assistance which would otherwise be prohibited under paragraph (1) of this subsection if, before furnishing such assistance, the President transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate termination of assistance to that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (3) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate and House of Representatives in accordance with subparagraphs (C) and (D) of this paragraph.

(C) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(D) For the purpose of expediting the consideration and adoption of joint resolutions under this paragraph, a motion to proceed to the consideration of such a joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

Joint resolution.

(E) For purposes of this paragraph, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress having received on a certification by the President under section 670(b)(2) of the Foreign Assistance Act of 1961 with respect to _____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 670(b)(3) of that Act," with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

22 USC 2429a.

Transmittal of certification to Congress.

(3) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (2) of this subsection, the President may furnish assistance which would otherwise be prohibited under paragraph (1) if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(4) For purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

Non-nuclear weapon State. See 21 UST 483.

(5) As used in this subsection, the term "non-nuclear-weapon state" means any country which is not a nuclear-weapon state, as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

Approved December 29, 1981

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL IMPLEMENTATION ACT OF 1982

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CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL IMPLEMENTATION ACT OF 1982[1]

Public Law 97-351 **96 Stat. 1663**

October 18, 1982

An Act

To amend title 18 of the United States Code to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

18 USC 831 note. Convention on the Physical Protection of Nuclear Material Implementation Act of 1982.

This Act may be cited as the "Convention on the Physical Protection of Nuclear Material Implementation Act of 1982."

Sec. 2. Implementation of Convention and Prohibition of Related Offenses

(a) Chapter 39 of title 18 of the United States Code is amended by inserting after the table of sections at the beginning of such chapter the following new section:

Sec. 831. Prohibited transactions involving nuclear materials

18 USC 831.

(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs–

(1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material for nuclear byproduct material and–

(A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property or to the environment; or

(B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;

(2) with intent to deprive another of nuclear material or nuclear byproduct material, knowingly–

(A) takes and carries away nuclear material or nuclear byproduct material of another without authority;

(B) makes an unauthorized uses, disposition, or transfer, of nuclear material or nuclear byproduct material belonging to another; or

(C) uses fraud and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(3) knowingly–

(A) uses force; or

[1]Added October 15, 1982, Public Law 97-351, sec. 2(a), 96 Stat. 1663; November 18, 1988, Public Law 100-690, Title VII, Subtitle B, sec. 7022, 102 Stat. 4397; July 5, 1994, Public Law 103-272, sec. 5(e)(6), 108 Stat. 1374; September 13, 1994, Public Law 103-322, Title XXXIII, sec. 330016(2)(C), 108 Stat. 2148.
As amended April 24, 1996, Public Law 104-132, Title V, Subtitle A, sec. 502, 110 Stat. 1282.

(B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material or nuclear byproduct material belonging to another from the person or presence of any other;

(4) intentionally intimidates any person and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;

96 Stat. 1664.

(6) knowingly threatens to use nuclear material or nuclear byproduct material to cause death or serious bodily injury to any person or substantial damage to property or to the environment under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

(7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or

(8) is a party to a conspiracy of two of more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under–

(1) paragraphs (1) through (7) of subsection (a) of this section is–

(A) a fine under this title; and

(B) imprisonment–

(i) for any term of years or for life

(I) if, while committing the offense, the offender knowingly causes the death of any person; or

(II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious body injury to any person; and

(ii) for not more than 20 years in any other case; and

(2) paragraph (8) of subsection (a) of this section is–

(A) a fine under this title; and

(B) imprisonment–

(i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and

(ii) for not more than 10 years in any other case.

(c) The circumstances referred to in subsection (a) of this section are that–

(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

(2) an offender or a victim is–

(A) a national of the United States; or

(B) a United States corporation or other legal entity;

(3) after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or

96 Stat. 1665.

(4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material or nuclear byproduct mater by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States; or

(5) either–

(A) the governmental entity under subsection (a)(5) is the United States; or

(B) the threat under subsection (a)(6) is directed at the United States

10 USC 371 *et seq.*

(d) The Attorney General may request assistance from the Secretary of Defense under chapter 18 of title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with chapter 18 of title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.

18 USC 1385.

(e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if–

(A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and

(B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

Emergency situation.

(2) As used in this subsection, the term "emergency situation" means a circumstance–

(A) that poses a serious threat to the interests of the United States; and

(B) in which–

(i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(3) Assistance under this section may include–

(A) use of personnel of the Department of Defense to arrest persons and conduct searches and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(4) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(5) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

Definitions.

(f) As used in this section–

(1) the term "nuclear material" means material containing any–

(A) plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(3) the term "international organization" means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 USC 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

96 Stat. 1666.

(4) the term "serious bodily injury" means bodily injury which involves–

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "bodily injury" means–

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of a function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

(6) the term "national of the United States" has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 USC 1101(a)(22)); and

(7) the term "United States corporation or other legal entity" means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.

FOREIGN OPERATIONS APPROPRIATIONS ACT FOR FISCAL YEAR 1991

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November 5, 1990

IRAQ SANCTIONS ACT OF 1990

* * * *

TITLE V

* * * *

Sec. 586. SHORT TITLE.

Iraq Sanctions Act of 1990.

Sections 586 through 586J of this Act may be cited as the 'Iraq Sanctions Act of 1990'.

Sec. 586A. DECLARATIONS REGARDING IRAQ'S INVASION OF KUWAIT.

The Congress–

(1) condemns Iraq's invasion of Kuwait on August 2, 1990;

(2) supports the actions that have been taken by the President in response to that invasion;

(3) calls for the immediate and unconditional withdrawal of Iraqi forces from Kuwait;

(4) supports the efforts of the United Nations Security Council to end this violation of international law and threat to international peace;

(5) supports the imposition and enforcement of multilateral sanctions against Iraq;

(6) calls on United States allies and other countries to support fully the efforts of the United Nations Security Council, and to take other appropriate actions, to bring about an end to Iraq's occupation of Kuwait; and

(7) condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.

Sec. 586B. CONSULTATIONS WITH CONGRESS.

President

The President shall keep the Congress fully informed, and shall consult with the Congress, with respect to current and anticipated events regarding the international crisis caused by Iraq's invasion of Kuwait, including with respect to United States actions.

SEC. 586C. TRADE EMBARGO AGAINST IRAQ.

President

(a) CONTINUATION OF EMBARGO–Except as otherwise provided in this section, the President shall continue to impose the trade embargo and other economic sanctions with respect to Iraq and Kuwait that the United States is imposing, in response to Iraq's invasion of Kuwait, pursuant to Executive Orders Numbered 12724 and 12725 (August 9, 1990) and, to the extent they are still in effect, Executive Orders Numbered 12722 and 12723 (August 2, 1990). Notwithstanding any other provision of law, no funds, credits, guarantees, or insurance appropriated or otherwise made available by this or any other Act for fiscal year 1991 or any fiscal year thereafter shall be used to support or administer any financial or commercial operation of any United States Government

department, agency, or other entity, or of any person subject to the jurisdiction of the United States, for the benefit of the Government of Iraq, its agencies or instrumentalities, or any person working on behalf of the Government of Iraq, contrary to the trade embargo and other economic sanctions imposed in accordance with this section.

(b) HUMANITARIAN ASSISTANCE–To the extent that transactions involving foodstuffs or payments for foodstuffs are exempted 'in humanitarian circumstances' from the prohibitions established by the United States pursuant to United Nations Security Council Resolution 661 (1990), those exemptions shall be limited to foodstuffs that are to be provided consistent with United Nations Security Council Resolution 666 (1990) and other relevant Security Council resolutions.

(c) NOTICE TO CONGRESS OF EXCEPTIONS TO AND TERMINATION OF SANCTIONS–

(1) NOTICE OF REGULATIONS–Any regulations issued after the date of enactment of this Act with respect to the economic sanctions imposed with respect to Iraq and Kuwait by the United States under Executive Orders Numbered 12722 and 12723 (August 2, 1990) and Executive Orders Numbered 12724 and 12725 (August 9, 1990) shall be submitted to the Congress before those regulations take effect.

President

(2) NOTICE OF TERMINATION OF SANCTIONS–The President shall notify the Congress at least 15 days before the termination, in whole or in part, of any sanction imposed with respect to Iraq or Kuwait pursuant to those Executive orders.

(d) Relation to Other Laws–

(1) SANCTIONS LEGISLATION–The sanctions that are described in subsection (a) are in addition to, and not in lieu of the sanctions provided for in section 586G of this Act or any other provision of law.

(2) NATIONAL EMERGENCIES AND UNITED NATIONS LEGISLATION–Nothing in this section supersedes any provision of the National Emergencies Act or any authority of the President under the International Emergency Economic Powers Act or section 5(a) of the United Nations Participation Act of 1945.

Sec. 586D. COMPLIANCE WITH UNITED NATIONS SANCTIONS AGAINST IRAQ.

(a) DENIAL OF ASSISTANCE–None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including title IV of chapter 2 of part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that–

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

(b) IMPORT SANCTIONS–If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq,

and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not prohibited–

(1) the importation of products of Iraq into its customs territory, and

(2) the export of its products to Iraq.

Sec. 586E. PENALTIES FOR VIOLATIONS OF EMBARGO.

Notwithstanding section 206 of the International Emergency Economic Powers Act (50 USC 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 USC 287c(b))–

(1) a civil penalty of not to exceed $250,000 may be imposed on any person who, after the date of enactment of this Act, violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order; and

(2) whoever, after the date of enactment of this Act, willfully violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order–

(A) shall, upon conviction, be fined not more than $1,000,000, if a person other than a natural person; or

(B) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (2) may be punished by imposition of the fine or imprisonment (or both) specified in subparagraph (B) of that paragraph.

Sec. 586F. DECLARATIONS REGARDING IRAQ'S LONG–STANDING VIOLATIONS OF INTERNATIONAL LAW.

(a) IRAQ'S VIOLATIONS OF INTERNATIONAL LAW–The Congress determines that–

(1) the Government of Iraq has demonstrated repeated and blatant disregard for its obligations under international law by violating the Charter of the United Nations, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925), as well as other international treaties;

(2) the Government of Iraq is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights and is obligated under the Covenants, as well as the Universal Declaration of Human Rights, to respect internationally recognized human rights;

(3) the State Department's Country Reports on Human Rights Practices for 1989 again characterizes Iraq's human rights record as "abysmal";

(4) Amnesty International, Middle East Watch, and other independent human rights organizations have documented extensive, systematic, and continuing human rights abuses by the Government of Iraq, including summary executions, mass political killings, disappearances, widespread use of torture, arbitrary arrests and

prolonged detention without trial of thousands of political opponents, forced relocation and deportation, denial of nearly all civil and political rights such as freedom of association, assembly, speech, and the press, and the imprisonment, torture, and execution of children;

(5) since 1987, the Government of Iraq has intensified its severe repression of the Kurdish minority of Iraq, deliberately destroyed more than 3,000 villages and towns in the Kurdish regions, and forcibly expelled more than 500,000 people, thus effectively depopulating the rural areas of Iraqi Kurdistan;

(6) Iraq has blatantly violated international law by initiating use of chemical weapons in the Iran-Iraq war;

(7) Iraq has also violated international law by using chemical weapons against its own Kurdish citizens, resulting in tens of thousands of deaths and more than 65,000 refugees;

Saddam Hussein.

(8) Iraq continues to expand its chemical weapons capability, and President Saddam Hussein has threatened to use chemical weapons against other nations;

(9) persuasive evidence exists that Iraq is developing biological weapons in violation of international law;

(10) there are strong indications that Iraq has taken steps to produce nuclear weapons and has attempted to smuggle from the United States, in violation of United States law, components for triggering devices used in nuclear warheads whose manufacture would contravene the Treaty on the Non-Proliferation of Nuclear Weapons, to which Iraq is a party; and

Saddam Hussein.

(11) Iraqi President Saddam Hussein has threatened to use terrorism against other nations in violation of international law and has increased Iraq's support for the Palestine Liberation Organization and other Palestinian groups that have conducted terrorist acts.

(b) HUMAN RIGHTS VIOLATIONS–The Congress determines that the Government of Iraq is engaged in a consistent pattern of gross violations of internationally recognized human rights. All provisions of law that impose sanctions against a country whose government is engaged in a consistent pattern of gross violations of internationally recognized human rights shall be fully enforced against Iraq.

(c) SUPPORT FOR INTERNATIONAL TERRORISM–

(1) The Congress determines that Iraq is a country which has repeatedly provided support for acts of international terrorism, a country which grants sanctuary from prosecution to individuals or groups which have committed an act of international terrorism, and a country which otherwise supports international terrorism. The provisions of law specified in paragraph (2) and all other provisions of law that impose sanctions against a country which has repeatedly provided support for acts of international terrorism, which grants sanctuary from prosecution to an individual or group which has committed an act of international terrorism, or which otherwise supports international terrorism shall be fully enforced against Iraq.

(2) The provisions of law referred to in paragraph (1) are–

(A) section 40 of the Arms Export Control Act;

(B) section 620A of the Foreign Assistance Act of 1961;

(C) sections 555 and 556 of this Act (and the corresponding sections of predecessor foreign operations appropriations Acts); and

(D) section 555 of the International Security and Development Cooperation Act of 1985.

(d) MULTILATERAL COOPERATION–The Congress calls on the President to seek multilateral cooperation–

(1) to deny dangerous technologies to Iraq;

(2) to induce Iraq to respect internationally recognized human rights; and

(3) to induce Iraq to allow appropriate international humanitarian and human rights organizations to have access to Iraq and Kuwait, including the areas in northern Iraq traditionally inhabited by Kurds.

Sec. 586G. SANCTIONS AGAINST IRAQ.

(a) IMPOSITION–Except as provided in section 586H, the following sanctions shall apply with respect to Iraq:

(1) FMS SALES–The United States Government shall not enter into any sale with Iraq under the Arms Export Control Act.

(2) COMMERCIAL ARMS SALES- Licenses shall not be issued for the export to Iraq of any item on the United States Munitions List.

(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY–The authorities of section 6 of the Export Administration Act of 1979 (50 USC App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 USC App. 2404(c)(1)) onthe control list provided for in section 4(b) of that Act (50 USC App. 2403(b)).

(4) Nuclear equipment, materials, and technology–

(A) NRC LICENSES–The Nuclear Regulatory Commission shall not issue any license or other authorization under the Atomic Energy Act of 1954 (42 USC 2011 and following) for the export to Iraq of any source or special nuclear material, any production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b. of the Atomic Energy Act of 1954 (42 USC 2139(b)), or any other material or technology requiring such a license or authorization.

(B) DISTRIBUTION OF NUCLEAR MATERIALS–The authority of the Atomic Energy Act of 1954 shall not be used to distribute any special nuclear material, source material, or byproduct material to Iraq.

(C) DOE AUTHORIZATIONS–The Secretary of Energy shall not provide a specific authorization under section 57b. (2) of the Atomic Energy Act of 1954(42 USC 2077(b)(2)) for any activity that would constitute directly or indirectly engaging in Iraq in activities that require a specific authorization under that section.

(5) ASSISTANCE FROM INTERNATIONAL FINANCIAL INSTITUTIONS–The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 USC 262d).

Credit.

(6) ASSISTANCE THROUGH THE EXPORT-IMPORT BANK–Credits and credit guarantees through the Export-Import Bank of the United States shall be denied to Iraq.

(7) ASSISTANCE THROUGH THE COMMODITY CREDIT CORPORATION–Credit, credit guarantees, and other assistance through the Commodity Credit Corporation shall be denied to Iraq.

(8) FOREIGN ASSISTANCE–All forms of assistance under the Foreign Assistance Act of 1961 (22 USC 2151 and following) other than emergency assistance for medical supplies and other forms of emergency humanitarian assistance, and under the Arms Export Control Act (22 U.S.C. 2751 and following) shall be denied to Iraq.

(b) CONTRACT SANCTITY–For purposes of the export controls imposed pursuant to subsection (a)(3), the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 USC App. 2405) shall be deemed to be August 1, 1990.

Sec. 586H. WAIVER AUTHORITY.

(a) IN GENERAL–The President may waive the requirements of any paragraph of section 586G(a) if the President makes a certification under subsection (b) or subsection (c).

(b) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI POLICIES AND ACTIONS–The authority of subsection (a) may be exercised 60 days after the President certifies to the Congress that–

(1) the Government of Iraq–

(A) has demonstrated, through a pattern of conduct, substantial improvement in its respect for internationally recognized human rights;

(B) is not acquiring, developing, or manufacturing (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses; and

(C) does not provide support for international terrorism;

(2) the Government of Iraq is in substantial compliance with its obligations under international law, including–

(A) the Charter of the United Nations;

(B) the International Covenant on Civil and Political Rights (done at New York, December 16, 1966) and the International Covenant on Economic, Social, and Cultural Rights (done at New York, December 16, 1966);

(C) the Convention on the Prevention and Punishment of the Crime of Genocide (done at Paris, December 9, 1948);

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925);

(E) the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow, July 1, 1968); and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (done at Washington, London, and Moscow, April 10, 1972); and

(3) the President has determined that it is essential to the national interests of the United States to exercise the authority of subsection (a).

(c) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI LEADERSHIP AND POLICIES–The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that–

(1) there has been a fundamental change in the leadership of the Government of Iraq; and

(2) the new Government of Iraq has provided reliable and credible assurance that–

(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

(C) it is not and will not provide support for international terrorism; and(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

(d) INFORMATION TO BE INCLUDED IN CERTIFICATIONS–Any certification under subsection (b) or (c) shall include the justification for each determination required by that subsection. The certification shall also specify which paragraphs of section 586G(a) the President will waive pursuant to that certification.

Sec. 586I. DENIAL OF LICENSES FOR CERTAIN EXPORTS TO COUNTRIES ASSISTING IRAQ'S ROCKET OR CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS CAPABILITY.

(a) RESTRICTION ON EXPORT LICENSES–None of the funds appropriated by this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines is assisting, or whose government officials the President determines are assisting, Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability.

(b) NEGOTIATIONS–The President is directed to begin immediate negotiations with those governments with which the United States has bilateral supercomputer agreements, including the Government of the United Kingdom and the Government of Japan, on conditions restricting the transfer to Iraq of supercomputer or associated technology.

Sec. 586J. REPORTS TO CONGRESS.

(a) STUDY AND REPORT ON THE INTERNATIONAL EXPORT TO IRAQ OF NUCLEAR, BIOLOGICAL, CHEMICAL, AND BALLISTIC MISSILE TECHNOLOGY–

(1) The President shall conduct a study on the sale, export, and third party transfer or development of nuclear, biological, chemical, and ballistic missile technology to or with Iraq including–

(A) an identification of specific countries, as well as companies and individuals, both foreign and domestic, engaged in such sale

or export of, nuclear, biological, chemical, and ballistic missile technology;

(B) a detailed description and analysis of the international supply, information, support, and coproduction network, individual, corporate, and state, responsible for Iraq's current capability in the area of nuclear, biological, chemical, and ballistic missile technology; and

(C) a recommendation of standards and procedures against which to measure and verify a decision of the Government of Iraq to terminate the development, production, coproduction, and deployment of nuclear, biological, chemical, and offensive ballistic missile technology as well as the destruction of all existing facilities associated with such technologies.

(2) The President shall include in the study required by paragraph (1) specific recommendations on new mechanisms, to include, but not be limited to, legal, political, economic and regulatory, whereby the United States might contribute, in conjunction with its friends, allies, and the international community, to the management, control, or elimination of the threat of nuclear, biological, chemical, and ballistic missile proliferation.

(3) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

(b) STUDY AND REPORT ON IRAQ'S OFFENSIVE MILITARY CAPABILITY–

(1) The President shall conduct a study on Iraq's offensive military capability and its effect on the Middle East balance of power including an assessment of Iraq's power projection capability, the prospects for another sustained conflict with Iran, joint Iraqi-Jordanian military cooperation, the threat Iraq's arms transfer activities pose to United States allies in the Middle East, and the extension of Iraq's political-military influence into Africa and Latin America.

(2) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1).

(c) REPORT ON SANCTIONS TAKEN BY OTHER NATIONS AGAINST IRAQ–

(1) The President shall prepare a report on the steps taken by other nations, both before and after the August 2, 1990, invasion of Kuwait, to curtail the export of goods, services, and technologies to Iraq which might contribute to, or enhance, Iraq's nuclear, biological, chemical, and ballistic missile capability.

(2) The President shall provide a complete accounting of international compliance with each of the sanctions resolutions adopted by the United Nations Security Council against Iraq since

August 2, 1990, and shall list, by name, each country which to his knowledge, has provided any assistance to Iraq and the amount and type of that assistance in violation of each United Nations resolution.

(3) The President shall make every effort to encourage other nations, in whatever forum or context, to adopt sanctions toward Iraq similar to those contained in this section.

(4) Not later than every 6 months after the date of enactment of this Act, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

Public Law 102-484 106 Stat. 2571

October 23, 1992

* * * *

DIVISION A –TITLE XVI

* * * *

TITLE XVI–IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992

Sec. 1601. SHORT TITLE.

Iran–Iraq Arms Non–Proliferation Act of 1992. 50 USC 1701 note.

This title may be cited as the "Iran–Iraq Arms Non–Proliferation Act of 1992".

Sec. 1602. UNITED STATES POLICY.

(a) IN GENERAL–It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

President.

(b) SANCTIONS–

(1) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, chapter 7 of the Arms Export Control Act, and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) PUBLIC IDENTIFICATION–The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

Sec. 1603. APPLICATION TO IRAN OF CERTAIN IRAQ SANCTIONS.

The sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101-513), including denial of export licenses for United States persons and prohibitions on United States Government sales, shall be applied to the same extent and in the same manner with respect to Iran.

Sec. 1604. SANCTIONS AGAINST CERTAIN PERSONS.

(a) PROHIBITION–If any person transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to

acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) MANDATORY SANCTIONS–The sanctions to be imposed pursuant to subsection (a) are as follows:

(1) PROCUREMENT SANCTION–For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.

(2) EXPORT SANCTION- For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

Sec. 1605. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

President.

(a) PROHIBITION–If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons, then–

(1) the sanctions described in subsection (b) shall be imposed on such country; and

(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c).

(b) MANDATORY SANCTIONS- Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows:

(1) SUSPENSION OF UNITED STATES ASSISTANCE–The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country.

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE–The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country.

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS–The United States shall suspend, for a period of one year, compliance with its obligations under any memorandum of understanding with the sanctioned country for the codevelopment or coproduction of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part.

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS–The United States shall suspend, for a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual-use technology between the United States and the sanctioned country that does not directly contribute to the security of the United

States, and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period.

(5) UNITED STATES MUNITIONS LIST–No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctioned country for a period of one year.

(c) DISCRETIONARY SANCTION–The sanction referred to in subsection (a)(2) is as follows:

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT–Except as provided in paragraph (2), the President may exercise, in accordance with the provisions of that Act, the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country.

(2) EXCEPTION–Paragraph (1) does not apply with respect to urgent humanitarian assistance.

Sec. 1606. WAIVER.

President.

The President may waive the requirement to impose a sanction described in section 1603, in the case of Iran, or a sanction described in section 1604(b) or 1605(b), in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and detailed rationale for such determination.

Sec. 1607. REPORTING REQUIREMENT.

President.

(a) ANNUAL REPORT–Beginning one year after the date of the enactment of this Act, and every 12 months thereafter, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report detailing–

(1) all transfers or retransfers made by any person or foreign government during the preceding 12-month period which are subject to any sanction under this title; and

(2) the actions the President intends to undertake or has undertaken pursuant to this title with respect to each such transfer.

(b) REPORT ON INDIVIDUAL TRANSFERS–Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this title, the President shall, within 30 days after such transfer, submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report–

(1) identifying the person or government and providing the details of the transfer; and

(2) describing the actions the President intends to undertake or has undertaken under the provisions of this title with respect to each such transfer.

(c) FORM OF TRANSMITTAL–Reports required by this section may be submitted in classified as well as in unclassified form.

Sec. 1608. DEFINITIONS.

For purposes of this title:

(1) The term "advanced conventional weapons" includes–

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways;

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this title.

(2) The term "cruise missile" means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag.

(3) The term "goods or technology" means–

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data.

(4) The term "person" means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries.

(5) The term "sanctioned country" means a country against which sanctions are required to be imposed pursuant to section 1605.

(6) The term "sanctioned person" means a person that makes a transfer described in section 1604(a).

(7) The term "United States assistance" means–

(A) any assistance under the Foreign Assistance Act of 1961, other than–

(i) urgent humanitarian assistance or medicine, and

(ii) assistance under chapter 11 of part I (as enacted by the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992);

(B) sales and assistance under the Arms Export Control Act;

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and

(D) financing under the Export-Import Bank Act.

SUBTITLE B–NORTH KOREA THREAT REDUCTION

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SUBTITLE B–NORTH KOREA THREAT REDUCTION

Public Law 106-113 113 Stat. 1501–472

November 29, 1999

An Act

making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

* * * *

SEC. 821. SHORT TITLE.

This subtitle may be cited as the "North Korea Threat Reduction Act of 1999"

SEC. 822. RESTRICTIONS ON NUCLEAR COOPERATION WITH NORTH KOREA.

(a) IN GENERAL.–Notwithstanding any other provision of law or any international agreement, no agreement for cooperation (as defined in section 11b. of the Atomic Energy Act of 1954 (42 USC 2014 b.)) between the United States and North Korea may become effective, no license may be issued for export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement, and no approval may be given for the transfer or retransfer directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement, until the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that–

(1) North Korea has come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), and has taken all steps that have been deemed necessary by the IAEA in this regard;

(2) North Korea has permitted the IAEA full access to all additional sites and all information (including historical records) deemed necessary by the IAEA to verify the accuracy and completeness of North Korea's initial report of May 4, 1992, to the IAEA on all nuclear sites and material in North Korea;

(3) North Korea is in full compliance with its obligations under the Agreed Framework;

(4) North Korea has consistently taken steps to implement the Joint Declaration on Denuclearization, and is in full compliance with its obligations under numbered paragraphs 1, 2, and 3 of the Joint Declaration on Denuclearization (excluding in the case of numbered paragraph 3 facilities frozen pursuant to the Agreed Framework);

(5) North Korea does not have uranium enrichment or nuclear reprocessing facilities (excluding facilities frozen pursuant to the Agreed Framework), and is making no significant progress toward acquiring or developing such facilities;

(6) North Korea does not have nuclear weapons and is making no significant effort to acquire, develop, test, produce, or deploy such weapons; and

(7) the transfer to North Korea of key nuclear components, under the proposed agreement for cooperation with North Korea and in accordance with the Agreed Framework, is in the national interest of the United States.

(b) CONSTRUCTION.–The restrictions contained in subsection (a) shall apply in addition to all other applicable procedures, requirements, and restrictions contained in the Atomic Energy Act of 1954 and other laws.

SEC. 823. DEFINITIONS.

In this subtitle:

(1) AGREED FRAMEWORK.–The term "Agreed Framework" means the "Agreed Framework Between the United States of America and the Democratic People's Republic of Korea", signed in Geneva on October 21, 1994, and the Confidential Minute to that Agreement.

(2) IAEA.–The term "IAEA" means the International Atomic Energy Agency.

(3) NORTH KOREA.–The term "North Korea" means the Democratic People's Republic of Korea.

(4) JOINT DECLARATION ON DENUCLEARIZATION.–The term "Joint Declaration on Denuclearization" means the Joint Declaration on the Denuclearization of the Korean Peninsula, issued by the Republic of Korea and the Democratic People's Republic of Korea on January 1, 1992.

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IRAN NONPROLIFERATION ACT OF 2000

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IRAN NONPROLIFERATION ACT OF 2000

Public Law 106-178 114 Stat. 38

March 14, 2000

An Act

to provide for the application of measures to foreign persons who transfer to Iran certain goods, services, or technology, and for other purposes.

Iran Nonproliferation Act of 2000. Arms and munitions. Weapons. 50 USC 1701 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Iran Nonproliferation Act of 2000".

President

SEC. 2. REPORTS ON PROLIFERATION TO IRAN.

(a) REPORTS.–The President shall, at the times specified in subsection (b), submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after January 1, 1999, transferred to Iran–

(1) goods, services, or technology listed on–

(A) the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/ Rev.3/ Part 1, and subsequent revisions) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/ Rev.3/ Part 2, and subsequent revisions);

(B) the Missile Technology Control Regime Equipment and Technology Annex of June 11, 1996, and subsequent revisions;

(C) the lists of items and substances relating to biological and chemical weapons the export of which is controlled by the Australia Group;

(D) the Schedule One or Schedule Two list of toxic chemicals and precursors the export of which is controlled pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; or

(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list of July 12, 1996, and subsequent revisions; or

(2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems.

Deadline.

(b) TIMING OF REPORTS.–The reports under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act, not later than 6 months after such date of enactment, and not later than the end of each 6-month period thereafter.

(c) EXCEPTIONS.–Any foreign person who–

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer; or

(2) has engaged in a transfer on behalf of, or in concert with, the Government of the United States, is not required to be identified on account of that same transfer in any report submitted thereafter under this section, except to the degree that new information has emerged indicating that the particular transfer may have continued, or been larger, more significant, or different in nature than previously reported under this section.

(d) Submission in Classified Form.--When the President considers it appropriate, reports submitted under subsection (a), or appropriate parts thereof, may be submitted in classified form.

SEC. 3. APPLICATION OF MEASURES TO CERTAIN FOREIGN PERSONS.

(a) APPLICATION OF MEASURES.–Subject to sections 4 and 5, the President is authorized to apply with respect to each foreign person identified in a report submitted pursuant to section 2(a), for such period of time as he may determine, any or all of the measures described in subsection (b).

(b) DESCRIPTION OF MEASURES.–The measures referred to in subsection (a) are the following:

(1) EXECUTIVE ORDER NO. 12938 PROHIBITIONS.–The measures set forth in subsections (b) and (c) of section 4 of Executive Order No. 12938.

(2) ARMS EXPORT PROHIBITION.–Prohibition on United States Government sales to that foreign person of any item on the United States Munitions List as in effect on August 8, 1995, and termination of sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(3) DUAL USE EXPORT PROHIBITION.–Denial of licenses and suspension of existing licenses for the transfer to that person of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) EFFECTIVE DATE OF MEASURES.–Measures applied pursuant to subsection (a) shall be effective with respect to a foreign person no later than–

(1) 90 days after the report identifying the foreign person is submitted, if the report is submitted on or before the date required by section 2(b);

(2) 90 days after the date required by section 2(b) for submitting the report, if the report identifying the foreign person is submitted within 60 days after that date; or

(3) on the date that the report identifying the foreign person is submitted, if that report is submitted more than 60 days after the date required by section 2(b).

(d) PUBLICATION IN FEDERAL REGISTER.–The application of measures to a foreign person pursuant to subsection (a) shall be announced by notice published in the Federal Register.

SEC. 4. PROCEDURES IF MEASURES ARE NOT APPLIED.

(a) REQUIREMENT TO NOTIFY CONGRESS.–Should the President not exercise the authority of section 3(a) to apply any or all of the measures described in section 3(b) with respect to a foreign person identified in a report submitted pursuant to section 2(a), he shall so notify the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate no later than the effective date under section 3(c) for measures with respect to that person.

(b) WRITTEN JUSTIFICATION.–Any notification submitted by the President under subsection (a) shall include a written justification describing in detail the facts and circumstances relating specifically to the foreign person identified in a report submitted pursuant to section 2(a) that support the President's decision not to exercise the authority of section 3(a) with respect to that person.

(c) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, the notification of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 5. DETERMINATION EXEMPTING FOREIGN PERSON FROM SECTIONS 3 AND 4.

(a) IN GENERAL.–Sections 3 and 4 shall not apply to a foreign person 15 days after the President reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the President has determined, on the basis of information provided by that person, or otherwise obtained by the President, that–

(1) the person did not, on or after January 1, 1999, knowingly transfer to Iran the goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a);

(2) the goods, services, or technology the transfer of which caused that person to be identified in a report submitted pursuant to section 2(a) did not materially contribute to Iran's efforts to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems;

(3) the person is subject to the primary jurisdiction of a government that is an adherent to one or more relevant nonproliferation regimes, the person was identified in a report submitted pursuant to section 2(a) with respect to a transfer of goods, services, or technology described in section 2(a)(1), and such transfer was made consistent with the guidelines and parameters of all such relevant regimes of which such government is an adherent; or

(4) the government with primary jurisdiction over the person has imposed meaningful penalties on that person on account of the transfer of the goods, services, or technology which caused that person to be identified in a report submitted pursuant to section 2(a).

(b) OPPORTUNITY TO PROVIDE INFORMATION.–Congress urges the President–

(1) in every appropriate case, to contact in a timely fashion each foreign person identified in each report submitted pursuant to

section 2(a), or the government with primary jurisdiction over such person, in order to afford such person, or governments, the opportunity to provide explanatory, exculpatory, or other additional information with respect to the transfer that caused such person to be identified in a report submitted pursuant to section 2(a); and

(2) to exercise the authority in subsection (a) in all cases where information obtained from a foreign person identified in a report submitted pursuant to section 2(a), or from the government with primary jurisdiction over such person, establishes that the exercise of such authority is warranted.

(c) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, the determination and report of the President under subsection (a), or appropriate parts thereof, may be submitted in classified form.

SEC. 6. RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.

Russian Federation. President.

(a) RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.–Notwithstanding any other provision of law, no agency of the United States Government may make extraordinary payments in connection with the International Space Station to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any other organization, entity, or element of the Government of the Russian Federation, unless, during the fiscal year in which the extraordinary payments in connection with the International Space Station are to be made, the President has made the determination described in subsection (b), and reported such determination to the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate.

(b) DETERMINATION REGARDING RUSSIAN COOPERATION IN PREVENTING PROLIFERATION TO IRAN.–The determination referred to in subsection (a) is a determination by the President that–

(1) it is the policy of the Government of the Russian Federation to oppose the proliferation to Iran of weapons of mass destruction and missile systems capable of delivering such weapons;

(2) the Government of the Russian Federation (including the law enforcement, export promotion, export control, and intelligence agencies of such government) has demonstrated and continues to demonstrate a sustained commitment to seek out and prevent the transfer to Iran of goods, services, and technology that could make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems; and

(3) neither the Russian Aviation and Space Agency, nor any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, has, during the 1-year period prior to the date of the determination pursuant to this subsection, made transfers to Iran reportable under section 2(a) of this Act (other than transfers with respect to which a determination pursuant to section 5 has been or will be made).

Deadline.

(c) PRIOR NOTIFICATION.–Not less than 5 days before making a determination under subsection (b), the President shall notify the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate of his intention to make such determination.

(d) WRITTEN JUSTIFICATION.–A determination of the President under subsection (b) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(e) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, a determination of the President under subsection (b), a prior notification under subsection (c), and a written justification under subsection (d), or appropriate parts thereof, may be submitted in classified form.

(f) EXCEPTION FOR CREW SAFETY.–

(1) EXCEPTION.–The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency or any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency if the President has notified the Congress in writing that such payments are necessary to prevent the imminent loss of life by or grievous injury to individuals aboard the International Space Station.

Deadline.

(2) REPORT.–Not later than 30 days after notifying Congress that the National Aeronautics and Space Administration will make extraordinary payments under paragraph (1), the President shall submit to Congress a report describing–

(A) the extent to which the provisions of subsection (b) had been met as of the date of notification; and

(B) the measures that the National Aeronautics and Space Administration is taking to ensure that–

(i) the conditions posing a threat of imminent loss of life by or grievous injury to individuals aboard the International Space Station necessitating the extraordinary payments are not repeated; and

(ii) it is no longer necessary to make extraordinary payments in order to prevent imminent loss of life by or grievous injury to individuals aboard the International Space Station.

(g) SERVICE MODULE EXCEPTION.–

(1) The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any subcontractor thereof for the construction, testing, preparation, delivery, launch, or maintenance of the Service Module, and for the purchase (at a total cost not to exceed $14,000,000) of the pressure dome for the Interim Control Module and the Androgynous Peripheral Docking Adapter and related hardware for the United States propulsion module, if–

(A) the President has notified Congress at least 5 days before making such payments;

(B) no report has been made under section 2 with respect to an activity of the entity to receive such payment, and the President has no credible information of any activity that would require such a report; and

(C) the United States will receive goods or services of value to the United States commensurate with the value of the extraordinary payments made.

(2) For purposes of this subsection, the term "maintenance" means activities which cannot be performed by the National Aeronautics and Space Administration and which must be performed in order for the Service Module to provide environmental control, life support, and orbital maintenance functions which cannot be performed by an alternative means at the time of payment.

Termination date.

(3) This subsection shall cease to be effective 60 days after a United States propulsion module is in place at the International Space Station.

(h) EXCEPTION.–Notwithstanding subsections (a) and (b), no agency of the United States Government may make extraordinary payments in connection with the International Space Station to any foreign person subject to measures applied pursuant to–

(1) section 3 of this Act; or

(2) section 4 of Executive Order No. 12938 (November 14, 1994), as amended by Executive Order No. 13094 (July 28, 1998).

Such payments shall also not be made to any other entity if the agency of the United States Government anticipates that such payments will be passed on to such a foreign person.

SEC. 7. DEFINITIONS.

For purposes of this Act, the following terms have the following meanings:

(1) EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.–The term "extraordinary payments in connection with the International Space Station" means payments in cash or in kind made or to be made by the United States Government–

(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date.

(2) FOREIGN PERSON; PERSON.–The terms "foreign person" and "person" mean–

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign governmental entity operating as a business enterprise; and

(D) any successor, subunit, or subsidiary of any entity described in subparagraph (B) or (C).

(3) EXECUTIVE ORDER NO. 12938. The term "Executive Order No. 12938" means Executive Order No. 12938 as in effect on January 1, 1999.

(4) ADHERENT TO RELEVANT NONPROLIFERATION REGIME.–A government is an "adherent" to a "relevant nonproliferation regime" if that government–

(A) is a member of the Nuclear Suppliers Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(A);

(B) is a member of the Missile Technology Control Regime with respect to a transfer of goods, services, or technology described in section 2(a)(1)(B), or is a party to a binding international agreement with the United States that was in effect on January 1, 1999, to control the transfer of such goods, services, or technology in accordance with the criteria and standards set forth in the Missile Technology Control Regime;

(C) is a member of the Australia Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(C);

(D) is a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction with respect to a transfer of goods, services, or technology described in section 2(a)(1)(D); or

(E) is a member of the Wassenaar Arrangement with respect to a transfer of goods, services, or technology described in section 2(a)(1)(E).

(5) ORGANIZATION OR ENTITY UNDER THE JURISDICTION OR CONTROL OF THE RUSSIAN AVIATION AND SPACE AGENCY.–

(A) The term "organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency" means an organization or entity that–

(i) was made part of the Russian Space Agency upon its establishment on February 25, 1992;

(ii) was transferred to the Russian Space Agency by decree of the Russian Government on July 25, 1994, or May 12, 1998;

(iii) was or is transferred to the Russian Aviation and Space Agency or Russian Space Agency by decree of the Russian Government at any other time before, on, or after the date of the enactment of this Act; or

(iv) is a joint stock company in which the Russian Aviation and Space Agency or Russian Space Agency has at any time held controlling interest.

(B) Any organization or entity described in subparagraph (A) shall be deemed to be under the jurisdiction or control of the Russian Aviation and Space Agency regardless of whether–

(i) such organization or entity, after being part of or transferred to the Russian Aviation and Space Agency or Russian Space Agency, is removed from or transferred out of

the Russian Aviation and Space Agency or Russian Space Agency; or

(ii) the Russian Aviation and Space Agency or Russian Space Agency, after holding a controlling interest in such organization or entity, divests its controlling interest.

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