

March 30, 2005

The Honorable Richard B. Cheney  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to provide an NRC draft bill that would amend the Atomic Energy Act of 1954 and in one instance the Omnibus Budget Reconciliation Act of 1990. These provisions are intended to enhance the nation's nuclear safety and security and further NRC effectiveness and efficiency.

More specifically, this legislation would accomplish the following objectives:

(1) authorization of NRC to allow security guards to possess more powerful weapons when they are engaged in the protection of NRC-licensed or NRC-certified facilities that are designated by the Commission, or of radioactive material or other property owned or possessed by an NRC licensee or certificate holder and determined by the Commission to be of significance to the common defense and security or public health and safety;

(2) expansion of requirements for fingerprinting, for criminal history record checks, to any individual who is permitted access to safeguards information or unescorted access to an NRC-licensed utilization facility or radioactive material or other property subject to NRC regulation that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks;

(3) making unauthorized introduction of weapons into NRC-regulated facilities a Federal crime;

(4) making it a Federal crime to sabotage commercial nuclear facilities, fuel, and Commission-designated material or property not previously covered by the sabotage section of the Atomic Energy Act (section 236), and extending coverage to the construction period for all facilities addressed by that section;

(5) augmentation of the Commission's regulatory authority to protect the public health and safety and promote the common defense and security with respect to radioactive materials by including accelerator-produced and certain other radioactive material under its jurisdiction;

(6) clarification that NRC's jurisdiction extends to former licensees of production or utilization facilities to the extent that they own or control decommissioning funds;

(7) clarification that in the case of a combined construction and operating license the initial duration of the operating authorization runs from the time the Commission authorized operation;

(8) elimination of the Commission's antitrust review authority with respect to pending or future applications for a license to construct or operate a utilization facility;

(9) authorization of the Commission to assess and collect fees from other Federal agencies for services provided to them;

(10) making NRC's 90 percent fee recovery requirement permanent; and

(11) clarification that the existence of an organizational conflict of interest does not bar the Commission from entering into a contract or other arrangement for work to be performed by a Department of Energy laboratory or the operator of such a laboratory, provided that the Commission determines that the conflict of interest cannot be mitigated and that adequate justification exists to proceed with the contract or other arrangement.

In addition to the proposals listed above, as it has previously stated, the Commission supports the enactment of legislation extending the Price-Anderson Act as it applies to NRC licensees.

A draft bill (Enclosure 1) and a memorandum explaining the need for the legislation (Enclosure 2) are provided.

Sincerely,

*/RA/*

Nils J. Diaz

Enclosures:

1. Draft Bill
2. Legislative Memorandum

Identical letter sent to:

The Honorable Richard B. Cheney  
President of the United States Senate  
Washington, D.C. 20510

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

The Honorable George V. Voinovich, Chairman  
Subcommittee on Clean Air, Climate Change,  
and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator Thomas R. Carper

The Honorable Ralph M. Hall, Chairman  
Subcommittee on Energy and Air Quality  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Rick Boucher

The Honorable James M. Inhofe, Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator James M. Jeffords

The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative John D. Dingell

DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Nuclear Safety and Security Act of 2005".

**TITLE I – NUCLEAR SAFETY AND SECURITY**

**SEC. 101. USE OF FIREARMS BY SECURITY PERSONNEL OF LICENSEES AND CERTIFICATE HOLDERS OF THE COMMISSION.**

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following subsection:

“y.(1) notwithstanding sections 922(a)(4), 922(a)(5), 922(b)(2), 922(b)(4), 922(o), and 925(d)(3) of title 18, United States Code, and section 5844 of title 26, United States Code, or any provision of any State law or any rule or regulation of a State or any political subdivision of a State prohibiting the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for the foregoing, or a large capacity ammunition feeding device, authorize security personnel of licensees and certificate holders of the Nuclear Regulatory Commission (including employees of contractors of licensees and certificate holders) to transfer, receive, possess, transport, import, and use 1 or more of those weapons, ammunition, or devices, if the Nuclear Regulatory Commission determines that--

“(A) such authorization is necessary to the discharge of the security personnel's official duties; and

“(B) the security personnel--

“(i) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws pertaining to possession of firearms by certain categories of persons;

“(ii) have successfully completed requirements established through guidelines implementing this subsection for training in use of firearms and tactical maneuvers;

“(iii) are engaged in the protection of--

“(I) facilities owned or operated by a Nuclear Regulatory Commission licensee or certificate holder that are designated by the Nuclear Regulatory Commission; or

“(II) radioactive material or other property owned or possessed by a person that is a licensee or certificate holder of the Nuclear Regulatory Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Nuclear Regulatory Commission to be of significance to the common defense and security or public health and safety; and

“(iv) are discharging their official duties in transferring, receiving, possessing, transporting, or importing such weapons, ammunition, or devices.

“(2) Such receipt, possession, transportation, importation, or use shall be subject to a background check by the Attorney General, based on fingerprints and including a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the person applying

for the authority is prohibited from possessing or receiving a firearm under Federal or State law.

“(3) This subsection shall become effective upon the issuance of guidelines by the Nuclear Regulatory Commission, with the approval of the Attorney General, to govern the implementation of this subsection.

“(4) In this subsection, the terms `handgun', `rifle', `shotgun', `firearm', `ammunition', `machinegun', `short-barreled shotgun', and `short-barreled rifle' shall have the meanings given those terms in section 921(a) of title 18, United States Code.”.

SEC. 102. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.

(a) IN GENERAL- Subsection a. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is amended--

(1) by striking “a. The Nuclear” and all that follows through “section 147.” and inserting the following:

“a. IN GENERAL-

“(1) REQUIREMENTS-

“(A) IN GENERAL- The Nuclear Regulatory Commission shall require each individual or entity--

“(i) that is licensed or certified to engage in an activity subject to regulation by the Nuclear Regulatory Commission;

“(ii) that has filed an application for a license or certificate to engage in an activity subject to regulation by the Nuclear Regulatory Commission; or

“(iii) that has notified the Nuclear Regulatory Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Nuclear Regulatory Commission;

to fingerprint each individual described in subparagraph (B) before the individual is permitted unescorted access or access, whichever is applicable, as described in subparagraph (B).

“(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED-  
The Nuclear Regulatory Commission shall require to be fingerprinted each individual who--

“(i) is permitted unescorted access to--

“(I) a utilization facility; or

“(II) radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that the Nuclear Regulatory Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

“(ii) is permitted access to safeguards information under section 147.”;

(2) by striking “All fingerprints obtained by a licensee or applicant as required in the preceding sentence” and inserting the following:

“(2) SUBMISSION TO THE ATTORNEY GENERAL- All fingerprints obtained by an individual or entity as required in paragraph (1)”;

(3) by striking “The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant.” and inserting the following:

“(3) COSTS- The costs of any identification and records check conducted pursuant to paragraph (1) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).”;

(4) by striking “Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Nuclear Regulatory Commission, and, in accordance with regulations prescribed under this section, the Nuclear Regulatory Commission may provide such results to licensee or applicant submitting such fingerprints.” and inserting the following:

“(4) PROVISION TO INDIVIDUAL OR ENTITY REQUIRED TO CONDUCT FINGERPRINTING- Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Nuclear Regulatory Commission, and, in accordance with regulations prescribed under this section, the Nuclear Regulatory Commission may provide such results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).”.

(b) ADMINISTRATION- Subsection c. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(c)) is amended--

(1) by striking “, subject to public notice and comment, regulations–“ and inserting “requirements–“; and

(2) by striking, in paragraph (2)(B), “unescorted access to the facility of a licensee or applicant” and inserting “unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)”.

(c) BIOMETRIC METHODS- Subsection d. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(d)) is redesignated as subsection e., and the following is inserted after subsection c.:

“d. USE OF OTHER BIOMETRIC METHODS- The Nuclear Regulatory Commission may satisfy its responsibility to require a person or individual to conduct fingerprinting under paragraph (1) by authorizing or requiring use of any alternative biometric method for identification that the Attorney General has approved and that the Nuclear Regulatory Commission has approved by rule.”

SEC. 103. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after “custody of the Commission” the words “or subject to its licensing authority or to certification by the Commission under this Act or any other Act”.

SEC. 104. SABOTAGE OF NUCLEAR FACILITIES, FUEL, OR DESIGNATED MATERIAL.

(a) IN GENERAL- Subsection a. of section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended--

(1) in paragraph (2), by striking “storage facility” and inserting “storage, treatment, or disposal facility”;

(2) in paragraph (3)--

(A) by striking “such a utilization facility” and inserting “a utilization facility licensed under this Act”; and

(B) by striking “or” at the end;

(3) in paragraph (4)--

(A) by striking “facility licensed” and inserting “, uranium conversion, or nuclear fuel fabrication facility licensed or certified”; and

(B) by striking the comma at the end and inserting a semicolon;

and

(4) by inserting after paragraph (4) the following:

“(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

“(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

“(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security,”.

(b) Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended by striking “intentionally and willfully” wherever they appear in the section, and inserting “knowingly”.

SEC. 105. COVERAGE OF ACCELERATOR-PRODUCED AND OTHER RADIOACTIVE MATERIAL IN DEFINITION OF BYPRODUCT MATERIAL.

(a) DEFINITION OF BYPRODUCT MATERIAL- Section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) is amended—

(1) by striking “means (1) any radioactive” and inserting “means—

“(1) any radioactive”;

(2) by striking “material, and (2) the tailings” and inserting “material;

“(2) the tailings”; and

(3) by striking “content.” and inserting “content; and

“(3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph, for use in a commercial, medical, or research activity; or

“(B) any material that—

“(I) has been made radioactive by use of a particle accelerator; and

“(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph, for use in a commercial, medical, or research activity; and

“(4) any discrete source of naturally occurring radioactive material, other than source material that—

“(A) the Nuclear Regulatory Commission determines (after consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency), would pose a threat similar to that posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

“(B) before, on, or after the date of enactment of this paragraph, is extracted or converted after extraction, for use in a commercial, medical, or research activity.”.

(b) AGREEMENTS- Section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (2) the following:

“(3) byproduct materials (as defined in section 11e.(3));

“(4) byproduct materials (as defined in section 11e.(4));”.

(c) REGULATIONS.--

(1) IN GENERAL- The Nuclear Regulatory Commission shall promulgate final regulations establishing such requirements and standards as the Nuclear Regulatory Commission considers necessary for the acquisition, possession, transfer, use, or disposal of byproduct material (as defined in paragraphs (3) and

(4) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a)).

(2) COOPERATION- The Nuclear Regulatory Commission shall cooperate with the States in formulating the regulations under paragraph (1).

(3) TRANSITION- To facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a)), the Nuclear Regulatory Commission shall prepare and provide public notice of a transition plan developed in coordination with States that—

(A) have not, before such notice is issued, entered into an agreement with the Nuclear Regulatory Commission under section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)); or

(B) have entered into such an agreement, but have not, before such notice is issued, applied for an amendment to the agreement that would permit assumption by the State of regulatory responsibility for such byproduct material.

(d) WASTE DISPOSAL.--

(1) DEFINITION OF BYPRODUCT MATERIAL- In this subsection, the term “byproduct material” has the meaning given the term in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a)).

(2) IN GENERAL- Beginning on the date of enactment of this Act byproduct material may be transferred to and disposed of—

(A) in a disposal facility licensed by the Nuclear Regulatory Commission, if the disposal facility meets the requirements of the Nuclear Regulatory Commission; or

(B) in a disposal facility licensed by a State that has entered into an agreement with the Nuclear Regulatory Commission under section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)), if the disposal facility meets requirements of the State that are equivalent to the requirements of the Nuclear Regulatory Commission.

(3) DISPOSAL IN SOLID OR HAZARDOUS WASTE FACILITIES-

Enactment of this section does not affect disposal of byproduct material in a disposal facility permitted under Federal or State solid and hazardous waste laws, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(4) MATERIAL NOT CONSIDERED LOW-LEVEL RADIOACTIVE WASTE- With respect to disposal of byproduct material, such material shall not be considered low-level radioactive waste—

(A) as defined in section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b); or

(B) in implementing any Compact—

(i) entered into in accordance with the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.); and

(ii) approved by the Congress.

(e) WAIVERS.--

(1) Subject to paragraph (2), the Nuclear Regulatory Commission may grant a waiver, for a period that the Nuclear Regulatory Commission determines

to be appropriate, of the application of any requirement imposed by this section with respect to a matter or class of matters relating to byproduct materials as defined in paragraphs (3) or (4) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a)), if the Nuclear Regulatory Commission determines that granting such a waiver is consistent with protection of the public health and safety and promotion of the common defense and security; *Provided, however,* that a waiver of the requirements of subsection (c)(1) and subsection (c)(3) may not be granted under this subsection.

(2) The Nuclear Regulatory Commission may not exercise the waiver authority granted by paragraph (1)--

(A) with respect to a matter or class of matters concerning imports into or exports from the United States, for any period that ends later than one year from the date of enactment of this Act; and

(B) with respect to any matter or classes of matters not covered by subparagraph (A), for any period that ends later than four years from the date of enactment of this Act.

(3) The Nuclear Regulatory Commission shall publish a notice in the Federal Register of each waiver granted under paragraph (1).

SEC. 106. NRC AUTHORITY OVER NON-LICENSEES FOR DECOMMISSIONING FUNDING.

Section 161 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended by--

(1) striking “and (3)”, and inserting “(3)”; and

(2) by inserting before the semicolon at the end the following:

“, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has ownership of or control over any fund for the decommissioning of the facility”.

## **TITLE II – ENHANCEMENT OF NRC EFFECTIVENESS AND EFFICIENCY**

### **SEC. 201. PERIOD OF COMBINED LICENSE.**

Section 103 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by inserting “from the authorization to commence operations” after “forty years.”

### **SEC. 202. ELIMINATION OF NRC ANTITRUST REVIEWS.**

Section 105 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

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

### **SEC. 203. COST RECOVERY FROM GOVERNMENT AGENCIES.**

Section 161 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended--

(1) by striking “for or is issued” and all that follows through “1702” and inserting “to the Nuclear Regulatory Commission for, or is issued by the Nuclear Regulatory Commission, a license or certificate”;

(2) by striking “483a” and inserting “9701”; and

(3) by striking “, of applicants for, or holders of, such licenses or certificates”.

Section 204. NRC USER FEES AND ANNUAL CHARGES.

(a) Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is amended by --

(1) striking paragraph (1) of subsection (a) and inserting the following:

“(1) IN GENERAL – The Nuclear Regulatory Commission shall annually assess and collect such fees and charges as are described in subsections (b) and (c).”;

(2) striking subsection (a)(3);

(3) striking “and” after the semicolon at the end of clause (i) in subsection (c)(2)(A);

(4) striking the period at the end of clause (ii) in subsection (c)(2)(A) and inserting “;”;

(5) adding the following clause at the end of subsection (c)(2)(A):

“(iii) amounts appropriated to the Nuclear Regulatory Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.”; and

(6) striking clause (v) of subsection (c)(2)(B) and inserting the following:

“(v) 90 percent for fiscal year 2005 and each fiscal year thereafter.”

(b) Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. 2213) is repealed.

SEC. 205. CONFLICTS OF INTEREST RELATING TO CONTRACTS.  
AND OTHER ARRANGEMENTS.

Subsection b. of section 170A. of the Atomic Energy Act of 1954 (42 U.S.C. 2210a.(b)) is amended by inserting the following before the period at the end of the subsection:

“; *Provided*, That if the Nuclear Regulatory Commission determines that a conflict of interest exists with respect to a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, that the conflict of interest cannot be mitigated, and that adequate justification exists to proceed without mitigation of the conflict of interest, the Nuclear Regulatory Commission may enter into such contract, agreement, or arrangement”.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act for fiscal year 2006, and such sums as may be necessary for subsequent fiscal years.

LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

**TITLE I – NUCLEAR SAFETY AND SECURITY**

**SEC. 101. USE OF FIREARMS BY SECURITY PERSONNEL OF LICENSEES AND  
CERTIFICATE HOLDERS OF THE COMMISSION.**

The proposed amendment would enhance safeguards and security for commercial nuclear facilities and materials by eliminating several weaknesses under the current safeguards and security regime. For example, State laws, which can vary considerably, govern the use of many types of weapons by guards who are responsible for protecting NRC-licensed or certified facilities designated by the Commission and radioactive material or other property designated by the Commission, and transportation of such radioactive material or other property to or from a facility owned or operated by a licensee or certificate holder. The Commission is particularly concerned about possible efforts to seize formula quantities of strategic special nuclear material that could be used in an improvised nuclear weapon and radioactive material that could be seized to make a radioactive dispersal device (sometimes referred to as a “dirty bomb”).

Some Federal laws and various State laws contain prohibitions against transportation, sale, possession, storage, or use of weapons, including the most effective and modern weaponry available to combat terrorist or other malevolent acts. Some NRC licensees’ guard forces even have difficulty in obtaining state of the art firearms or replacement components for such firearms, because of State or local government legal restrictions on possession and use of firearms. Some of these laws contain an exception for Federal, State, or local law enforcement officers, but being dependent on having all guards appointed as deputy law enforcement officers is an inefficient and burdensome solution of the problem, and could delay replacement of departing guards. Terrorists are, of course, under no such constraints.

Within the last couple of years, a few States have enacted legislation that would provide special authority to guards at commercial nuclear facilities to carry or use more robust weapons under designated circumstances. The approach has not, however, been uniform in scope and is not generally applicable to all situations in which licensee guards might appropriately be expected to act. Given the potential harm that could result from a successful attack on a Commission-designated nuclear facility, radioactive material or other property, or shipment of such material or property, it is important that the guards hired to protect them have the authority to carry and use the weapons necessary to their successful defense.

Security personnel who would be authorized to receive, possess, transport, import, or use weapons under this section would be subject to a background check by the Attorney General based on their fingerprints.

#### SEC. 102. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.

Currently, under section 149 of the Atomic Energy Act of 1954, each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. of the Act must fingerprint each individual who is permitted unescorted access to the facility or access to safeguards information under section 147 of the Act. The current authorization and implementing programs are too limited both with respect to who must conduct fingerprinting and who must be fingerprinted. Employees of licensees that do not operate a utilization facility under section 103 or 104 b. of the Act have access to radioactive material that could be used for malevolent purposes.

Under this amendment, fingerprinting would be required to be conducted by a much wider class of persons. The persons required to conduct fingerprinting would be

(1) Commission licensees and certificate holders, (2) applicants for a Commission license or certificate, and (3) any person that has notified the Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity regulated by the NRC. In addition, a wider group of individuals would have to be fingerprinted. Persons required to conduct fingerprinting would need to fingerprint any individual permitted unescorted access to a utilization facility or access to safeguards information, or permitted unescorted access to radioactive material or other property subject to NRC regulation that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. The costs of any identification and records check would be paid by the person required to conduct the fingerprinting. Other biometric methods for identification approved by the Attorney General and approved, by rule, by the Commission could be authorized to be used instead of fingerprinting.

The expanded fingerprinting for criminal history background checks that would be authorized by this section recognizes that damage to commercial nuclear facilities and theft of nuclear material or other property subject to NRC regulation could have substantial consequences for the public health and safety and the common defense and security. Background checks can help to identify individuals who seek to gain access to NRC-regulated facilities, materials and related property, as well as safeguards information, with malicious intent to commit such damage or theft.

#### SEC. 103. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

There have been a number of reported incidents where persons without authorization have brought firearms into protected areas of NRC-regulated sites. The Commission's current

authority to prevent the unauthorized introduction of weapons or other dangerous instruments into the site is limited. Although the NRC may impose sanctions against the licensee for violations of its security regulations, there is no Federal law permitting the imposition of criminal sanctions against the person responsible for bringing the weapon or other dangerous instrument to the site.

Because of the potential danger to the public's security and safety from nuclear theft or unauthorized introduction of dangerous instruments to NRC-regulated sites, the Commission proposes that this section be enacted permitting it to promulgate regulations prohibiting the unauthorized introduction of weapons into NRC-regulated sites. Violation of the regulations would constitute a Federal crime, which (under section 229 c. of the Atomic Energy Act of 1954) could result in a fine or imprisonment, or both. Such legislation would assist the efforts to protect nuclear facilities, radioactive material, and other property subject to the authority of the Commission against nuclear theft or radiological sabotage.

Facilities subject to certification by the Commission (principally USEC Inc.) have been included in the provision.

SEC. 104. SABOTAGE OF NUCLEAR FACILITIES, FUEL, OR DESIGNATED MATERIAL.

The proposed amendment would modify section 236 of the Atomic Energy Act of 1954 to provide criminal sanctions for sabotage or attempted sabotage of commercial nuclear facilities, fuel, and Commission-designated material or property not previously covered. These would include waste storage, waste treatment, waste disposal, uranium enrichment, and fuel fabrication facilities, as well as primary facilities or backup facilities from which a radiological emergency preparedness alert and warning system is activated. For facilities already covered (production, utilization, nuclear waste storage and uranium enrichment facilities) and facilities

that would be newly covered by the section, the coverage would encompass the period of construction of the facility, as well as its period of operation.

Section 236, which makes sabotage or attempted sabotage of covered facilities a Federal crime, was enacted in 1980 in response to a sabotage incident at the Surry nuclear reactor in Virginia. While the present language of the section could arguably be read to include facilities that have been granted construction permits by the Commission, the legislative history strongly suggests that sabotage during the construction phase is not covered by the section.

In addition, under the current language of section 136, the perpetrator must have acted “intentionally and willfully” for a violation to have taken place. The amendment would change this standard, requiring that the perpetrator must have acted “knowingly” for a violation to have taken place. The new standard encompasses knowledge of the facts that constitute the crime, but not knowledge that the action taken constitutes a crime. This change recognizes that any individual who is sabotaging or attempting to sabotage a facility known by the person to be a nuclear facility should be presumed to know the likelihood of the action being unlawful.

Sabotage during the later stages of construction, particularly during pre-operational testing, is of special concern because of the possibility that it might not be discovered prior to operation, since most of the inspections that could have led to the discovery of the sabotage would have already taken place. Thus, the Commission believes that enacting criminal sanctions to help deter such sabotage is warranted to protect more adequately the public health and safety and the common defense and security.

SEC. 105. COVERAGE OF ACCELERATOR-PRODUCED AND OTHER RADIOACTIVE MATERIAL IN DEFINITION OF BYPRODUCT MATERIAL.

The Atomic Energy Act of 1954 provides the Nuclear Regulatory Commission with regulatory authority to protect the public health and safety and promote the common defense and security with respect to specifically defined radioactive materials. Among these materials are “byproduct material,” which is currently defined to include any radioactive material (except special nuclear material, which is defined separately) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. This definition does not encompass all radiological material. In particular, it does not cover accelerator-produced material, discrete sources of radium-226, or discrete sources of naturally occurring radioactive material.

The proposed amendment would permit the Nuclear Regulatory Commission to regulate discrete sources of radium-226, certain hazardous discrete sources of naturally occurring radioactive material (NORM), other than source material, and accelerator-produced material, where they are produced, extracted or converted for use in commercial, medical, or research activities. For the most part, it would not extend the Commission’s authority to NORM, and would specifically not include such materials as residues from drinking water and waste water treatment processes, scale from pipes used by the fossil fuel industry, diffuse sources of radioactive material such as pipe scale resulting from petroleum production, fly ash, sewer sludge, phosphate fertilizer, or other similar materials. The Commission’s focus would be on NORM materials that pose a threat similar to that posed by discrete sources of radium-226 to the public health and safety or the common defense and security.

Some Federal agencies address some aspects of the materials that this amendment would add to the definition of “byproduct” material, although not in a comprehensive manner, and many States address accelerator-produced radioactive material and discrete sources of naturally occurring material (other than source material) that is extracted or converted for use in commercial, medical, or research activities, but the approach is not uniform. (Diffuse sources of radium-226 or naturally occurring radioactive material are not covered by the amendment. Their coverage would require a significant expenditure of additional resources by the NRC, and other governmental bodies have the experience necessary for dealing with them.)

Extending the Commission’s regulatory authority and oversight to include these materials that are extracted or converted for use in commercial, medical, or research activities would provide regulatory consistency and predictability for users of the materials and provide a more reliable event reporting database for events occurring with respect to such materials, thus ensuring that the material is adequately controlled. These attributes would lead to greater assurance that the newly covered materials are used and controlled in a manner that maintains public health and safety and promotes the common defense and security.

Under the Atomic Energy Act, the Commission is authorized to enter into agreements with States to discontinue its regulatory authority over certain listed materials. While such an agreement is in effect, the Agreement State has regulatory authority over material covered by the agreement for purposes of protection of the public health and safety from radiation hazards. The proposed amendment would add the newly covered materials to the Agreement State program, and would allow the Agreement States to seek to amend their agreements, if necessary, to reacquire regulatory authority over these materials after NRC establishes and promulgates uniform standards. It is anticipated that most of the current Agreement States may elect to cover these materials under their Agreements, and that some non-Agreement

States may elect to enter into new agreements with the Commission for that purpose. These States will, however, have to look to standards and requirements issued by the Commission for the newly covered materials in developing their own regulatory programs.

As indicated previously, the NRC currently does not have regulatory jurisdiction over accelerator-produced material or discrete sources of Radium-226. If the Congress were to place these materials within NRC's regulatory jurisdiction by defining them to be "byproduct material" under the Atomic Energy Act without making special provision for their disposal, this would mean that in accordance with the Low-Level Radioactive Waste Policy Act (LLRWPA), as amended, these materials would have to be disposed of at low-level radioactive waste disposal facilities licensed by either the NRC or an Agreement State. Due to interstate import and export restrictions adopted by compacts under the LLRWPA, this could eliminate for generators in the majority of States a national disposal capability for discrete radium sources that is currently available to generators across the nation. Section (d)(2) (A) and (B) of the amendment to the Atomic Energy Act regarding treatment of accelerator-produced and other radioactive material as byproduct material, coupled with section (d)(4) (A) and (B) of the amendment, would preserve the availability of the existing disposal capacity for these types of materials for all States.

In addition, to the extent that the newly covered material is included in the definition of byproduct material, converting this material into Atomic Energy Act material would likely result in making any Act that excludes Atomic Energy Act material from the Act's coverage (such as the Solid Waste Disposal Act, popularly referred to as the Resource Conservation and Recovery Act (RCRA)) inapplicable. This would result in limiting disposal capacity for certain material by precluding it from being disposed of in some EPA or State-permitted RCRA facilities without explicit approval of the Atomic Energy Act authorities. Section (d)(3) would preserve the

capability of solid and hazardous waste facilities to accept such material for disposal, if they are currently able to do so, and would not prevent other facilities from obtaining the necessary permits to do so. The Federal and State agencies with regulatory authority over the facilities would retain the ability to modify a disposal facility's permit to prohibit the disposal of such materials in the future, if deemed appropriate.

The proposed amendment would become effective immediately upon enactment. However, in order to provide the time necessary for the Commission and the States to do the work required for full implementation of the amendment, authority would be provided to the Commission to grant waivers of requirements imposed by the section with respect to a matter or class of matters relating to the newly covered material, if the Commission determines that granting such a waiver is consistent with the public health and safety and the common defense and security. With respect to imports into and exports from the United States, such a waiver could not be effective for any period that ends later than one year from the date of enactment of the Act, a limitation needed for the United States to implement effectively the IAEA Code of Conduct for the Safety and Security of Radioactive Sources. With respect to other matters or classes of matters, such a waiver could not be effective for any period that ends later than four years from the date of enactment. The four-year period will provide the time required for completion of the various steps that the Commission and the States will need to take in order to successfully make the transition to the program that will implement the amendment.

The NRC is satisfied that these legislative provisions will preserve the current options for the safe disposal of these materials across the nation, and provide adequate protection of the public health and safety.

SEC. 106. NRC AUTHORITY OVER NON-LICENSEES FOR DECOMMISSIONING  
FUNDING

Due to utility deregulation and restructuring, the Nuclear Regulatory Commission has received a number of applications for the transfer of ownership of commercial nuclear power reactors. It has been the NRC's experience that some license transfer applicants that are selling or otherwise transferring ownership of a reactor may seek to retain control of accumulated decommissioning funds without remaining owners, operators, or licensees of a nuclear power facility. In the instances in which this has occurred, the Commission has issued transfer orders that are conditioned in such a way as to provide adequate assurance that the funds will remain intact after the transfer, but legislation on the subject will minimize the likelihood of later controversy regarding the transferor's responsibility regarding use of decommissioning funds that are retained. Legislative clarification that, with respect to such funds, the NRC's jurisdiction extends to non-licensees would ensure that accumulated decommissioning funds will be available for their intended purpose, regardless of who owns or controls the funds.

Section 161 i. of the Atomic Energy Act of 1954 gives the NRC broad authority to prescribe regulations or orders to govern activities authorized under the Act. While section 161 i. does not expressly limit the NRC's authority to NRC licensees, an explicit statutory recognition of the NRC's authority over the activities of non-licensees with respect to decommissioning funding would remove any ambiguity in the situation, thus eliminating the potential of costly and burdensome litigation with respect to the NRC's authority over non-licensees to ensure availability of funds for decommissioning.

The amendment would make clear that, for the purpose of ensuring that established decommissioning funds will be available and used for decommissioning, the NRC has direct

authority under section 161 i. to regulate the activities with respect to decommissioning funds of any person that owns or controls decommissioning funds for a commercial utilization or production facility. By providing an unequivocal statutory basis for asserting regulatory control over non-licensees that own or control the decommissioning fund, the amendment would provide greater assurance, in a deregulated environment, that the NRC can effectively carry out the objective that decommissioning is done in a safe, timely, and efficient manner once a nuclear facility has reached the end of its operating life.

## **TITLE II – ENHANCEMENT OF NRC EFFECTIVENESS AND EFFICIENCY**

### **SEC.201. PERIOD OF COMBINED LICENSE.**

Historically, under the Atomic Energy Act of 1954, the Commission licensed nuclear power plants in a two-step process, i.e., a construction permit was issued first, and an operating license followed. Section 103 c. of the Atomic Energy Act of 1954 provides a statutory duration limitation of 40 years for an operating license. The 40-year period commences when the operating license is issued by the Commission.

After years of experience with the two-step process, it became clear that a one-step combined license would lend itself to a more efficient licensing process, and the Commission published regulations authorizing the issuance of such licenses in 1989. As the result of a court challenge to those regulations, the Congress made clear, in the Energy Policy Act of 1992, that the Commission has the authority to issue combined licenses. This was done by adding a new subsection b. to section 185 of the Atomic Energy Act, directing the Commission to issue a combined construction and operating license for a production or utilization facility if, after holding a public hearing, the Commission determines that the application contains sufficient information to support the issuance and there is reasonable assurance that the facility will be

constructed and operated in conformity with the license, the Act, and NRC rules and regulations.

Under section 185 b., the Commission is required to identify within the combined license the inspections, tests, and analyses that the licensee must perform, and the acceptance criteria that, if met, will provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the Act and NRC rules and regulations. Following issuance of the license, the Commission must ensure that the inspections, tests, and analyses identified in the license are performed and, prior to operation of the facility, the Commission must make a finding that the prescribed acceptance criteria are met.

However, the amendment that enacted section 185 b. did not make any express provision regarding the date on which the 40-year period of operation under a combined license would commence. Under the process that involves a separate construction permit and operating license, the operating license for a facility becomes effective immediately upon issuance of such a license and the duration of operation of the facility can be a full 40 years. The potential duration of operations under a combined license should be no less, and achieving that goal is the purpose of the amendment proposed by this section. The amendment would make clear that the term of operation of a combined license commences when the Commission finds that the acceptance criteria prescribed in the license have been met. This approach is consistent with the original Congressional intent in providing for a combined license, that is, to make the licensing process more efficient and expeditious.

#### SEC.202. ELIMINATION OF NRC ANTITRUST REVIEWS.

Section 105 c. of the Atomic Energy Act requires antitrust reviews by the NRC in connection with applications for a Commission license to construct or operate a commercial

utilization or production facility. At the time the Commission was given this authority in 1970, the Congress believed that the Commission would be in a unique position to ensure that the licensed activities of nuclear utilities could not be used to create or maintain a situation inconsistent with the antitrust laws. However, the situation has changed considerably since that time.

NRC's antitrust reviews are now duplicative of other agencies' efforts. In 1992, the Congress passed the Energy Policy Act, which amended the Federal Power Act to enlarge substantially the authority of the Federal Energy Regulatory Commission (FERC) to prevent and mitigate potential and existing abuses of market power by electric utilities, including nuclear utilities. As a result, FERC now possesses statutory authority overlapping that of the Commission under section 105 c. of the Atomic Energy Act to prevent and mitigate potential and existing anticompetitive behavior by electric utilities that utilize nuclear power plants. In addition, as reflected in section 105 a. of the Atomic Energy Act, the Attorney General possesses broad authority to enforce nuclear utility compliance with the antitrust laws. The Federal Trade Commission also has an enforcement role with respect to the use of unfair methods of competition by nuclear utilities. Thus, retaining the Commission's antitrust authority would result in duplicative regulation, which is wasteful of the NRC's resources and contrary to the objective of streamlining government.

The proposed amendment would eliminate NRC antitrust reviews of any application for a license (including an application for a combined license) that is pending on, or filed on or after, the date of enactment of this section. It would leave intact existing antitrust license conditions and the Commission's authority to enforce these existing conditions or otherwise take actions with respect to them. At the same time, the amendment would not relieve any person from compliance with the antitrust laws, and would not change the requirement that the

Commission report to the Attorney General any information it may have with respect to violations of these laws. Thus, passage of the proposed amendment would not affect in any meaningful way the enforcement of antitrust laws with respect to NRC-licensed activities.

SEC. 203. COST RECOVERY FROM GOVERNMENT AGENCIES.

Under 31 U.S.C. 9701 (originally codified as 31 U.S.C. 483a., a provision of the Independent Offices Appropriation Act of 1952, Pub. L. 82-137), the NRC is not authorized to charge fees to other Federal agencies for licensing and inspection services absent explicit legislation. The NRC currently possesses such authority with respect to the Tennessee Valley Authority, an independent U.S. Government corporate agency, but does not have such authority with respect to any other Federal agency. The proposed amendment would permit the NRC to assess and collect fees from other Federal agencies for these services, rather than recovering the costs through annual fees assessed to all licensees. This would make the NRC fee schedules more equitable.

This amendment would also delete the references to sections 1701 and 1702 of the Atomic Energy Act as they are obsolete because of the privatization of USEC Inc.

SEC. 204. NRC USER FEES AND ANNUAL CHARGES.

This section will make permanent the NRC's 90 percent fee recovery requirement beginning in fiscal year 2006. Absent this provision, the NRC would only be authorized to collect 33 percent of its budget authority in fees after fiscal year 2005.

In establishing the current 90 percent requirement for user fees in the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)), the Congress adopted the fairness and equity concept that NRC licensees should not be charged for NRC expenses that do not

provide a direct benefit to them. Consistent with this fairness and equity concept, it is reasonable that the NRC's 90 percent fee recovery requirement should be made permanent.

SEC. 205. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.

Section 170A. of the Atomic Energy Act of 1954 generally prohibits the Commission from entering into a contract, agreement, or other arrangement for the conduct of research, development, or evaluation activities with any person that has a conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice, because of activities or relationships with other persons. An exception to application of this bar can be made only under extraordinary circumstances.

Department of Energy laboratories have expertise that may be of considerable value in an area with respect to which the NRC must seek external technical assistance. In fact, in some instances, expertise of that caliber is not available from any source that is not covered by the restrictions of section 170A. Although the language of the Atomic Energy Act regarding the definition of the word "person" makes the application of section 170A. to Department of Energy facilities somewhat unclear, the NRC does address conflict of interest or potential conflict of interest considerations when placing work with Department of Energy laboratories.

The amendment of section 170A. would make clear that the existence of a conflict of interest does not bar the Commission from entering into a contract, agreement, or other arrangement for work to be performed at such a facility. However, if the Commission determines that such a conflict of interest does exist with respect to placing particular work with a Department of Energy laboratory, it would be required to take appropriate actions to mitigate the conflict to the extent feasible. If it is not feasible to mitigate the conflict, the NRC could

place the work with the laboratory, upon a Commission determination that, consistent with the agency's mission to protect public health and safety, promote common defense and security, and protect the environment, it is in the best interests of the United States to do so. In such circumstances, it is in the best interests of the nation that there should be an amelioration of the restrictions of section 170A. in order for the Commission to be able to obtain necessary expertise.