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Protecting People and the Environment

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110th Congress; 2nd Session

Office of the General Counsel

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FOREWORD

This compilation of statutes and materials pertaining to nuclear regulatory legislation through the 110th Congress, 2nd Session, has been prepared by the Office of the General Counsel, U.S. Nuclear Regulatory Commission, with the assistance of staff, for use as an internal resource document. The compilation is not to be used as an authoritative citation in lieu of the primary legislative sources. Furthermore, while every effort has been made to ensure the completeness and accuracy of this material, neither the United States Government, the Nuclear Regulatory Commission, nor any of their employees makes any expressed or implied warranty or assumes liability for the accuracy or completeness of the material presented in this compilation.

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A. THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Public Law 83-703 **68 Stat. 919**

August 30, 1954

Title I– Atomic Energy

Chapter 1– Declaration, Findings, And Purpose

Sec. 1. Declaration.

42 USC 2011. Declaration.

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that[1]–

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Sec. 2. Findings.

42 USC 2012. Findings.

The Congress of the United States hereby makes the following findings concerning the development, use and control of atomic energy:[2]

a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

c.[3] The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national

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[1]Added by Public Law 102–486 (106 Stat. 2943); Oct. 24, 1992.

[2]Public Law 88–489 (78 Stat. 602)(1964), section 20, the Private Ownership of Special Nuclear Materials Act reads as follows:

> Nothing in this Act shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended to regulate source, byproduct, and special nuclear material and production and utilization facilities or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives.

[3]Public Law 88–489 (78 Stat. 602) (1964), section 1, deleted subsec. 2b. Subsec. 2b read as follows:

> b. In permitting the property of the United States to be used by others such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

interest to assure the common defense and security and to protect the health and safety of the public.

f. The necessity for protection against possible interstate damage occurring from the operation of facilities for production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

i.[4] In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.[5]

Sec. 3. Purpose.

42 USC 2013. Purpose.

It is the purpose of this Act to effectuate the policies set forth above by providing for–

a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.[6]

d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

e. a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

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[4]Public Law 88–489 (78Stat. 602) (1964), section 2, deleted subsec. 2h. Subsec. 2h, read as follows:

h. It is essential to the common defense and security that title to all special nuclear material be in the United States while such special nuclear material is within the United States.

[5]Public Law 85–256 (71 Stat. 576), (1957), section 1, added subsection i.

[6]Public Law 88–489 (78 Stat. 602) (1964), section 3, amended this subsection. Before amendment it read:

c. A program for Government control of the possession, use, and production of atomic energy and special nuclear material so directed as to make the maximum contribution to the common defense and security and the national welfare;

42 USC 2014. Definitions.

Sec. 11. Definitions.

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

Agency of the U.S.

a. The term "agency of the United States" means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

Agreement for cooperation.

b. The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91c., 103, 104, or 144, and made pursuant to section 123.[7]

Atomic energy.

c. The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

Atomic weapon.

d. The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon prototype, or a weapon test device.

Byproduct material.

e. The term "byproduct material" means–

(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(3)(A) any discrete source of radium–226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for 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 for a commercial, medical, or research activity; and

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

(A) the Commission, in 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, determines would pose a threat similar to the threat 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 August 8, 2005 is extracted or converted after extraction for use in a commercial, medical, or research activity.[8]

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[7]Public Law 87–206 (75 Stat. 475) (1961), section 2, amended this subsection by adding section 91c.

[8]Public Law 109–58 (119 Stat. 806), August 8, 2005; section 651(e)(1), revised subsection (e) of section 11 (Definitions) of the Atomic Energy Act of 1954 by adding new paragraphs (3) and (4) to the definition of byproduct material. Former subsection (e) read:

"(e) The term 'byproduct material' means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

NOTE: Public Law 109-58 (119 Stat. 808), section 651(e)(4) and (5), added the following relating to the material added to the Atomic Energy Act by paragraphs (3) and (4) of section 11e. of the Act:

(4) FINAL REGULATIONS.–

(A) REGULATIONS.–

Deadline. (i) IN GENERAL.–Not later than 18 months after the date of enactment of this Act, the Commission, after consultation with States and other stakeholders, shall issue final regulations establishing such requirements as the Commission determines to be necessary to carry out this section and the amendments made by this section.

(ii) INCLUSIONS.–The regulations shall include a definition of the term "discrete source " for purposes of paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) (as amended by paragraph (1)).

(B) COOPERATION.–In promulgating regulations under paragraph (1), the Commission shall, to the maximum extent practicable–

(i) cooperate with States; and

(ii) use model State standards in existence on the date of enactment of this Act.

(C) TRANSITION PLAN.–

(i) DEFINITION OF BYPRODUCT MATERIAL.–In this paragraph, 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 (42 U.S.C. 2014(e)) (as amended by paragraph (1)).

(ii) PREPARATION AND PUBLICATION.–To facilitate an orderly transition of regulatory authority with respect to byproduct material, the Commission, in issuing regulations under subparagraph (A), shall prepare and publish a transition plan for–

(I) States that have not, before the date on which the plan is published, entered into an agreement with the Commission under section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)); and

(II) States that have entered into an agreement with the Commission under that section before the date on which the plan is published.

(iii) INCLUSIONS.—The transition plan under clause (ii) shall include–

(I) a description of the conditions under which a State may exercise authority over byproduct material; and

(II) a statement of the Commission that any agreement covering byproduct material, as defined in paragraph (1) or (2) of section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)), entered into between the Commission and a State under section 274b. of that Act (42 U.S.C. 2021(b)) before the date of publication of the transition plan shall be considered to include byproduct material, as defined in paragraph (3) or (4) of section 11e. of that Act (42 U.S.C. 2014(e)) (as amended by paragraph (1)), if the Governor of the State certifies to the Commission on the date of publication of the transition plan that–

(aa) the State has a program for licensing byproduct material, as defined in paragraph (3) or (4) of section 11e. of the Atomic Energy Act of 1954, that is adequate to protect the public health and safety, as determined by the Commission; and

(bb) the State intends to continue to implement the regulatory responsibility of the State with respect to the byproduct material.

(D) AVAILABILITY OF RADIOPHARMACEUTICALS.–In promulgating regulations under subparagraph (A), the Commission shall consider the impact on the availability of radiopharmaceuticals to–

(i) physicians; and

(ii) patients the medical treatment of which relies on radiopharmaceuticals.

(5) WAIVERS.–

(A) IN GENERAL.–Except as provided in subparagraph (B), the Commission may grant a waiver to any entity of any requirement under this section or an amendment made by this section with respect to a matter relating to byproduct material (as defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) (as amended by paragraph (1)) if the Commission determines that the waiver is in accordance with the protection of the public health and safety and the promotion of the common defense and security.-

(B) EXCEPTIONS.–

(i) IN GENERAL.–The Commission may not grant a waiver under subparagraph (A) with respect to–

Commission.

f. The term "Commission" means the Atomic Energy Commission.

Common defense and security.

g. The term "common defense and security" means the common defense and security of the United States.

Defense information.

h. The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

Design.

i. The term "design" means (1) specifications, plans drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

Extraordinary nuclear occurrence.

j. The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts off-site, or causing radiation levels off-site, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate determines has resulted or will probably result in substantial damages to persons off-site or property off-site. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "off-site" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170.[9]

Financial protection.

k. The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.[10]

Government agency.

l. The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer,

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(I) any requirement under the amendments made by subsection (c)(1);

(II) a matter relating to an importation into, or exportation from, the United States for a period ending after the date that is 1 year after the date of enactment of this Act; or

(III) any other matter for a period ending after the date that is 4 years after the date of enactment of this Act.

(ii) WAIVERS TO STATES.–The Commission shall terminate any waiver granted to a State under subparagraph (A) if the Commission determines that–

(I) the State has entered into an agreement with the Commission under section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b));

(II) the agreement described in subclause (I) covers byproduct material (as described in paragraph (3) or (4) of section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) (as amended by paragraph (1)); and

(III) the program of the State for licensing such byproduct material is adequate to protect the public health and safety.

(C) PUBLICATION-The Commission shall publish in the Federal Register a notice of any waiver granted under this subsection.

[9]Public Law 89–645 (80 Stat. 891) (1966), section 1, added subsection j.

[10]Public Law 85–256 (71 Stat. 576) (1957), section 3, added subsection k.

authority, administration, or other establishment in the executive branch of the Government.

Indemnitor.

m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.[11]

International arrangement.

n. The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

Congressional Committee.

o. Energy Committees' means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.[12]

Licensed activity.

p. The term "licensed activity" means an activity licensed pursuant to this Act and covered by the provisions of section 170a.[13]

Nuclear incident.

q. The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence,[14] within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in section 170 1., it shall include any such occurrence outside of the United States: *And provided further*, That as the term is used in section 170d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in section 170c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to Chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.[15]

42 USC 2091.
42 USC 2111.
42 USC 2121.
42 USC 2151.

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[11]Public Law 89–645 (80 Stat. 891) (1966), section 1, added subsection m.

[12] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(1) amended section to reflect the current names of congressional committees.

[13]Public Law 85–256 (71 Stat. 576) (1957), section 3, added subsection p.

[14]Public Law 89–645 (80 Stat. 891) (1966), section 1, amended this subsection by inserting the phase: "including an extraordinary nuclear occurrence".

[15]Public Law 85–256 (71 Stat. 576) (1957), section 3 added subsection q. Prior to amendment by Public Law 89–645 (see footnote 9, above), the subsection had been amended by Public Law 87–615 (76 Stat. 409) (1962), section 4. Before amendment it read:

> o. The term "nuclear incident" means any occurrence within the United States causing bodily injury, sickness, disease, or death, or loss of or damage to property, or for loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material; *Provided however*, That as the term is used in subsection 170.1., it shall mean any such occurrence outside of the United States rather than within the United States.

Public Law 84–197 (89 Stat. 1111) (1975), section 1, amended the second proviso in subsection 11q. Prior to amendment, the proviso read as follows: And provided further,

Operator.

r. The term "operator" means any individual who manipulates the controls of a utilization or production facility.

Person.

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Person indemnified.

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 170c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170d. has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.[16]

u. The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

Production facility.

v.[17] The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility,[18] [19] such term as used in Chapters 10 and 16 shall not include any

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That as the term is used in section 170d., it shall include any such occurrence outside of the United States if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

[16]Public Law 85–256 (71 Stat. 576) (1957), section 3, added subsection t. Public Law 87–615 (76 Stat. 409) (1962), section 5, amended the subsection. Before amendment, it read:

r. The term "person indemnified" means the person with whom an indemnity agreement is executed and any other person who may be liable for public liability.

Public Law 94–197 (89 Stat. 1111) (1975), section 1, amended subsection 11t. by adding the phrases "or outside the United States as the term is used in subsection 170c." and "or who is required to maintain financial protection." to the definition of the term person "indemnified."

[17]Public Law 101–575 (104 Stat. 2834) (1990) section 5(a) added a new last sentence to section 11v.

[18]Public Law 102–486 (106 Stat. 2955) amended the last sentence of v. Before amendment the last sentence read:

Except with respect to the export or a uranium enrichment production facility, such term as used in Chapters 10 and 16 shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

[19]Public Law 104–134 (110 Stat. 1321–349) struck the words "or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology" following: "Except with respect to the export of a uranium enrichment production facility."

equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.[20]

Public liability.

w. The term "public liability"[21] means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation) except: (i) claims under State or Federal workmen's compensation acts of employees or persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k., of section 170, claims for loss of, or damage to property which is located at the site of and used in connection with licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

Research and development.

x. The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

Restricted Data.

y. The term "restricted data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

Source material.

z. The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

Special nuclear material.

aa. The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

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[20]Public Law 104–134 (110 Stat. 1321-349), Title III, section 3116(b)(1), added new language:

Chapters 10 and 16 shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

[21]Public Law 85–256 (71 Stat. 576) (1957), section 3, added subsection w. Public Law 87–206 (75 Stat. 475) (1961), section 3, amended the subsection. Before amendment it read:

u. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident, except claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs, and except for claims arising out of an act of war. " Public liability" also included damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

United States.

bb. The term "United States" when used in a geographical sense includes all territories and possessions of the United States, the Canal Zone and Puerto Rico.[22]

Utilization facility.

cc. The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

dd.[23] The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 USC 10101).

ee. The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nano-curies per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term "nuclear waste activities", as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

gg. The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is–

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

hh. The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which

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[22]Public Law 84-1006 (70 Stat. 1069) (1956), section 1, amended this definition. Before amendment it read: u. The term "United States" when used in a geographical sense, includes all territories and possessions of the United States, and the Canal Zone.

[23]Public Law 100-408 (102 Stat. 1066) (1988) added subsections dd-jj.

the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

jj. Legal Costs.–As used in section 170, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damages arising under such section.

Chapter 3–Organization

Sec. 23. Office.

42 USC 2033.
Office.

The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; however, the Commission shall maintain an office for the service of processing papers within the District of Columbia.[24]

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[24]Public Law 93-438 (88 Stat. 1233) (1974), section 104(a), repealed section 21 and section 22. Prior to repeal, section 21 read as follows:

Sec. 21. Atomic Energy Commission.–There is hereby established an Atomic Energy Commission, which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote.

Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress. Government agencies, persons or the public, and on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

Public Law 84-337 (69 Stat. 630) (1955), section 3 had previously amended the fifth sentence of section 21. Before amendment this sentence read:

Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission and shall have one vote.

Prior to repeal, section 22 read as follows:

Sec. 22. Members.--

a. Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate. In submitting any nomination to the Senate, the President shall set forth the experience and qualifications of the nominee. The term of office of each member of the Commission taking office after June 30, 1950, shall be five years, except that (1) the terms of office of the members first taking office after June 30, 1950, shall expire, as designated by the President at the time of the appointment, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 30, 1950: and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

b. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.

Public Law 88-426 (78 Stat. 400) (1964), section 305(10)(A) previously amended section 22a. by repealing the last sentence, which read:

Each member, except the Chairman, shall receive compensation at the rate of $22,000 per annum; and the member designated as Chairman shall receive compensation at the rate of $22,500 per annum.

Public Law 85-287 (71 Stat. 612) (1957), section 1, had amended that sentence by substituting $22,000 for $18,000, and by substituting $22,500 for $20,000.

Sec. 24. General Manager, Deputy and Assistant General Managers.

42 USC 2034. General Manager, Deputy and Assistant General Managers.

There is hereby established within the Commission:[25]

a. A General Manager, who shall be the chief executive officer of the Commission, and who shall discharge such of the administrative and executive functions of the Commission as the Commission may direct. The General Manager shall be appointed by the Commission, shall serve at the pleasure of the Commission, and shall be removable by the Commission.[26]

b. A Deputy General Manager, who shall act in the stead of the General Manager during his absence when so directed by the General Manager, and who shall perform such other administrative and executive functions as the General Manager shall direct. The Deputy General Manager shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.[27]

c. Assistant General Managers, or their equivalents (not to exceed a total of three positions), who shall perform such administrative and executive functions as the General Manager shall direct. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.[28]

Sec. 25. Divisions, Offices, And Positions.

42 USC 2035. Assistant General Manager for Military Application. Divisions and offices.

There is hereby established within the Commission:[29]

a. A Division of Military Application and such other program divisions (not to exceed ten in number) as the Commission may determine to be necessary to the discharge of its responsibilities, including a division or divisions the primary responsibilities of which include the development and application of civilian uses of atomic energy. The Division of Military Application shall be under the direction of an Assistant General

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[25]Public Law 85-287 (71 Stat. 612) (1957), section 2. amended section 24 and replaced it in its entirety. Before amendment section 24 read:

> Sec. 24. General Manager.–There is hereby established within the Commission a General Manager, who shall discharge such of the administrative and executive functions of the Commission as the Commission may direct. The General Manager shall be appointed by the Commission, shall serve at the pleasure of the Commission, shall be removable by the Commission, and shall receive compensation at a rate determined by the Commission, but not in excess of $20,000 per annum.

[26]Public Law 88-426 (78 Stat. 400) (1964), section 306(f), amended the last sentence of section 24c. by inserting "and" immediately before "shall be removable by the General Manager" and by deleting the last part of the sentence which read:

> and shall receive compensation at a rate determined by the General Manager, but not in excess of $20,500 per annum.

[27]Public Law 88-426 (78 Stat. 400) (1964), section 306(f), amended the last sentence of section 24b. by inserting "and" immediately before "shall be removable by the General Manager" and by deleting the last part of the sentence which read:

> "and shall receive compensation at a rate determined by the General Manager, but not in excess of $20,500 per annum."

[28]Public Law 88-426 (78 Stat. 400) (1964), section 306(f), amended the last sentence of section 24c. by inserting "and" immediately before "shall be removable by the General Manager" and by deleting the last part of the sentence which read:

> "and shall receive compensation at a rate determined by the General Manager, but not in excess of $20,000 per annum."

[29]Public Law 85-287 (71 Stat. 612) (1957), section 3, amended the title of section 25. Before amendment the title of this section was: "Divisions and Offices."

Program divisions.

Manager for Military Application, who shall be appointed by the Commission and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade, as appropriate. Each other program division shall be under the direction of a Director who shall be appointed by the Commission. The Commission shall require each such division to exercise such of the Commission's administrative and executive powers as the Commission may determine;[30]

General Counsel.

b. an Office of the General Counsel under the direction of the General Counsel who shall be appointed by the Commission;[31] and

Inspection Division.

c. an Inspection Division under the direction of a Director who shall be appointed by the Commission.[32] The Inspection Division shall be responsible for gathering information to show whether or not the contractors, licensees, and officers and employees of the Commission are complying with the provisions of this Act (except those provisions for which the Federal Bureau of Investigation is responsible) and the appropriate rules and regulations of the Commission.

d. such other executive management positions (not to exceed six in number) as the Commission may determine to be necessary to the discharge of its responsibilities. Such positions shall be established by the General Manager with the approval of the Commission. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.[33]

Sec. 26. General Advisory Committee.

(Repealed[34])

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[30]Public Law 90-190 (81 Stat. 575) (1967), section 5, amended section 25a. Before amendment, section 25a. read as follows:

a. a Division of Military Application and such other program divisions (not to exceed ten in number) as the Commission may determine to be necessary to the discharge of its responsibilities, including a division or divisions the primary responsibilities of which include the development and application of civilian uses of atomic energy. Each such division shall be under the direction of a Director who shall be appointed by the Commission. The Director of the Division of Military Application shall be an active member of the Armed Forces. The Commission shall require each such division to exercise such of the Commission's administrative and executive powers as the Commission may determine.

Public Law 88-426 (78 Stat. 400) (1964), section 306(f), earlier had amended the second sentence of section 25a. by deleting the last part which read: "and shall receive compensation at a rate determined by the Commission, but not in excess of $19,000 per annum." Public Law 85-287 (71 Stat. 612) (1957), section 3, had amended that sentence by substituting $19,000 for $16,000.

[31]Public Law 88-426 (78 Stat. 400) (1964), section 306(f), amended section 25b. by deleting the last part which read: "and shall receive compensation at a rate determined by the Commission, but not in excess of $19,500 per annum."

Public Law 85-287 (71 Stat. 612) (1957), section 3, had amended section 25b. by substituting $19,500 for $16,000.

[32]Public Law 88-426 (78 Stat. 400) (1964), section 306(f), amended the first sentence of section 25c. by deleting the last part which read:

"and shall receive compensation at a rate determined by the Commission, but not in excess of $19,000 per annum."

Public Law 85-287 (71 Stat. 612) (1957), section 3, had amended that sentence by substituting $19,000 for $16,000.

[33]Public Law 85-287 (71 Stat. 612) (1957), section 3, added subsection d. Public Law 88-426 (78 Stat. 400) (1964), section 306(f). amended the last sentence of this subsection by inserting "and" immediately before "shall be removable by the General Manager", and by deleting the last part of the sentence which read:

"and shall receive compensation at a rate determined by the General Manager, but not in excess of $19,000 per annum."

[34]*Public Law 95-91 (91 Stat. 608) (1977) section 709(c)(1). repealed section 26 which read:*

General Advisory Committee–There shall be a General Advisory Committee to advise the Commission on scientific and technical matters relating to materials, production, and research and development, to be composed of nine members, who shall be appointed from civilian life by the President. Each member shall hold office for a term of six years, except that (a) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of

Sec. 27. Military Liaison Committee.

(Repealed[35])

Sec. 28. Appointment Of Army, Navy, Or Air Force Officers.

42 USC 2038. Appointment of Army, Navy or Air Force Officers.

Notwithstanding the provisions of any other law, the officer of the Army, Navy, or Air Force serving as Assistant General Manager for Military Application shall serve without prejudice to his commissioned status as such officer. Any such officer serving as Assistant General Manager for Military Application shall receive in addition to his pay and allowances, including special and incentive pays, for which pay and allowances the Commission shall reimburse his service, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position.[36]

Chairman, Military Liaison Committee.

Notwithstanding the provisions of any other law, any active or retired officer of the Army, Navy, or Air Force may serve as Chairman of the Military Liaison Committee without prejudice to his active or retired status as such officer. Any such active officer serving as Chairman of the Military Liaison Committee shall receive, in addition to his pay and

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such term; and (b) the terms of office of the members first taking office after August 1, 1946, shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years, after August 1, 1946. The Committee shall designate one of its own members as Chairman. The Committee shall meet at least four times in every calendar year. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee.

[35]Public Law 99-661 (100 Stat. 4066) (1986) Div C, title I, Part C, section 3137(c) repealed section 27, which read:

Military Liaison Committee.–There is hereby established a Military Liaison Committee consisting of--

a. a Chairman, who shall be the head thereof and who shall be appointed by the President, by and with the advice and consent of the Senate, who shall serve at the pleasure of the President; and

b. a representative or representatives from each of the Departments of the Army, Navy, and Air Force, in equal numbers, as determined by the Secretary of Defense, to be assigned from each Department by the Secretary thereof, and who will serve without additional compensation.

The Chairman of the Committee may designate one of the members of the Committee as Acting Chairman to act during his absence. The Commission shall advise and consult with the Department of Defense, through the Committee, on all atomic energy matters which the Department of Defense deems to relate to military applications of atomic weapons or atomic energy including the development, manufacture, use, and storage of atomic weapons, the allocation of special nuclear material for military research, and the control of information relating to the manufacture or utilization of atomic weapons; and shall keep the Department of Defense, through the Committee, fully and currently informed of all such matters before the Commission. The Department of Defense, through the Committee, shall keep the Commission fully and currently informed on all matters within the Department of Defense which the Commission deems to relate to the development or application of atomic energy. The Department of Defense, through the Committee, shall have the authority to make written recommendations to the Commission from time to time on matters relating to military applications of atomic energy as the Department of Defense may deem appropriate. If the Department of Defense at any time concludes that any request, action, proposed action, or failure to act on the part of the Commission is adverse to the responsibilities of the Department of Defense, the Secretary of Defense shall refer the matter to the President whose decision shall be final.

[36]Public Law 90-190 (81- Stat. 575) (1967), section 6, amended the first two sentences of section 28. Prior to this amendment, these sentences read as follows:

Notwithstanding the provisions of any other law, any active officer of the Army, Navy, or Air Force may serve as Director of the Division of Military Application without prejudice to his commissioned status as such officer. Any such officer serving as Director of the division of Military Application shall receive in addition to his pay and allowances, including special and incentive pays, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position pursuant to section 303, or section 309 of the Federal Executive Salary Act of 1964.

Public Law 88-426 (73 Stat. 400), section 306, had earlier amended the second sentence of section 28 by substituting the last phrase for the phrase "and the compensation prescribed in section 25."

allowances, including special and incentive pays, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation fixed for such Chairman. Any such retired officer serving as Chairman of the Military Liaison Committee shall receive the compensation fixed for such Chairman and his retired pay.[37]

Sec. 29. Advisory Committee On Reactor Safeguards.

42 USC 2039. Committee on Reactor Safeguards.

There is hereby established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 163 shall be applicable to the Committee.[38, 39]

Chapter 4–Research

Sec. 31. Research Assistance.

42 USC 2051. Research assistance.

a. The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training[40] activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to–

(1) nuclear processes;

(2) the theory and production of atomic energy, including processes, materials, and devices related to such production;

(3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable

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[37]Public Law 107–107, Division A, title X, Subtitle E, section 1048(i)(11), (115 Stat. 1230); December 28, 2001.

[38]Public Law 85-256 (71 Stat. 576) (1957), section 5, added section 29.

[39]Public Law 105-362 (112 Stat. 3292), Nov. 10, 1998, struck the following two sentences which had previously been added by Public Law 99-209 (91 Stat. 1483) (1977), section 5:

> In addition to its other duties under this section, the committee, making use of all available sources, shall undertake a study of reactor safety research and prepare and submit annually to the Congress a report containing the results of such study. The first such report shall be submitted to the Congress no later than December 31, 1977.

[40]Public Law 84-1006 (70 Stat. 1069) (1956), section 2. added the words "and training."

energy, and the demonstration of advances in the commercial or industrial application of atomic energy;[41]

(5) the protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.[42]

Grants for construction of reactors, etc.

b. GRANTS AND CONTRIBUTIONS.–The Commission is authorized–

(1) to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection (a) of this section; and

(2) to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the Commission determines to be critical to the regulatory mission of the Commission.[43]

41 USC 252(c) (See 41 USC 260(b)).

c. The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

d. The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.

42 USC 2052. Research by the Commission.

Sec. 32. Research by the Commission.

The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 31.

42 USC 2053. Research for others.

Sec. 33. Research For Others.

Where the Commission finds private facilities or laboratories are inadequate for the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of energy.[44] To the extent the Commission determines that private facilities

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[41]Public Law 91-560 (84 Stat. 1472) (1970), section 1, amended paragraph 31a.(4) which read as follows:

> Utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production atomic energy or such material for all other purposes, including industrial use, the generation of usable energy, and the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes; and.

[42]Public Law 92-84 (85 Stat. 304) (1971), section 201(a). added paragraph (6).

[43]Public Law 109-58 (119 Stat. 801), August 8, 2005; Title VI, section 651(c)(1).

[44]Public Law 92-84 (85 Stat. 304) (1971), section 201(b), amended this sentence. Prior to amendment it read as follows:

or laboratories are inadequate to the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.[45]

Chapter 5–Production Of Special Nuclear Material

Sec. 41. Ownership And Operation Of Production Facilities.

42 USC 2061. Ownership and operation of production facilities.

a. Ownership of Production Facilities.–The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; (2) are licensed by the Commission pursuant under this title; or (3) are owned by the United States Enrichment Corporation.[46]

Operation of the Commission's production facilities.

b. Operation of the Commission's Production Facilities.–The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section

41 USC 252 (c) (See 41 USC 260 (b)).

"Where the Commission finds private facilities or laboratories are inadequate to the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of atomic energy."

[45]Public Law 90-190 (81 Stat. 575) (1967), section 7, amended section 33. Prior to amendment, the section read as follows:

Sec. 33. RESEARCH FOR OTHERS.–Where the Commission finds private facilities or laboratories are inadequate to the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of atomic energy. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of such activities and studies.

[46]Public Law 102-486 (106 Stat. 2943) Oct. 24, 1992 added new section (3).

3079 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonable practicable. Partial and advance payments may be made under such contracts.[47]

Operation of other production facilities.

c. Operation of Other Production Facilities.–Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.

42 USC 2062. Irradiation of materials.

Sec. 42. Irradiation Of Materials.

The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.

42 USC 2063. Acquisition of production facilities.

44 USC 252(c) (See 41 USC 260(b)).

Sec. 43. Acquisition of Production Facilities.

The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, condemn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefor.

42 USC 2064. Disposition of energy.

Sec. 44. Disposition Of Energy.

If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this Act shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.

Chapter 6–Special Nuclear Material

42 USC 2071. Special nuclear material.

Sec. 51. Special Nuclear Material.

The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the

[47]Public Law 90-190 (81 Stat. 575) (1967), section 8, deleted the last sentence of section 41b. which read as follows:

> The President shall determine in writing at least once each year the quantities of special nuclear material to be produced under this section and shall specify in such determination the quantities of special nuclear material to be available for distribution by the Commission pursuant to section 53 or section 54.

Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy[48] Committee[49] and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however*, That the Energy[50] Committee, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

Sec. 53. Domestic Distribution Of Special Nuclear Material.

42 USC 2073. Nuclear material licenses

a.[51] The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material–[52]

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.[53]

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special

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[48]Public Law 103-437 (108 Stat. 4592), section 15(f))(2), changed "Joint Committee" to "Energy Committee".

[49]See Public Law 95-110, section 301b.

[50]Public Law 103-437 (108 Stat. 4592), section 15(f))(2), changed "Joint Committee" to "Energy Committee".

[51]Public Law 88-489 (78 Stat. 602) (1964), section 4, reads as follows:

Section 52 of the Atomic Energy Act of 1954, as amended, is repealed. All rights, title, and interest in and to any special nuclear material vested in the United States solely by virtue of the provisions of the first sentence of such section 52, and not by any other transaction authorized by the Atomic Energy Act of 1954, as amended, or other applicable law, are hereby extinguished.

Section 52 read as follows:

Sec. 52. Government Ownership Of All Special Nuclear Material.–All rights, title, and interest in or to any special nuclear material within or under the jurisdiction of the United States, now or hereafter produced, shall be the property of the United States and shall be administered and controlled by the Commission as agent of and on behalf of the United States by virtue of this Act. Any person owning any interest in any special nuclear material at the time when such material is hereafter determined to be a special nuclear material shall be paid just compensation therefor. Any person who lawfully produces any special nuclear material, except pursuant to a contract with the Commission under the provisions of section 31 or section 41, shall be paid a fair price, determined pursuant to section 56, for producing such material.

[52]Public Law 88-489 (78 Stat. 602) (1964), section 5, amended this subsection. Before amendment, this subsection read:

a. The Commission is authorized to issue licenses for the possession of, to make available for the period of the license, and to distribute special nuclear material within the United States to qualified applicants requesting such material–

[53]Public Law 85-681 (72 Stat. 632) (1958), section 1, added clause (4).

nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of–

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

Distribution.

c. (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant.[54] *Provided however*, That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale[55] to any person who possesses or operates a utilization facility under a license pursuant to section 103 or 104b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

Agreements.

(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

Charges.

(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed by lease under subsection 53a.(1), (2) or (4)[56] and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection 53a.(3). The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection 53a.(1), (2) or (4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.[57]

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[54]Public Law 90-190 (81 Stat. 575) (1967), section 10, added the phrase "or through the provision of production or enrichment services."

[55]Section (c)(1) amended by Public Law 102-486 (106 Stat. 2943), Oct. 24, 1992.

[56]Public Law 85-681 (72 Stat. 632) (1958), section 2, amended subsec. c. of section 53. Before amendment this phrase and the same phrase in the next sentence read "subsection 53a. (1) or subsection 53a (2)."

[57]Public Law 88-489 (78 Stat. 602) (1964), section 6, amended subsec. 53c. Before amendment, this subsection read:

c. The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed under subsection 53a.(1), (2) or (4) and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and

d. In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease[58] to licensees of utilization or production facilities licensed pursuant to section 103 or section 104, in addition to consideration of the cost thereof, the Commission shall take into consideration–

(1) the use to be made of the special nuclear material;

(2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;

(3) the energy value of the special nuclear material in the particular use for which the license is issued;

(4) whether the special nuclear material is to be used in facilities licensed pursuant to section 103 or section 104. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 103; and

(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53c.(2), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104.[59]

License conditions.

e. Each license issued pursuant to this section shall contain and be subject to the following conditions–

(2)[60] no right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act;

(4) all special nuclear material shall be subject to the right of recapture or control reserved by section 108 and to all other provisions of this Act;

(5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this Act;

(6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;

(7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and

(8) except to the extent that the indemnification and limitation of liability provisions of section 170 apply, the licensee will hold the United States and the Commission harmless from any damages

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distributed under subsection 53a.(3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed under subsection 53a.(1), (2) or (4) considering, among other things, whether the licensee is a non-profit or eleemosynary institution and the purposes for which the special nuclear material will be used.

[58]Public Law 88-489 (78 Stat. 602) (1964), section 7, added the words "by lease".

[59]Public Law 88-489 (78 Stat. 602) (1964), section 7, amended this paragraph. Before amendment this paragraph read:

(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge based on the cost to the Commission, as estimated by the Commission, or the average fair price paid for the production of such special nuclear material as determined by section 56, whichever is lower.

[60]Public Law 88-489 (78 Stat. 602) (1964), section 8, deleted, subsec. 53e.(1). Subsec. 53e.(1) read:

(1) title to all special nuclear material shall at all times be in the United States:

resulting from the use or possession of special nuclear material by the licensee.[61]

Distribution for independent research, etc.

f. The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable.[62] In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.

Sec. 54. Foreign Distribution Of Special Nuclear Material.

42 USC 2074. Foreign distribution of special nuclear material.

a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. 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 period of time as are authorized by Congress: *Provided, however,* That, (i) 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, five hundred grams of uranium-233, and three kilograms of plutonium, 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 June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however*, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Energy Committees[63] and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of adjournment of more than three days): *And provided further*, That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating

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[61]Public Law 85-256 (71 Stat. 576), section 2 amended section 53e.(8). Before amendment this Subsection read:

(8) the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

[62]Public Law 90-190 (81 Stat. 575)(1967), section 9, deleted the following phrase which appeared at the end of this sentence:

and within the limitations set by the President pursuant to section 41.

[63]See Public Law 95-110, section 301b; Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(3) (A) struck "Joint Committee" and substituted Energy Committees.

in substance that it does not favor the proposed action: *And provided further,* That prior to the elapse of the first thirty days of any such sixty-day period the Energy Committees shall submit to their respective houses reports of their views [64] and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

Purchase of special nuclear material.

b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 percent centrum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. 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. The Commission shall not distribute any plutonium containing 80 per centrum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

Foreign distribution of certain materials.

c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.[65]

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[64] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(3) (B) struck "Joint Committee" and substituted Energy Committees.

[65] Section 2 of Public Law 93-377 (88 Stat. 473) (1974), amended section 54. Previously section 54 read as follows:

Sec.54. Foreign Distribution Of Special Nuclear Material.–The Commission is authorized to cooperate with any nation by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. 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

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):

(l) 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.

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.[66]

Sec. 55. Acquisition.

42 USC 2075. Acquisition.

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practical. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section.[67] *Providing,* That

41 USC 252(c) (*See* 41 USC 260(b)).

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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, five hundred grams of uranium 233 and three kilograms of plutonium 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 l, 1960. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this section which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this section. Under any such agreement, the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

Public Law 88-487 (78 Stat. 602)(1964) has added the last three sentences to section 54, Public Law 87-206 (75 Stat. 475)(1961) section 4, had added the words "five hundred grams of uranium 233 and three kilograms of plutonium" to the proviso in this section. Public Law 85-177 (71 Stat. 453) (1957), section 7, had added the second and third sentences, including the proviso, to section 54.

[66]Public Law 95-242 (92 Stat. 125)(1978), section 301(a) and section 303(b)(1) added subsec. 54(d) and subsec. 54(e), respectively.

[67]Public Law 88-489 (78 Stat. 602)(1964), section 10, amended section 55 by substituting a complete new section 55. Before amendment section 55 read as follows:

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.[68]

Sec. 56. Guaranteed Purchase Prices.

42 USC 2076. Guaranteed purchase prices.

The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee.[69] Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a non-discriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.[70]

Sec. 57. Prohibition.

42 USC 2077. Unauthorized handling.

a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

42 USC 2077. Special nuclear material production. Technology transfers.

b. It shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material[71] 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

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Sec. 55 Acquisition.–The Commission is authorized to purchase or otherwise acquire any special nuclear material or any interest therein outside the United States without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes.

[68]Public Law 95-242 (92 Stat. 131) (1978), section 303(b)(2), added the proviso at the end of section 55.

[69]Public Law 91-560 (84 Stat. 1472) (1970), section 2, added "section 103 or" to this sentence.

[70]Public Law 88-489 (78 Stat. 602)(1964), section 11 amended section 56, by substituting a new section 56. Before amendment section 56 read as follows:

Sec. 56. Fair Price.–In determining the fair price to be paid by the Commission pursuant to section 52 for the production of any special nuclear material, the Commission shall take into consideration the value of the special nuclear material for its intended use by the United States and may give such weight to the actual cost of producing that material as the Commission finds to be equitable. The fair price, as may be determined by the Commission, shall apply to all licensed producers of the same material: *Provided, however*, That the Commission may establish guaranteed fair prices for all special nuclear material delivered to the Commission for such period of time as it may deem necessary but not to exceed seven years.

[71]Public Law 108-458 (118 Stat. 3768), Dec. 17, 2004 added new language. Formerly read "in the production of any special nuclear material".

the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with[72] 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, Commerce,[73] 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 inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial 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 only required assurances or evidentiary showings, for the decision required under this subsection. The processing of any requests 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), or 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.[74]

Authorization requests, procedures.

Standards and criteria.

Trade secrets, protection.

42 USC 2014.
42 USC 2074.
42 USC 2094.
42 USC 7172.

c. The Commission shall not–

(l) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

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[72]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "the Arms Control and Disarmament Agency".

[73]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "the Arms Control and Disarmament Agency".

[74]Public Law 95-242 (92 Stat. 126) (1978), section 302, amended section 57 by substituting a complete new subsection 57(b). Before amendment, subsec. 57(b) 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) under an agreement for cooperation made pursuant to section 123, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States.

(2) distribute any special nuclear material or issue a license pursuant to section 53 to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

Certain exemptions.

d. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute unreasonable risk to the health and safety of the public.[75]

e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or section 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.[76]

42 USC 2078.
Review.

Sec. 58. Review.

Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Energy Committees and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however*, That the Energy Committees, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.[77] [78]

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[75]Section 3 of Public Law 93-377 (88 Stat. 475) (1974) added new subsec. d to section 57. Previously Public Law 88-489 (78 Stat. 602) (1964), section 12, amended section 57 by substituting a complete new section 57. Before amendment section 57 read as follows:

Sec. 57. Prohibition.–

a. It shall be unlawful for any person to–

(1) possess or transfer any special nuclear material which is the property of the United States except as authorized by the Commission pursuant to subsection 53 a.;

(2) transfer or receive any special nuclear material in interstate commerce except as authorized by the Commission pursuant to subsection 53a., or export from or import into the United States any special nuclear material; and

(3) directly or indirectly engage in the production of any special nuclear material outside of the United States except (A) under an agreement for cooperation made pursuant to section 123, or (B) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States.

b. The Commission shall not distribute any special nuclear material--

(1) to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

(2) to any person within the Untied States, if the Commission finds that the distribution of such special nuclear material to such person would be inimical to the common defense and security.

[76]Section 14 of Public Law 97-415 (96 Stat. 2067) (1983) added new subsec. e to section 57.

[77]Public Law 85-79 (71 Stat. 274) (1957), added section 58.

Sec. 61. Source Material.

42 USC 2091. Source material.

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees[79] and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: Provided, however, That the Energy Committees,[80] after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

Submittal of determination to Joint Committee.

Sec. 62. License For Transfers Required.

42 USC 2092. License for transfers required.

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

Sec. 63. Domestic Distribution Of Source Material.

42 USC 2093. Domestic distribution of source material.

a. The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material–

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103; or

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[78]Public Law 88-489 (78 Stat. 602) (1964), section 13, amended section 58 by substituting a complete new section 58. Before amendment, section 58 read as follows:

Sec. 58. Review.–Before the Commission establishes any fair price or guaranteed fair price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed or distributed under section 53 the proposed fair price, guaranteed fair price period, or criteria for the waiver of such charge shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however,* That the Joint Committee, after having received the proposed fair price, guaranteed fair prices period, or criteria for the waiver of such charge, may by resolution waive the conditions of or all or any portion of such forty-five day period.

Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(4) struck "Joint Committee" and substituted Energy Committees throughout section.

[79]See Public Law 95-110, section 301b.

[80] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(4) struck "Joint Committee" and substituted Energy Committees throughout section.

Charges.

(4) for any other use approved by the Commission as an aid to science or industry.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of–

(l) the physical characteristics of the source material to be distributed;

(2) the quantities of source material to be distributed; and

(3) the intended use of the source material to be distributed.

c. The Commission may make a reasonable charge determined pursuant to subsection 161m. for the source material licensed and distributed under subsection 63a.(1), subsection 63a.(2), or subsection 63a.(4), and shall make a reasonable charge determined pursuant to subsection 161m., for the source material licensed and distributed under subsection 63a.(3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection 63a.(1), subsection 63a.(2), or subsection 63a.(4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the source material will be used.

42 USC 2094. Foreign distribution of material.

Sec. 64. Foreign Distribution Of Source Material.

The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. 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.[81]

42 USC 2095. Reporting.

Sec. 65. Reporting.

The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any source material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.

42 USC 2096. Acquisitions.

Sec. 66. Acquisition.

The Commission is authorized and directed, to the extent it deems necessary to effectuate the provisions of this Act–

a. to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;

b. to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and

c. to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

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[81]Public Law 95-242 (92 Stat. 126) (1978). section 301.(b), amended section 64 by adding the last sentence.

41 USC 252(c) (See 41 USC 260(b)).

Any purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.

Sec. 67. Operations On Lands Belonging To The United States.

42 USC 2097. Operations on lands belonging to the United States.

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however*, That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

Sec. 68. Public And Acquired Lands.

42 USC 2098. Public and acquired lands.

a.[82] No individual, corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to the date of the enactment of this Act made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

Release of reservation.

b. Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, inserted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946, or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is hereby released, remised, and quitclaimed to the person or persons entitled upon the date of this Act under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under applicable Federal or State laws: *Provided, however*, That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954, as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be

[82]Public Law 85-681 (72 Stat. 623) (1958), section 3, amended the title to section 68. Before amendment it read: PUBLIC LANDS

subject to any rights which may have been granted by the United States pursuant to any such reservation, but the releases shall be subrogated to the rights of the United States.[83]

30 USC 501-505.

c. Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended, and particularly section 5(b)(7) thereof,[84] or the provisions of the Act of August 12, 1953 (67 Stat. 539), and particularly section 3 thereof, any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material.

Sec. 69. Prohibition.

42 USC 2099. Prohibition.

The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

Chapter 8–Byproduct Material

Sec. 81. Domestic Distribution.

42 USC 2111. Domestic distribution.

a. IN GENERAL–No person may[85] transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84.[86] The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants[87] with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not

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[83]Public Law 85-681 (72 Stat. 632) (1958), section 3 amended section 68 by substituting a new subsec .b. Before amendment, subsection b. read as follows:

> b. In cases where any patent, conveyance, lease, permit, or other authorization has been issued, which reserved to the United States source materials and the right to enter upon the land and prospect for, mine, and remove the same, the head of the Government agency which issued the patent, conveyance, lease, permit, or other authorization shall, on application of the holder thereof, issue a new or supplemental patent, conveyance, lease, permit, or other authorization without such reservation. If any rights have been granted by the United States pursuant to any such reservation then such patent shall be made subject to those rights, but the patentee shall be subrogated to the rights of the United States.

[84]See Atomic Energy Act of 1946, appendix B, *infra,* section 5(b)(7).

[85]Public Law 109-58 (119 Stat. 807), August 8, 2005 ; section 651(e)(3)(A)(i), designated existing text as subsection (a) by inserting "(a). In general" preceding text.

[86]Public Law 95-604 (92 Stat. 3039) (1978), section 205(b), amended the first sentence of section 81. Before amendment it read as follows:

> No person may transfer or receive in interstate commerce, manufacture, produce transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section or by section 82.

[87]Section 4 of Public Law 93-377 (88 Stat. 475) (1974) changed the word "licensees" to "qualified applicants" and deleted the following sentence, which was previously the fifth sentence of section 81:

> Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material.

discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

b. REQUIREMENTS–

(1) IN GENERAL–Except as provided in paragraph (2), byproduct material, as defined in paragraphs (3) and (4) of section 11e., may only be transferred to and disposed of in a disposal facility that–

(A) is adequate to protect public health and safety; and

(B)(i) is licensed by the Commission; or

(ii) is licensed by a State that has entered into an agreement with the Commission under section 274b., if the licensing requirements of the State are compatible with the licensing requirements of the Commission.

(2) EFFECT OF SUBSECTION–Nothing in this subsection affects the authority of any entity to dispose of byproduct material, as defined in paragraphs (3) and (4) of section 11e., at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*)

c. TREATMENT AS LOW-LEVEL RADIOACTIVE WASTE–Byproduct material, as defined in paragraphs (3) and (4) of section 11e., disposed of under this section shall not be considered to be low-level radioactive waste for the purposes of–

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

(2) carrying out a compact that is–

(A) entered into in accordance with that Act (42 U.S.C. 2021b *et seq.*); and

(B) Approved by Congress.[88]

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[88]Public Law 109-58 (119 Stat. 807, 808), 2005, section 651(e)(3), added new subsection b., "Requirements", and c., "Treatment as Low-Level Radioactive Waste";

Note: Public Law 109-58 (119 Stat. 808, August 8, 2005, Title VI, section 651(e)(3), redefined Low-Level Radioactive Waste in section 2(9) of the Low Level Radioactive Waste Policy Amendments Act to take into account the addition of paragraphs (3) and (4) of section 11e. of the Atomic Energy Act.

Sec. 82. Foreign Distribution Of Byproduct Material.

42 USC 2112. Foreign distribution of byproduct material.

a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123.

b. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such material as would be charged for the material if it were distributed within the United States: *Provided, however*, That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further,* That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

c. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

Sec. 83. Ownership And Custody Of Certain Byproduct Material And Disposable Sites.

42 USC 2113.

42 USC 2014.
42 USC 2111.

a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11e.(2), shall contain terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license–

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

42 USC 2014.

(2) ownership of any byproduct material, as defined in section 11e.(2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b.(1) to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.[89]

Rule, regulation or order.

(b)(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interest therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11e.(2), pursuant to such license shall be transferred to:

(i) the United States or–

(ii) the State in which such land is located, at the option of such State

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[89]Public Law 96-106 (93 Stat. 800) (1979), section 22(c) amended last sentence of section 83a. Before amendment this sentence read as follows:

Any license in effect on the date of the enactment of this section shall either contain such terms and conditions on renewal thereof after the effective date of this section, or comply with paragraphs (1) and (2) upon the termination of such license, whichever first occurs.

unless[90] the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 81 of this Act[91] in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under sub-paragraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

42 USC 2092.

(4) In the case of any such license under section 62, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interest therein (as described in paragraph (1) of this subsection) to the United States or a State in which land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interest

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[90]Public Law 96-106 (93 Stat. 800) (1979), section 22(e)(1) amended section 83(b)(1)(A) by striking out all that follows "transferred to." through "Unless." Before amendment this part read as follows:

(A) the United States, or

(B) the State in which such land is located, at the option of such State.

(2) Unless

[91]Public Law 96-106 (93 Stat. 800) (1979) section 22(e)(2) amended section 83(b)(1)(A) by inserting "section 81 of this Act" in lieu of "section 84b."

therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.

42 USC 2014.

(6) The transfer of title to land or byproduct materials, as defined in section 11e.(2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11e.(2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

c. Upon termination on any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.[92]

Sec. 84. Authorities Of Commission Respecting Certain Byproduct Material.

42 USC 2114.

a. The Commission shall insure that the management of any byproduct material, as defined in section 11e.(2), is carried out in such manner as–

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate,[93]

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[92]Public Law 95-604 (92 Stat. 3033) (1978, section 202(a), added section 83.

[93]Public Law 97-415 (96 Stat. 2067) (1983), section 22 added the language after "material."

Infra.

(2) conforms with applicable general standards promulgated by the Administration of the Environmental Protection Agency under section 275, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at lease comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

42 USC 6901 note.

b. In carrying out its authority under this section, the Commission is authorized to–

42 USC 2112. Rule, regulation of order.

(l) by rule, regulation, or order require persons, officers, or instrumentalities, exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Civil penalty.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provisions of this Act.[94]

42 USC 2282.
42 USC 2014.
42 USC 2114.

c. In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and non-radiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.[95]

42 USC 2022.

Chapter 9–Military Application Of Atomic Energy

Sec. 91. Authority.

42 USC 2121. Authority.

a. The Commission is authorized to–

(1) conduct experiments and do research and development work in the military application of atomic energy;

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United

[94]Public Law 95-604 (92 Stat. 3039) (1978), section 205(a), added section 84.
[95]Public Law 97-415 (96 Stat. 2067) (1983), section 20 added subsection "c."

States has been obtained, which consent and direction shall be obtained at least once each year;

(3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;

(4) carry out research on and development of technologies needed for the effective negotiation and verification of international agreements on control of special nuclear materials and nuclear weapons; and

(5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or nonprofit organizations so that the prospects for commercialization of such technology are enhanced.

b. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

c. The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of section 57, 62, or 81, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President–

(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

(2) utilization facilities for military applications; and

(3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has made substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123: *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization

facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation[96].

Sec. 92. Prohibition.

42 USC 2122. Prohibition.

a. It shall be unlawful, except as provided in section 91, for any person inside or outside of the United States to knowingly participate in the development of, manufacture, produce, transfer, acquire, receive, possess, import, export, or use, or possess and threaten to use, any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31a. or section 101.[97]

"b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if –

"(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

"(2) the offense is committed against a national of the United States while the national is outside the United States;

"(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section."[98]

Chapter 10–Atomic Energy Licenses

Sec. 101. License Required.

42 USC 2131. License required.

It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use,[99] import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or section 104.

Sec. 102. Utilization And Production Facilities For Industrial Or Commercial Purposes.

42 USC 2132.

a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104b. prior to enactment into law of this subsection, shall be issued under subsection 104b.

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[96]Public Law 83-703 (68 Stat. 936), Aug. 30, 1954, Title I, Ch. 9, section 91, Public Law 85-479, (72 Stat. 276), July 2, 1958, section I; Public Law 101-189 (103 Stat. 1684), Nov. 29, 1989, Div. C, title XXXI, Part E, section 3157; Public Law 102-486 (106 Stat. 2944), Oct. 24, 1992, Title IX, section 902(a)(8), renumbered title I.

[97]Public Law 108-458 (118 Stat. 3771), December 17, 2004, added new language to section "a".

[98]Public Law 108-458 (118 Stat. 3771), December 17, 2004 added new "b." section.

[99]Public Law 84-1006 (70 Stat. 1069) (1956), section 11, added the word "use."

c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104b.[100]

Sec. 103. Commercial Licenses.

42 USC 2133. Commercial licenses.

a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use[101] import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes.[102] Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

b. The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operation[103] and may be renewed upon the expiration of such period.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any[104] corporation or other entity if the Commission knows

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[100]Public Law 91-560 (84 Stat. 1472) (1970), section 3, amended section 102, prior to amendment it read as follows:

Sec. 102. Finding Of Practical Value–Whenever the Commission has made a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes, the Commission may thereafter issue licenses for such type of facility pursuant to section 103.

[101]Public Law 84-1006 (70 Stat. 1069) (1956), section 12, added the word "use."

[102]Public Law 91-560 (84 Stat. 1472) (1970), section 4, amended the first sentence of section 103a. Before amendment it read as follows:

Subsequent to a finding by the Commission as required in section 102, the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility.

[103]Public Law 109-58, (119 Stat. 782), August 8, 2005, section 621, inserted "from the authorization to commence operations" after "forty years".

[104]Public Law 84-1006 (70 Stat. 1069) (1956), section 13, added the words "an alien or any" between the words "to" and "any" in the second sentence of subsec. 103d. Addition of the word "any" was, of course, unnecessary.

or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

42 USC 2133.

f. Each license issued for a utilization facility under this section or section 104b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104b. which is in effect on the date of enactment of this subsection to include the provisions required under this subsection.[105]

42 USC 2237.

Sec. 104. Medical Therapy And Research And Development.

42 USC 2134. Medical therapy and research and development.

a. The Commission is authorized to issue licenses to persons applying therefore for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.

b. As provided for in subsection 102b., or 102c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.[106]

c. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 31 and which are not facilities of the type specified in subsection 104b. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the

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[105]Public Law 96-295 (94 Stat. 786) (1980) section 201, added subsec. (f) without prior enactment of subsec. (e).

[106]Public Law 91-560 (84 Stat. 1472) (1970), section 5, amended subsec. 104b. Before amendment it read as follows:

> b. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will be compatible with the regulations and terms of license which would apply in the event that a commercial license were later to be issued pursuant to section 103 for that type of facility. In issuing such licenses, priority shall be given to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes.

public and will permit the conduct of widespread and diverse research and development.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Sec. 105. Antitrust Provisions.

42 USC 2135. Antitrust provisions.

a. Nothing contained in this Act[107] shall relieve any person from the operation of the following Acts, as amended, An Act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety: sections seventy-three to seventy-six[108] inclusive, of an Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes approved August twenty-seven, eighteen hundred and ninety-four; 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October fifteen, nineteen hundred and fourteen; and 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes, approved September twenty-six, nineteen hundred and fourteen. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws cited above, to have violated any of the provisions of such laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

b. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.

c. (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply

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[107]Public Law 88-489 (78 Stat. 602) (1964), section 14, deleted the phrase ", including the provisions which vest title to all special nuclear material in the United States," which appeared after the word "Act."
[108]Public Law 107-273 (116 Stat. 1921), Nov. 2, 2002, Div. C, Title IV, section 14102(c)(2)(D).

to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104b. prior to the enactment into law of this subsection, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdiction basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection, whichever is later.

(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a.

(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105a.

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 103, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid

unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.[109]

(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 104b. that is filed on or after the date of enactment of this paragraph.[110]

Sec. 106. Classes Of Facilities.

42 USC 2136. Classes of facilities.

The Commission may–

a. group the facilities licensed either under section 103 or under section 104 into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

b. define the various activities to be carried on at each such class of facility; and

c. designate the amounts of special nuclear material available for use by each such facility.

Sec. 107. Operators' Licenses.

42 USC 2137. Operators' licenses.

The Commission shall–

a. prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this Act;

b. determine the qualifications of such individuals;

c. issue licenses to such individuals in such form as the Commission may prescribe; and

d. suspend such licenses for violations of any provision of this Act or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

Sec. 108. War Or National Emergency.

42 USC 2138. War or national emergency.

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material[111] or to

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[109]Public Law 91-560 (84 Stat. 1472) (1970), section 6, amended subsec. 105c. Before amendment it read as follows:

> c. Whenever the Commission proposes to issue any license to any persons under section 103, it shall notify the Attorney General of the proposed license and the proposed terms and conditions thereof, except such classes or type of licenses, as the Commission, with the approval of the Attorney General, may determine would not significantly affect the licensee's activities under the antitrust laws as specified in subsection 150a. Within a reasonable time, in no event to exceed 90 days after receiving such notification, the Attorney General shall advise the Commission whether, insofar as he can determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws, and such advice shall be published in the Federal Register. Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate or necessary to enable him to give the advice called for by this section.

[110]Public Law 109-58, (119 Stat. 784), August 8, 2005; section 625, subsection (C)(9) added paragraph (9).

[111]Public Law 86-373 (73 Stat. 688) (1959), section 2, amended section 108 by deleting the phrase "distributed under the provisions of subsection 53a.," after the words "special nuclear material" in the second sentence.

order the operation of any facility licensed under section 103 or section 104, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

Sec. 109. Component And Other Parts Of Facilities.

42 USC 2139. Domestic activities licenses, issuance, authorization. Export licenses.

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.

b. After consulting with the Secretaries of State, Energy, and Commerce,[112] 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 re-transferred to the jurisdiction of any 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.

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 126 a., that the export would be inimical to the common defense and security of the United States.[113]

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[112]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "and the Director".

[113]Public Law 95-242 (92 Stat. 141) (1978), section 309(a), amended section 109 by substituting a complete new section 109. Before amendment, section 109 read as follows:

Sec. 109. **Component Parts of Facilities**–With respect to those utilization and production facilities which are so determined by this Commission pursuant to subsection 11v.(2) or 11cc.(2) the Commission may (a) issue general licenses for 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, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security.

Amended by Public Law 89-645 (80 Stat. 891) (1966), section 1. Prior to amendment, reference was to "11t.(2)."

Amended by Public Law 89-645 (80 Stat. 891) (1966), section 1. Prior to amendment, reference was to "11aa(2)." Earlier, Public Law 87-615 (76 Stat. 409) (1962), section 9, had amended the reference. Prior to this amendment the reference was to "11v.(2)."

Sec. 110. Exclusions.

42 USC 2140. Exclusions.

Nothing in this subchapter shall be deemed

a. to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

b. to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91, or for the use of such facility by the Department of Defense or a contractor thereof.

Sec. 111. Distribution By The Department Of Energy.

42 USC 2141.

42 USC 2112. *Supra.*

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 sections 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.

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or section 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[114] 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.[115]

Chapter 11– International Activities

Sec. 121. Effect Of International Arrangements.

42 USC 2151. Effect of international arrangements.

Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangements made after the date of enactment of this Act shall be deemed to be of no force or effect.

Sec. 122. Policies Contained In International Arrangements.

42 USC 2152. Policies contained in international arrangements.

In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

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[114]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "the Arms Control and Disarmament Agency".

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

Sec. 123. Cooperation With Other Nations.

42 USC 2153

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until–

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

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 91c. 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;

42 USC 2121. 42 USC 2164.

(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., 144c., or 144d.,[116] 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;

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

[116]As amended by Public Law 103-337 (108 Stat. 2663), October 5, 1994.

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., 144c., or 144d.,[117] 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., 144c., or 144d.,[118] 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., 144c., or 144d.,[119] 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, submitted to President.
Proposed cooperation agreements submittal to President.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91c., 144b., 144c., or 144d.[120]) 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.[121] 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[122] 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. 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

[117]As amended by Public Law 103-337 (108 Stat. 2663), October 5, 1994.
[118]As amended by Public Law 103-337 (108 Stat. 2663), October 5, 1994.
[119]As amended by Public Law 103-337 (108 Stat. 2663), October 5, 1994.
[120]As amended by Public Law 103-337 (108 Stat. 3092), October 5, 1994.
[121]As amended by Public Law 103-337 (108 Stat. 3092), October 5, 1994.
[122]Public law 105-277 (112 Stat. 2681-774), Oct. 21, 1998 struck "and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director")".

information. 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 the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)[123] regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d.,[124] 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., or 144b., which are to be implemented by the Department of Defense, by the Secretary of Defense;

b. the President has submitted text of the proposed agreement for cooperation, except an agreement arranged pursuant to section 91c., 144b., 144c., or 144d. of section 144,[125] together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and[126] 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 Foreign Affairs[127] 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

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 sections 53, 54a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, 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

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[123] As amended by Public Law 99-64, section 301 (a)(1).
[124] As amended by Public Law 103-337 (108 Stat. 3092), October 5, 1994.
[125] As amended by Public Law 103-337 (108 Stat. 32092), October 5, 1994.
[126] As amended by Public Law 99-64, section 301(a)(2).
[127] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

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[128] 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,[129] when required by subsection 123a., have 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, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006,[130] shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.[131] 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.[132] Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130i. of this Act.[133]

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., 144c., or 144d.) to the Committee on Foreign Affairs 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, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any export as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 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

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[128]As amended by Public Law 99-64, section 301(a)(1).
[129]Public Law 105-277 (112 Stat. 774), Oct. 21, 1998, struck "Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency".
[130] Public law 109-401 (120 Stat. 2734) (2006) amended section to include exemption clause from Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006.
[131]As amended by Public Law 99-64, section 301(b)(2).
[132]As amended by Public Law 99-64, section 301(a)(3).
[133]As amended by Public Law 99-64, section 301(b)(3).

which the agreement for cooperation in question is reviewed by the Congress.[134]

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[134]Public Law 95-242 (92 Stat. 142) (1978), section 401, amended section 123 by substituting a complete new section 123. Before amendment, section 123 read as follows:

Sec 123. Cooperation With Other Nations–No cooperation with any nation or regional defense organization pursuant to sections 53, 54a, 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until–

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

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

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

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

[a]Public Law 88-489 (78 Stat. 602) (1964), section 15, added "53."

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

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

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

Public Law 85-681 (72 Stat. 632) (1958), section 4, added the proviso to subsec. 123 c. The semicolon erroneously inserted after the word "and" at the end of the subsection was added by Public Law 85-479. Subsec. 123d was amended by Public Law 93-485 (88 stat. 1460) (1974). Prior to amendment, subsec. 123d read as follows:

d. the proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91c., 144b., or 144c., has been submitted to the

President.

e. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d., or an amendment thereto).[135]

Sec. 124. International Atomic Pool.

42 USC 2154. International atomic pool.

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

Sec. 125. Cooperation With Berlin.

42 USC 2153. Cooperation with Berlin.

The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to section 54a,[136] 57, 64, 82, 103, or 104; *Provided,* That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.[137]

Sec. 126. Export Licensing Procedures.

42 USC 2155.

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, no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until–

42 USC 2112. Executive branch judgment notice to commission. Exemption. *Supra.*

(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.

Contents. Procedure.

Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce,[138] and the Nuclear

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

[d]Public Law 85-479 (72 Stat. 276) (1958), section 4 added new subsec. 123d.

[135] Public Law 110-369 (122 Stat. 4028) (2008), added sub-section e.

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

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

[138]Public Law 105-277 (112 Stat. 774); Oct. 21, 1998, struck "the Director of the Arms Control and Disarmament Agency".

Regulatory Commission for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs[139] 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:

Standards and criteria.

Notice to congressional committees.

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

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

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

[139] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

Data and recommendations.

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

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 120 of this Act: *And additionally provided,* That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further,* That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting

42 USC 2154.

Extension, notice to Congress.

Findings.

Judicial review, Exception.

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 license and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

Presidential review.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should 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 adopt a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions. *And provided further,* That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review while awaiting the final executive branch judgment. In initiating its review the Commission may identify a set of concerns and requests for information associated with the projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for

Report to Congress and congressional Committee.

Review.

Concerns and request, transmittal to executive branch.

such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein.
However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or–within sixty days after receipt of the executive branch judgment on the proposed export–the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a.(1) of this section: *Provided further,* That 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.[140]

Sec. 127. Criteria Governing United States Nuclear Exports.

42 USC 2156.

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

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

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

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

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be re-transferred to the jurisdiction of any other nation or group of nations unless the prior

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

approval of the United States is obtained for such re-transfer. 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 exported sensitive nuclear technology.[141]

Sec. 128. Additional Export Criterion And Procedures.

42 USC 2157.

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

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

Export applications, criterion enforcement.

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

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided,* That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgement of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130g. of this Act) and referred to the Committee on Foreign Affairs[142] of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not

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

[142] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

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.

Congressional disapproval, resolution.

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

Export authorizations, congressional review.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided,* That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further,* That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.[143]

Sec. 129. Conduct Resulting In Termination Of Nuclear Exports.

42 USC 2158. Export terminations, criterion.

a. No nuclear materials and equipment or sensitive nuclear technology shall be exported to—[144]

(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

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[143]Public Law 95-242 (92 Stat. 137), section 306, added section 128.

[144]Public Law 109-58, (119 Stat. 788), August 8, 2005, section 632(a)(1), designated the matter preceding paragraph (1) as subsection (a) by inserting "a." preceding "No nuclear materials and equipment".

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

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an 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 Foreign Affairs[145] 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, and there is enacted, a joint resolution[146] 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.[147]

Report to Congress. *Infra.*

b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in para-graphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1), or section 40(d) of the Arms Export Control Act (22 U.S.C.

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[145] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

[146] Public Law 110-369 (122 Stat. 4028) (2008), section 203 struck out "Congress adopts a concurrent resolution" and inserted "Congress adopts, and there is enacted, a joint resolution".

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

2780(d)) to have repeatedly provided support for acts of international terrorism).

(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and–

(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

(C) the waiver of that paragraph is in the vital national security interest of the United States; or

(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.

42 USC 2158 note.

(b) APPLICABILITY TO EXPORTS APPROVED FOR TRANSFER BUT NOT TRANSFERRED Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.[148]

Sec. 130. Congressional Review Procedures.

42 USC 2159.

42 USC 2121. 42 USC 2164. 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[149] 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 Foreign Affairs of the House of Representatives[150] shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided,* That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission.[151] If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced

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[148]Public Law 109-58, (119 Stat. 789), August 8, 2005, section 632(a)(1), added subsection (b).
[149]Public Law 99-64, section 301(c)(1)(A)(i)
[150]Public Law 99-64, section 301(c)(1)(A)(ii)
[151]Public Law 99-64, section 301(c)(1)(B)

within five days thereafter within such House shall be placed on the appropriate calendar of such House.

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

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

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

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

Resolution.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: That the Congress (does or does not) favor the transmitted to the Congress by the President on _____, the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

Continuous sessions of Congress.

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

Computation.

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

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

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

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

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

h. This section is enacted by Congress–

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

(2) With full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.[152]

i. (1) For the purposes of this subsection, the term "joint resolution" means—

(A) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving H. R. 7081—7 clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on _____.",

(B) for a determination under section 129 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress does not favor the determination transmitted to the Congress by the President on _____.", or

(C) for a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress does not favor the subsequent arrangement to the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.", with the date[153] of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123d., a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs,[154] for himself and the

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

[153] Public Law 110-369 (122 Stat. 4028) (2008), section 205 (1) struck out "means a joint resolution, the matter after the resolving clause of which is as follows: That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on _____, with the date" and inserted sub-sections A, B, and C.

[154] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

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

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

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15 days after its introduction),[155] the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15-day period)[156] one such committee has reported the joint resolution, any committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

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

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

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

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[155] Public Law 110-369 (122 Stat. 4028) (2008), section 205 (2)(A) inserted parenthetical information.
[156] Public Law 110-369 (122 Stat. 4028) (2008), section 205 (2)(A) inserted parenthetical information.

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

Sec. 131. Subsequent Arrangements.

42 USC 2160.

42 USC 2121.
42 USC 2164.
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 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 Secretary of State is required[157] 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 requirement to prepare a Nuclear Proliferation Assessment Statement[158] 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.

Notice publication in the Federal Register.

Nuclear Proliferation Assessment Statement.

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

Subsequent arrangements.

Contracts.

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

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

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

(D) arrangements for physical security;

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[157]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "the Director declares that he intends".
[158]Public Law 105-277 (112 Stat. 2681-774), Oct. 21, 1998, struck "the Director's declaration".

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

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

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

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

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

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

Report to congressional committees.

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs[159] of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 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;

(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

[159] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(6)(A) struck "International Relations" and substituted "Foreign Affairs" throughout section.

consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device and

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

Nuclear materials, reprocessing or transfer procedures.

c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial request should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State[160] shall so declare in his response to the Department of Energy. If the Secretary of State[161] 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 Secretary of State's[162] request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs 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

Controversial requests, identification. Standards and criteria.

Nuclear Proliferation Assessment Statement.

Notice to congressional committees. Presidential waiver.

[160]Public Law 105-277 (112 Stat. 2681-775), Oct. 21, 1998, struck "Director" and added "Secretary of State".
[161]Public Law 105-277 (112 Stat. 2681-775), Oct. 21, 1998, struck "Director" and added "Secretary of State".
[162]Public Law 105-277 (112 Stat. 2681-775), Oct. 21, 1998, struck "Director" and added "Secretary of State".

this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

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

42 USC 7172.

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

Presidential plan, submittal to Congress.

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

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

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

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

Notice to congressional committees.

(2) Subsection (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign

Affairs and Science, Space, and Technology[163] of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

Plan, contents.

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

Foreign spent nuclear fuel.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or non-government, 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.[164]

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

42 USC 2160b.

President of U.S.

The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.[165]

Sec. 133. Consultation With The Department Of Defense Concerning Certain Exports And Subsequent Arrangements.

42 USC 2160c.

a. In addition to other applicable requirements–

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

42 USC 2160.

(2) approval may be granted by the Secretary of Energy under section 131 of this Act for the transfer of special nuclear material described in subsection b.; only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

b. Subsection a. applies to the export or transfer of more than 2 kilograms of plutonium or more than 5[166] kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.[167]

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[163] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(6)(B) struck "Science and Technology" and substituted "Science, Space, and Technology".

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

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

[166] Public Law 103-236 (108 Stat. 521) (1994), changed 20 kilograms to 5 kilograms.

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

Sec. 134. Further Restrictions On Exports.

42 USC 2160d.

(a). IN GENERAL[168]–Except as provided in subsection b., the Commission[169] may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that–

(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent that the proposed export, that can be used in that reactor;

(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target than can be used in that reactor.

b. MEDICAL ISOTOPE PRODUCTION.–

(1) DEFINITIONS–In this subsection:

(A) HIGHLY ENRICHED URANIUM–The term 'highly enriched uranium' means uranium enriched to include concentration of U–235 above 20 percent.

(B) MEDICAL ISOTOPE–The term 'medical isotope' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(C) RADIOPHARMACEUTICAL–The term 'radiopharmaceutical' means a radioactive isotope that–

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

(D) RECIPIENT COUNTRY–The term 'recipient country' means Canada, Belgium, France, Germany, and the Netherlands.

(2) LICENSES–The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection a.), the Commission determines that–

(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that–

(i) uses an alternative nuclear reactor fuel; or

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[168]Public Law 109-58 (119 Stat. 785), August 8, 2005; section 630(1), struck out the editorially supplied heading for subsection (a), and inserted "(a). In general".

[169]Public Law 109-58 (119 Stat. 785), August 8, 2005, section 630(1) struck out "The Commission" and inserted "Except as provided in subsection (b), the Commission".

(ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS–

(A) IN GENERAL–The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) IMPOSITION OF ADDITIONAL REQUIREMENTS–If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

(4) FIRST REPORT TO CONGRESS–

Contracts.

(A) NAS STUDY–The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine–

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) FEASIBILITY–For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if–

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

(C) REPORT BY THE SECRETARY–Not later than 5 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that–

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) SECOND REPORT TO CONGRESS–If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) CERTIFICATION–At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

(7) SUNSET PROVISION–After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.[170]

c. As used in this section[171]–

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

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

(3) a fuel or target "can be used" in a nuclear research or test reactor if–

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.[172]

c. Report to Congress.

(1) IN GENERAL.–Not later than 90 days after the date of the enactment of this Act, the Chairman of the Nuclear Regulatory Commission, after consulting with other relevant agencies, shall submit to the Congress a report detailing the current disposition of previous United States exports of highly enriched uranium, including–

(A) their location;

(B) whether they are irradiated;

(C) whether they have been used for the purpose stated in their export license; and

(D) whether they have been used for an alternative purpose and, if so, whether such alternative purpose has been explicitly approved by the Commission.

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[170]Public Law 109-58, (119 Stat. 785), August 8, 2005, section 630(2), (3), added subsection (b) and redesignated former subsection "b." as subsection "c.".

[171]Public Law 109-58, (119 Stat. 785), August 8, 2005, section 630(2), redesignated former subsection "b." as subsection "c.".

[172]Public Law 102-486 (106 Stat 2945), added new section 134.

(2) EXPORTS TO EURATOM.–To the maximum extent possible, the export required by paragraph (1) shall include–

(A) exports of highly enriched uranium to EURATOM; and

(B) subsequent retransfers of such material within EURATOM, without regard to the extent of United States control over such retransfers.[173]

Chapter 12–Control Of Information

Sec. 141. Policy.

42 USC 2161. Policy.

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

Sec. 142. Classification And Declassification Of Restricted Data.

42 USC 2162. Classification and declassification of restricted data.

a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

b. The commission shall maintain a continuous review of Restricted Data and of any Classification guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

d. The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except

50 USC 406(d).

[173]Public Law 103-160 (107 Stat 1959), Nov. 30, 1993, Div C., Title XXXII, section 3202(a)(2), added.

pursuant to an agreement for cooperation entered into in accordance with subsection b. or d. of section 144.[174]

e. The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

Sec. 143. Department Of Defense Participation.

42 USC 2163. Department of Defense participation.

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145b.[175] and 145c.[176] to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

Sec. 144. International Cooperation.

42 USC 2164. International cooperation.

a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on–

(1) refining, purification, and subsequent treatment of source material;

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

(5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing: *Provided, however,* That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this Act.[177]

Cooperation by Defense Department.

b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to–

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[174]Public Law 103-337 (108 Stat. 3092) (1994)

[175]Public Law 84-1006 (70 Stat. 1069) (1956), section 14, added the words: "or any other person authorized access to Restricted Data by the Commission under subsection 145b".

[176]Public Law 87-206 (75 Stat. 475) (1961), section 5, deleted the words "subsection 145b." and substituted in lieu thereof the words, "subsections 145b. and 145c."

[177]Public Law 85-479 (72 Stat. 276) (1958), section 5 amended subsec. a. of section 144 by inserting the word "civilian" before the words "reactor development" in clause (2) thereof.

(1) the development of defense plans;

(2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;

(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and

(4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into accordance with section 123.[178]

c. In addition to the cooperation authorized in subsections 144a. and 144b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and–

(1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.[179]

d. (1) In addition to the cooperation authorized in subsections a., b., and c., the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of

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[178]Public Law 85-479 (72 Stat. 276) (1958), section 6, amended section 144 by substituting a new subsec. b. Before amendment subsec. b. read as follows:

b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data as is necessary to--

(1) the development of defense plans;

(2) the training of personnel in the employment of and defense against atomic weapons; and

(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons.

while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That no such cooperation shall involve communication of Restricted Data relating to the design or fabrication of atomic weapons except with regard to external characteristics, including size, weight, and shape, yields and effects, and systems employed in the delivery or use thereof but not including any data in these categories unless in the joint judgment of the Commission and the Department of Defense such data will not reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon: *And provided further,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

[179]Public Law 103-337 (108 Stat. 3091), October 5, 1994, added new subsection "d."

the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 142, as is necessary for–

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph–

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

e. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144a., b., c., or d., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.[180]

Sec. 145. Restrictions.

42 USC 2165. Restrictions.

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

Investigations by CSC.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection b. of this section, the

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[180]Public Law 103-337 (108 Stat. 3092) amended Public Law 85-479 (92 Stat. 276) (1958) by redesignating subsection "d" to "e." [Note: see footnote 149 for explanation of new subsection "d."]

Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

Investigations by FBI.

d. In the event an investigation made pursuant to subsections a. and b. of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service commission for its information and appropriate action.

e. (1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program,[181] any investigation required by subsections a., b., and c. of this section shall be made by the Federal Bureau of Investigation.[182]

f. (1) Notwithstanding the provisions of subsections a., b., and c. of this section, but subject to subsection (e) of this section, a majority of the members of the Commission may direct that an investigation required by such provisions on an individual described in paragraph (2) be carried out by the Federal Bureau of Investigation rather than by the Civil Service Commission.

(2) An individual described in this paragraph is an individual who is employed --

(A) in a program certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity; or

(B) in any other specific position certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity.[183]

g. The commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections a., b., and c. of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

h. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b., to the extent that and so long as the

[181]Public Law 108-136 (117 Stat. 1749), Nov. 24, 2003, Div. C, title XXXI, section 3131,
[182]Public Law 106-65 (113 Stat. 934), Oct. 5, 1999, Div. C, title XXXI, Subtitle D, sec. 3144(a).
[183]Public Law 108-136 (117 Stat. 1749), Nov. 24, 2003, Div. C, title XXXI, section 3131.

Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.[184]

Sec. 146. General Provisions.

42 USC 2166. General Provisions.

a. Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

b. The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

Sec. 147. Safeguards Information.

42 USC 2167. Regulations.

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed–

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[184]Public Law 87-206 (75 Stat. 475) (1961), section 6, amended section 145 by redesignating subsection c. as subsection d and subsection g. as subsection h. This amendment also added new subsections "c", "e", "f", and "g." Before amendment, the section read as follows:

Sec. 145. Restrictions.–

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense security.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. In the event an investigation made pursuant to subsections a. and b. of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation of the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

d. If the President deems it to be in the national interest, he may from time to time cause investigations of any group or class which are required by subsections a. and b. of this section to be made by the Federal bureau of Investigation instead of by the Civil Service Commission.

e. Notwithstanding the provisions of subsections a. and b. of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity and upon such certification the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation instead of by the Civil Service Commission.

f. The Commission shall establish standards and specifications in writing as to the scope and extent of investigations to be made by the Civil Service Commission pursuant to subsections a. and b. of this section. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

g. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individual access to Restricted Data pending the investigation report, and determination required by section 145b., to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2).

If the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection–

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

42 USC 2282.

42 USC 2273.

b. For the purpose of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161b. of this Act.

c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:[185]

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, a specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.[186]

Sec. 148. Prohibition Against The Dissemination Of Certain Unclassified Information.

42 USC 2168.
Regulations.

a.[187] (1) In addition to any authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the "Secretary" with respect to atomic energy defense programs,[188]) shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to–

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

42 USC 2162.

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on

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[185]NOTE: As a result of Public Law 104-66 (109 Stat. 734), Dec. 21, 1995, section 3003, section 147e, ceased to be effective on December 21, 1999.

[186]Public Law 96-295 (94 Stat. 788) (1980), section 207(a)(1), added new section 147.

[187]Public Law 97-90 (95 Stat. 1163) (1981), section 210(a)(1), added new section 148.

[188]Public Law 97-415 (96 Stat. 2067) (1983), section 17 inserted in section 148a.(1) after "Secretary" the words "with respect to atomic energy defense programs."

the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection a.(1)–

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

Penalties.

b. (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed $100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

42 USC 2282.

(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

42 USC 2273.

c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161b. of this Act.

Judicial review.

d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code.

Quarterly report.

e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall–

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum

amount of information necessary to protect the health and safety of the public or the common defense and security.[189]

Sec. 149. Fingerprinting For Criminal History Record Checks.

42 USC 2169.

a.(1)(A)(i)[190] The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).

(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)–

(I) are licensed or certified to engage in an activity subject to regulation by the Commission;

(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

Notification.

(III) have notified the 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 Commission.

(B) The Commission shall require to be fingerprinted any individual who–

(i) is permitted unescorted access to–

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission 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; or

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

(2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the

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[189]Public Law 97-415 (96 Stat. 2067) (1983) section 17 added new subsec. "d" and "e" to section 148.

[190] Public Law 99-399 (100 Stat. 853) (1986) section 606, added section 149. Public Law 109-58 (119 Stat. 810), August 8, 2005; section 652(1), rewrote subsection (a), which formerly read:

"(a) The Nuclear Regulatory Commission (in this section referred to as the 'Commission') shall require each licensee or applicant for a license to operate a utilization facility under section 2133 or 2134(b) of this title to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 2167 of this title. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints."

Public Law 109-58 (119 Stat. 810), section 652(2)(A), August 8, 2005; subsection (C) in the introductory paragraph, struck out subject to public notice and comment, regulations–" and inserted requirements–".

Public Law 109-58 (119 Stat. 810), section 652(2)(B), August 8, 2005; subsection (c)(2)(B) struck out unescorted access to the facility of a licensee or applicant" and inserted unescorted access to a utilization facility, radioactive material, or other property described in subsection(a)(1)(B) of this section".

Public Law 109-58 (119 Stat. 810), section 652(3), (4); August 8, 2005; subsection (d) was redesignated as subsection (e), and a new subsection (d) was inserted, respectively.

Public Law 109-58 (119 stat. 810), section 652(3); August 8, 2005; Redesignated subsection (d) as subsection (e).

United States through the Commission for identification and a criminal history records check.

(3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(4) Notwithstanding any other provision of law–

(A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and

(B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

Health and medical care. Safety.

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, under specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

Regulations.

c. For purposes of administering this section, the Commission shall prescribe, subject to requirements–

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order–

(A) to limit the redissemination of such information ;

42 USC 2168.

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B) or shall be permitted access to safeguards information under section 147;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving–

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. The Commission may require a person or individual to conduct fingerprinting under subsection a.(1) by authorizing or requiring the use of any alternative biometric method for identification that has been approved by–

(1) the Attorney General; and

(2) the Commission, by regulation.

e. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts–

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the

Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.[191]

Chapter 13–Patents And Inventions

Sec. 151. Inventions Relating To Atomic Weapons, And Filing Of Reports.

42 USC 2181. Inventions relating to atomic weapons.

a.[192] No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is hereby revoked, and just compensation shall be made therefor.

b. No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are hereby revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

Inventions reports.

c. Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office[193] by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.[194]

"d. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office[195] shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection 151c., and shall provide the Commission access to all such applications.

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[191] Public Law 99-399 (100 Stat. 853) (1986), section 606 added section 149, which has been amended by Public Law 109-58 (119 Stat. 810) section 652.

[192] Public Law 87-206 (75 Stat. 475) (1961), section 7, changed the title of this section. The title prior to amendment was "Military Utilization."

[193] As amended by Public Law 106–113 (113 Stat 1536), November 29, 1999, Division B, section 1000(a)(9).

[194] Public Law 87-206 (75 Stat. 475) (1961), section 8, amended section 151c. Before amendment, section 151c read as follows:

> c. Any person who has made or hereafter makes any invention or discovery useful (1) in the production or utilization of special nuclear material or atomic energy; (2) in the utilization of special nuclear material in an atomic weapon; or (3) in the utilization of atomic energy in an atomic weapon, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Commission of Patents by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before whichever of the following is the later either the ninetieth day after completion of such invention or discovery; or the ninetieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

[195] As amended by Public Law 106–113 (113 Stat 1536), November 29, 1999., Division B, section 1000(a)(9).

"e. Reports filed pursuant to subsection c. of this section, and application to which access is provided under subsection d. of this section, shall be kept in confidence by the Commission, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission.[196]

Sec. 152. Inventions Made Or Conceived During Commission Contracts.

42 USC 2182. Invention conceived during Commission contracts.

Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the application is otherwise in condition for allowance[197] forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patents to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or

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[196]Public Law 87-206 (75 Stat. 475) (1961) section 9, added subsec. e.

[197]Amended by Public Law 87-615 (76 Stat. 409) (1962), section 11. Prior to amendment word was "allowances."

arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the applicant or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Board of Patents Appeals and Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Board of Patent Appeals an Interferences.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.[198]

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[198]Public Law 87-206 (75 Stat. 475) (1961), section 10, amended section 152. Before amendment this section read as follows:

Sec. 152. Inventions Conceived During Commission Contracts–Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived under any contract, subcontract, arrangement, or other relationship with the Commission, regardless of whether the contract or arrangement involved the expenditure of funds by the Commission, shall be deemed to have been made or conceived by the Commission, except the Commission may waive its claim to any such invention or discovery if made or conceived by any person at or in connection with any laboratory under the jurisdiction of the Commission as provided in section 33, or under such other circumstances as the Commission may deem appropriate. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within 30 days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of, in connection with or under the terms of any contract, subcontract, arrangement, or other relationship with the Commission, regardless of whether the contract or agreement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall forthwith forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of, in connection with, or under the terms of any contract, subcontract, arrangement, or other

Sec. 153. Nonmilitary Utilization.

42 USC 2183. Nonmilitary utilization.

a. The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this Act.

b. Whenever any patent has been declared affected with the public interest, pursuant to subsection 153a.–

(1) the Commission is hereby licensed to use the invention or discovery covered by such patent in performing any of its powers under this Act;

(2) any person may apply to the Commission for a nonexclusive patent license to use the intervention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this Act.

c. Any person–

(1) who has made application to the Commission for a license under section 53, 62, 63, 81, 103, or 104, or a permit or lease under section 67;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposed to conduct under a general license issued by the Commission under section 62 or 81; or

(4) whose activities or proposed activities are authorized under section 31, may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

d. Whenever any person has made an application to the Commission for a patent license pursuant to subsection 153c.–

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relationship with the Commission entitling the Commission to take title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before a Board of Patents Interferences. The Boards shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference cases and procedures established an appeal may be taken by either the applicant or the Commission from the final order of the Board to the Court of Customs and Patent Appeals in accordance with the procedures governing the appeals from the Board of Patent Interferences (amended by Public Law 97-164 and Public Law 98-622).

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section.

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in it discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

e. If, after any hearing conducted pursuant to subsection 153d, the Commission finds that–

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this Act; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant, the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patents or by the Commission to similar licensees for comparable use.

f. The Commission shall not grant any patent license pursuant to subsection 153e. for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection 153c., and without separate notification and hearing as provided in subsection 153d., and without a separate finding as provided in subsection 153e.

g. The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection 153b. or 153e. shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by the section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to subsection 157c.

h. The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.[199]

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[199]Public Law 86-50 (73 Stat. 81) (1959), section 114, amended subsec. 153h. by changing the date from Sept. 1, 1959, to Sept. 1, 1964. Public Law 88-394 (78 Stat. 376) (1964), section 1, amended subsec. 153h. by changing the date from Sept. 1, 1964, to Sept. 1, 1969. Public Law 91-161 (83 Stat. 444) (1969), section 1, amended subsec. 153h. by changing the date from Sept. 1, 1969, to Sept. 1, 1974. Public Law 93-377, section 6 (88 Stat. 475) (1974), amended subsec. 153h. by changing the date from Sept. 1, 1974 to Sept. 1, 1979.

Sec. 154. Injunctions.

42 USC 2184. Injunctions.

No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by subsection 153b. or 153e. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to subsection 157c. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

Sec. 155. Prior Art.

42 USC 2185. Prior art.

In connection with applications for patents covered by this chapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

Sec. 156. Commission Patent Licenses.

42 USC 2186. Commission patent licenses.

The Commission shall establish standards specifications upon which it may grant a patent license to use any patent[200] declared to be affected with the public interest pursuant to subsection 153a. Such a patent license shall not waive any of the other provisions of this Act.

Sec. 157. Compensation, Awards, And Royalties.

42 USC 2187. Compensation, awards, and royalties.

a. Patent Compensation Board.–The Commission shall designate a patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of section 281, 283, or 284 of title 18[201] of the United States Code, except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

Eligibility.

b. Eligibility.–

(1) Any owner of a patent licensed under section 158 or subsection 153b. or 153e., or any patent licensed thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in section 151 shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this Act and who has complied with the provisions of section 151c. hereof may make application to the Commission for, and the Commission may

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[200]Public Law 96-517 (94 Stat. 3027) (1980), section 7(a), amended section 156 by deleting the words "held by the Commission or."

[201] These sections have been repealed.

grant, an award. The Commission may also, after consultation with[202] the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

Standards.

c. Standards.–

(1) In determining a reasonable royalty fee as provided for in subsection 153b., or 153e., the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and, may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in section 151, or in determining the amount of any award under subsection 157b.(3), the Commission shall take into account the considerations set forth in subsection 157c.(1) and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

d. Period Of Limitations.–Every application under this section shall be barred unless filed within six years after the date on which first accrues the right of such reasonable royalty fee, just compensation, or award for which such application is filed.[203]

Sec. 158. Monopolistic Use Of Patents.

42 USC 2188. Monopolistic use of patents.

Whenever the owner of any patent hereafter granter for any invention or discovery or primary use in the utilization or production of special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in subsection 105a., there may be included in the judgement of the court, in its discretion and in addition to any other lawful sanction, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 157.[204]

Sec. 159. Federally Financed Research.

42 USC 2189. Federally financed research.

Nothing in this Act shall affect the right of the Commission to require the patents granted on inventions made or conceived during the course of federally financed research or operations, be assigned to the United States.

Sec. 160. Saving Clause.

42 USC 2190. Saving clause.

Any patent application on which a patent was denied by the United States Patent Office under section 11(a)(1), 11(a)(2), or 11(b) of the Atomic Energy Act of 1946,[205] and which is not prohibited by section 151 or section 155 of this Act may be reinstated upon application to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office within one year after enactment of this Act and shall then be deemed to have been continuously

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[202] Public Law 93-276 (88 Stat. 115) (1974), section 201, amended this section by substituting the words "after consultation with" for the words "upon the recommendation of."

[203] Public Law 87-206 (75 Stat. 475) (1961), section 11, added subsection 4.

[204] The second sentence of section 158 was amended by Public Law 87-206 (75 stat. 475) (1961), section 12. Prior to amendment, it read: "Such licensee shall pay a reasonable royalty fee to be determined in accordance with section 157, to the owner of the patent.

[205] See Atomic Energy Act of 1946, appendix 4, infra, section 11.

pending since its original filing date: *Provided, however,* That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.

Chapter 14–General Authority

Sec. 161. General Provisions.

42 USC 2201. General provisions.

In the performance of its functions the Commission is authorized to–

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitation of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;[206]

c. make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify or appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;[207]

d. appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended)[208] whose position would be subject to the

5 USC 5101.

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[206]Public Law 101-575 (104 Stat. 2835) (1990), Amended section 161b.

[207]Public Law 91-452 (84 Stat. 922) (1970) section 237, The Organized Crime Control Act of 1970, deleted the following sentence form subsection 161c:

> No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege.

[208]Public Law 87-793 (76 Stat. 832) (1962), section 1001(g), added the words "up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended." Prior to this amendment a limitation of $19,000 had been imposed by Public Law 85-287 (71 Stat. 612) (1957), section 4.

Classification Act of 1949, as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act.[209] The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

e. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174: *Provided, however*, That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege, grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant)[210] are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising (sic) and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;[211]

f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States,[212] subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;

h. consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

i. prescribe such regulations or order as it may deem necessary

(1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act,

(2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by

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[209]Public Law 85-681 (72 Stat. 633) (1958), section -- amended subsec. 161d. by inserting this sentence.

[210]Public Law 85-162 (71 Stat. 403) (1957), section 201, added the clause:

(at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequalities or undue hardship prior to the sale by the United States of property affected by such grant.

[211]Public Law 84-722 (70 Stat. 553) (1956), amended section 161e. by adding the proviso clause.

[212]The text of Executive Order 9816, providing for the transfer of properties and personnel of the Manhattan Engineer District to the Atomic Energy Commission on January 1, 1947, will be found in appendix 8, infra.

any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security,[213]

(3) to govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property; 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 control over any fund for the decommissioning of the facility,[214]

40 USC 471.
40 USC 488 note.

j. without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however*, That the property furnished to licensees in accordance with the provisions of subsection 161m. shall not be deemed to be properly disposed of by the commission pursuant to this subsection;

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties.

42 USC 2201(K).

A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to

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[213]Section 7 of Public Law 93-377 (88 Stat. 475) (1974), amended subsection 161i. by adding the phrase beginning with the word "including" and ending with the word "security" the second time it appears thereafter.
[214]Public Law 109-58 (119 Stat. 784), August 8, 2005, section 626; struck out "and (3)" and inserted "(3)" and, before the semicolon at the end, inserted new "(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 control over any fund for the decommissioning of the facility".

be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;[215]

m.[216] enter into agreements with persons licensed under section 103, 104, 53a.(4), or 63a.(4)[217] for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activities; *Provided, however*, That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided, further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

n.[218] delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except

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[215]Public Law 99-661 (100 Stat. 4064) (1986), amended subsection 161k. Public Law 97-90 (95 Stat. 1163) (1981), section 211, amended section 161k. (42 U.S.C. 2201k.) by striking out the semicolon after "duties" and inserting in lieu thereof a period and the new language giving arrest authority for persons authorized to carry firearms.

[216]Public Law 87-456 (76 Stat. 72) (1962), section 303(c), the Tariff Classification Act of 1962, repealed section 161 l, effective on the 10 day following a Presidential proclamation concerning tariff schedules, import restrictions and related matters. This proclamation was issued on August 21, 1963 (3 CFR, Proclamation 3548). Section 161 l, read as follows:

> l. Secure the admittance free of duty into the United States of purchases made abroad of source materials, upon certification to the Security of the Treasury that such entry is necessary in the interest of the common defense and security.

[217]Public Law 86-300 (73 Stat. 574) (1959), section 1, amended subsection 161m. to authorize agreements with persons licensed under section 53a. (4) or 63a.(4) as well as under section 103 or 104.

[218]Public Law 85-507 (72 Stat. 327) (1958), section 21, repealed former subsection 161n., and relettered subsequent subsections accordingly.

Subsection 161 n. read as follows:

> n. assign scientific, technical, professional, and administrative employees for instruction, education, or training by public or private agencies, institutions of learning, laboratories, or industrial or commercial organizations and to pay the whole or any part of the salaries of such employees, costs of their transportation and per diem in lieu of subsistence in accordance with applicable laws and regulation, and training charges incident to their assignments (including tuition and other related fees): *Provided, however,* That (1) not more than one per centrum of the eligible employees shall be so assigned during any fiscal year, and (2) any such assignment shall be approved in advance by the Commission or shall be in accordance with a training program previously approved by the Commission: *And provided further*, That appropriations or other funds available to the Commission for salaries or expenses shall be available for the purposes of this subsection.

those specified in sections 51, 57b.,[219] 61,[220] 108, 123, 145b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145f.,[221] and 161a.;

o. require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105; and

p. make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

Easements for rights-of-way.

q. The Commission is empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and street; and (j) for any other purpose or purposes deemed advisable by the Commission: Provided, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further,* That all or any part of such right-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.[222]

r. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural, manufactured, or mixed gas.
(7) Ice.

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[219]Public Law 90-190 (81 Stat. 575) (1967), section 11, amended section 161n. by striking out "57a.(3)" and inserting in lieu thereof "57b."

[220]Public Law 91-560 (84 Stat. 1472) (1970), section 7, amended subsection 161n. by striking out at this point the following: "102 (with respect to the finding of practical value)".

[221]Amended by Public Law 87-615 (76 Stat. 409) (1962), section 12. Prior to amendment reference was to 145e.

[222]Public Law 84-1006 (70 Stat. 1069), section 4, added subsection q. (originally subsection r.).

(8) Mechanical refrigeration.

(9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.[223]

Succession of authority.

s. establish a plan for a succession of authority which will assure the community of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;[224]

Processing contracts.

t. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161m.;

Long term contract authority.

u. (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2) (A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or supplies thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

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[223]Public Law 85-162 (71 Stat. 403) (1957), section 204, added subsection 4. (originally subsection s.).

[224]Public Law 85-681 (72 Stat. 632) (1958), section 7, amended section 161 by adding new subsections t., u. and v. Public Law 87-206 (75 Stat. 475) (1961), section 13, changed the designation of subsections t., u. and v. to subsections s., t. and u., respectively.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, and services and not available to the vendors or suppliers for the performance of the contract.[225]

Contract authority.

v. provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992 in performing such services;.[226] [227]

w. prescribe and collect from any other Government agency, which applies to the Commission for, or is issued by the Commission, a license or certificate, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of Title 31 or any other law.[228] [229] [230]

42 USC 2231.

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure–

42 USC 2014.

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct materials as defined in section 11e.(2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination,

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[225]Public Law 86-300 (73 Stat. 574) (1959), section 1, amended subsection 161m. to authorize agreements with persons licensed under section 53a. (4) or 63a.(4) as well as under section 103 or 104.

[226]Public Law 88-489 (78 Stat. 602) (1964), section 16, added subsection v.

[227]Public Law 102-486 (106 Stat. 2944) Oct. 24, 1992, changed section v.

[228]Public Law 92-314 (86 Stat. 222) (1972), section 301, added subsection w.

[229]Public Law 102-486 (106 Stat. 2944) Oct. 24, 1992, amended section w.

[230]Public Law 109-58 (119 Stat. 783), section 623; August 8, 2005; rewrote subsection (w), which formerly read: prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this chapter that has control over any fund for the decommissioning of the facility".

decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that–

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 11e.(2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.[231]

Sec. 161A. Use Of Firearms By Security Personnel.

42 USC 2201a.

a. DEFINITIONS–In this section, the terms 'handgun', 'rifle', 'shotgun', 'firearm', 'ammunition', 'machine gun', 'short-barreled shotgun', and 'short-barreled rifle' have the meanings given the terms in section 921(a) of title 18, United States Code.

b. AUTHORIZATION–Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title 18, United States Code, section 925(d)(3) of title 18, United States Code, section 5844 of the Internal Revenue Code of 1986, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission, the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices, if the Commission determines that–

(1) the authorization is necessary to the discharge of the official duties of the security personnel; and

(2) the security personnel–

(A) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws relating to possession of firearms by a certain category of persons;

[231]Public Law 95-604 (92 Stat. 3036) (1978), section 203, added a new subsection. 161(x).

(B) have successfully completed any requirement under this section for training in the use of firearms and tactical maneuvers;

(C) are engaged in the protection of–

(i) a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission; or

(ii) radioactive material or other property owned or possessed by a licensee or certificate holder of the 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 Commission to be of significance to the common defense and security or public health and safety; and

(D) are discharging the official duties of the security personnel in transferring, receiving, possessing, transporting, or importing the weapons, ammunition, or devices.

c. BACKGROUND CHECKS–A person that receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under subsection (b) shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103–159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

d. EFFECTIVE DATE–This section takes effect on the date on which guidelines are issued by the Commission, with the approval of the Attorney General, to carry out this section.[232]

Sec. 162. Contracts.

42 USC 2202. Contracts.

The President may, in advance, exempt any specific action of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.

Sec. 163. Advisory Committees.

42 USC 2203. Advisory committees.

The members of the General Advisory Committee established pursuant to section 26 and the members of advisory boards established pursuant to section 161a. may serve as such without regard to the provisions of section 281, 283, or 284 of title 18[233] of the United States Code, except insofar as such sections may prohibit any such member from receiving compensation from a source other than a nonprofit educational institution[234] in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.[235]

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[232]Public Law 109-58, (119 Stat. 811), August 8, 2005; Title VI, section 653, added new section 161A.

[233] These sections have been repealed.

[234]Public Law 86-300 (73 Stat. 574) (1959), section 2, amended section 163 by inserting after the words "from receiving compensation" the words "from a source other than a nonprofit educational institution."

[235]Public Law 87-849 (76 Stat. 1119) (1962), section 2, revised the existing conflict of interest laws. All exemptions from the provisions of sections 281, 283 and 284 of title 18 of the U.S. Code are deemed to be exemptions from the corresponding sections of the new conflict of interest law "except to the extent that they affect officers or employees of the executive branch of the United States Government [or] of any independent agency of the United States, * * * as to whom they are no longer applicable."

Sec. 164. Electric Utility Contracts.

42 USC 2204. Electric utility contracts.

The Commission is authorized in connection with the construction or operations of the Oak Ridge, Paducah, and Portsmouth installations of the Commission, without regard to section 3679 of the Revised Statutes, as amended, to enter into new contracts or modify or confirm existing contracts to provide for electric utility serves for periods not exceeding twenty-five years, and such contracts shall be subject to termination by the Commission upon payment of cancellation costs as provided in such contracts, and any appropriation presently or hereafter made available to the Commission shall be available for the payment of such cancellation costs. Any such cancellation payments shall be taken into consideration in determination of the rate to be charged in the event the Commission or any other agency of the Federal Government shall purchase electric utility services from the contractors subsequent to the cancellation and during the life of the original contract. The authority of the Commission under this section to enter into new contracts or modify or confirm existing contracts to provide for electric utility services includes, in case such electric utility services are to be furnished to the Commission by the Tennessee Valley Authority, authority to contract with any person to furnish electric utility services to the Tennessee Valley Authority in replacement thereof. Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Energy Committees[236] and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: *Provided, however*, That the Energy Committees, after having received the proposed contract, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

Sec. 165. Contract Practices.

42 USC 2205. Contract practices.

a. In carrying out the purposes of this Act the Commission shall not use the cost-plus-percent age-of-cost system of contracting.

b. No contract entered into under the authority of this Act shall provide, and no contract entered into under the authority of the Atomic Energy Act of 1946, as amended, shall be modified or amended after the date of enactment of this Act to provide, for direct payment or direct reimbursement by the Commission of any Federal income taxes on behalf of any contractor performing such contract for profit.

Sec. 166. Comptroller General Audit.

42 USC 2206. Comptroller General audit.

No moneys appropriated for the purposes of this Act shall be available for payments under any contract with the Commission, negotiated without advertising, except contracts with any foreign government or any agency thereof and contracts with foreign producers, unless such contract includes a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to such contracts or subcontracts: *Provided, however,* That no moneys so appropriated shall be available for payment under such contract which includes any provision precluding an audit by the General Accounting Office of any transaction under such contract:

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[236] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(7) struck "Joint Committee" and substituted "Energy Committees" throughout section.

And provided further, That nothing in this section shall preclude the earlier disposal of contractor and subcontractor records in accordance with records disposal schedules agreed upon between the Commission and the General Accounting Office.[237]

Sec. 167. Claims Settlements.

42 USC 2207.

The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of $5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of any program undertaken by the Commission involving the detonation of an explosive device, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however,* That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. If the Commission considers that a claim in excess of $5,000 is meritorious and would otherwise be covered by this section, the Commission may report the facts and circumstances thereof to the Congress for its consideration.[238]

Sec. 168. Payments In Lieu Of Taxes.

42 USC 2208.
Payments in Lieu of taxes.

In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.

Sec. 169. No Subsidy.

42 USC 2209.
No subsidy.

No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 103 or 104 except under contract or other arrangement entered into pursuant to section 31.

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[237]Public Law 85-681 (72 Stat. 632) (1958), section 8, amended section 166 by adding the second proviso clause.

[238]Public Law 87-206 (75 Stat. 474) (1961), section 14, amended section 167. Prior to amendment, this section read as follows:

Sec. 167. Claim Settlements–The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of $5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of the Commission's program for testing atomic weapons, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however,* That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary.

Sec. 170. Indemnification And Limitation Of Liability.

42 USC 2210.

a.[239] REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES[240]–Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in section 2i., have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission")[241] in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection b. to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection c. The Commission may require, as a further condition of issuing applicant waive any immunity from public liability conferred by Federal or State law.[242]

Indemnification agreement.

Waiver.

Liability insurance.

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES[243]

(1)[244] The amount of primary financial protection[245] required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the

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[239]Public Law 85-256 (71 Stat. 576) (1957), section 4, added section 170.

[240]Public Law 100-408 (102 Stat. 1080), August 20, 1988; section 16(e)(1), inserted immediately following the subsection designation "(a)" in the original a subsection heading "Requirement of Financial Protection for Licensees".

[241]Public Law 100-408 (102 Stat. 1079), August 20, 1988, section 16(a)(2) substituted "in such amounts as the Nuclear Regulatory Commission (in this section referred to as the 'Commission') in the exercise" for "in such amounts as the Commission in the exercise".

[242]Public Law 94-197 (89 Stat. 1111) (1975), section 2, amended subsection 170a. Prior to amendment, subsection 170a. read as follows:

> a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with subsection 170b. to cover public liability claims. Whenever such financial protection is required, it shall be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

[243]Public Law 100-408 (102 Stat. 1080), August 20, 1988, section 16(e)(2), inserted immediately following the subsection designation "(b)" in the original a subsection heading "Amount and Type of Financial Protection for Licensees."

[244]Public Law 100-408 (102 Stat. 1066), August 20, 1988, section 2(C)(1) inserted "(1)" preceding "The amount" at the beginning of the first existing sentence, thereby redesignating the first six sentences of existing subsection (b) as paragraph (1).

[245]Public Law 100-408 (102 Stat. 1066), August 20, 1988, section 2(a)(1), (2), (C)(2), in the first sentence of paragraph (1) redesignated existing clauses (1), (2), (3) as (A), (B) and (C), respectively, substituted "primary financial protection" for "financial protection" in two places, and, at the end of the proviso, inserted "(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection)".

amount of primary financial protection[246] required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, be rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole of major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further,* That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than $95,800,000[247] (subject to adjustment for inflation under subsection t.) but not more than $15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.),[248] for each facility for which licensee is required to maintain the maximum amount of primary financial protection: *And provided further,* That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o.(1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.[249]

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)–

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact

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[246]Public Law 100-408 (102 Stat. 1066), August 20, 1988, section 2(a)(1), in the second sentence of paragraph (1) substituted "primary financial protection" for "financial protection".

[247]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 603(1), in the second proviso of the third sentence, struck out "$63,000,000" and inserted "$95,800,000".

[248]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 603(1), in the second proviso of the third sentence struck out "10,000,000 in any 1 year" and inserted "15,000,000 in any 1 year (subject to adjustment for inflation under subsection (t) of this section)".

[249]Public Law 100-408 (102 Stat. 1066), August 8, 1988, section 2(a)(1), (3), (b), the third sentence of paragraph (1) read: "The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection,".

of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.[250]

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived there from or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.[251]

Claims.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds–

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[250]Public Law 100-408 (102 Stat. 1066), August 8, 1988, section 2(C)(3) struck out the fifth and sixth sentences of existing paragraph (1) which had authorized the Commissioner to establish a minimum amount which the aggregate deferred premiums charged for each facility within one calendar year could not exceed and which had authorized the Commissioner to establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. See paragraph (2) for successor provisions.

[251]Public Law 94-197 (89 Stat. 1111) (1975), section 3, amended subsection 170b. Prior to amendment, subsection 170b. read as follows:

b. The amount of financial protection required shall be in the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures.

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriate for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.[252]

Securities.

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is two or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.[253]

c. INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES–The Commission shall, with respect to licenses issued between August 30, 1954, and December 31, 2025,[254] for which it requires financial protection of less than $560,000,000, agree to

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[252]Public Law 100-408 (102 Stat. 1067), August 8, 1988, section 2(d)(2), added paragraph (4).

[253]Public Law 109-58 (119 Stat. 781), August 8, 2005; Title VI, section 608 added paragraph (5).

[254]Public Law 108-7 (117 Stat. 551), February 20, 2003, Div. O, section 101: struck out "August 1, 2002" each place it appeared in this section. Public Law 109-58 (119 Stat. 779), August 8, 2005, Title VI, section 602(a) struck out "licenses" and inserted "licensees:" in the subsection heading and following "August 30, 1954, and", struck out "December 31, 2003" and inserted "December 31, 2025".

indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025,[255] the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.[256, 257]

d.(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the "Secretary") may have, the Secretary shall, until December 31, 2025,[258, 259] enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.[260]

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[255]Public Law 109-58 (119 Stat. 779), August 8, 2005, Title VI, section 602(b) struck out "December 31, 2003" and inserted "December 31, 2025".

[256]Public Law 91-197 (89 Stat. 1111) (1975), sections 5(a) and (b) amended subsection 170c. by adding the phrase "of less than $560,000,000"; by substituting the word "excluding" for the words "including the reasonable"; and by substituting the date "August 1, 1987" for the date "August 1, 1977" wherever it appeared.

Public Law 89-210 (79 Stat 855) (1965), section 1 had previously amended subsection 170c. Prior to amendment, this subsection read as follows:

c. The commission shall, with respect to licenses issued between August 30, 1954 and August 1, 1967, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the license. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967.

Public Law 88-394 (78 Stat. 376) (1964), section 2 had previously amended subsection 170c. By adding the last sentence.

[257]Public Law 109-58 (119 Stat. 779), August 8, 2005; Title VI, section 602(b) struck out "December 31, 2003" and substituted "December 31, 2025".

[258]Public Law 108-375 (118 Stat. 2171), Oct. 28, 2004, Div. C, title XXXI, section 3141.

[259]Public Law 109-58, (119 Stat. 779), August 8, 2005, Title VI, section 602(b) struck out "December 31, 2006" and inserted "December 31, 2025".

[260]Public Law 100-408 (102 Stat. 1066) amended subsection 170d.

Public Law 94-197 (89 Stat 1111) (1975), section 5(a) and (b), amended subsection 170d. by substituting the date "August 1, 1987" for the date "August 1, 1977", and by substituting the word "excluding" for the words "including the reasonable."

Public Law 89-210 (79 Stat 855) (1965), section 2 had previously amended the first two sentences of subsection 170d. Prior to amendment these sentences read as follows:

d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection

Effective date.

(B)(i)(I) Beginning 60 days after the date of enactment of the Price-Anderson Amendments Act of 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85-804 entered into between August 1, 1987, and the date of enactment of the Price-Anderson Amendments Act of 1988.

(B)(i)(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(B)(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 USC 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b.

Claims.

(2) In an agreements of indemnification entered into under paragraph (1), the Secretary–

(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.[261]

(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2005, to

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required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided:* That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000.

Public Law 87-615 (76 Stat. 409) (1962), section 6 had previously amended the second sentence of subsection 170d. by adding the proviso providing that in the case of incidents occurring outside the United States, the amount of indemnity provided by the Commission shall not exceed $100 million.

[261]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 604(a) rewrote paragraph (2), which formerly read: "In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary".

reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.[262]

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the Energy Reorganization Act of 1974 (42 USC 5842).[263]

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission under this subsection shall not exceed $500,000,000.[264]

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission.[265]

(7) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.[266]

e. Limitation On Aggregate Public Liability.–(1)[267] The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o.(1)(D), shall not exceed–

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[262]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 604(b), rewrote paragraph (3), which formerly read:

(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licenses under subsection (b) of this section is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection (b) of this section.

(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended on August 20, 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on August 20, 1988.

[263]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) added paragraphs (3) and (4).

[264]Public Law-408 (102 Stat. 1068), August 8, 1988; section 4(a) designated the second proviso of the existing second sentence of subsection (D) as paragraph (5) and, in paragraph (5) as so designated, substituted "indemnity provided by the Secretary under this subsection" for "indemnity provided by the Commission".

Public Law 109-58 (119 Stat. 781), August 8, 2005; Title VI, section 605(a) struck out $100,000,000 and inserted $500,000,000 following "shall not exceed".

[265]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) designated the existing third sentence of subsection (d) as paragraph (6) and, in paragraph (6) as so designated, substituted "by the Secretary" for "by the Commission".

[266]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) designated the existing fourth sentence of subsection (D) as paragraph (7) and, in paragraph (7) as so designated, substituted "executed under paragraph (1)(A)" for "executed" and "indemnified under this subsection" for "indemnified under this section".

[267]Public Law 100-408 (102 Stat. 1066), August 8, 1988, section 2(C)(3), struck out the fifth and sixth sentences of existing paragraph (1) which had authorized the Commissioner to establish a minimum amount which the aggregate deferred premiums charged for each facility within one calendar year could not exceed and which had authorized the Commissioner to establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. See paragraph (2) for successor provisions.

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o.(1)(E));

Contracts.

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the amount of indemnity and financial protection that may be required under paragraph (2) of subsection d.[268], and

(C) in the case of all other licensees of the Commission required to maintain financial protection under this section–

(i) $500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

Claims.

(2) That in the event of a nuclear incident involving damages in excess of the amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is determined necessary and appropriate to protect the public from the consequences of a disaster of such magnitude.[269]

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).[270]

Contracts.

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of $500,000,000[271], together with the amount of financial protection required of the contractor.

f. Collection of Fees by Nuclear Regulatory Commission[272]–The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided,* That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to

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[268]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 604(C) struck out "the maximum amount of financial protection required under subsection (b) of this section or" following "indemnification" under subsection (d) of this section, and substituted "paragraph (2) of subsection (d) of this section;" for "paragraph (3) of subsection (d) of this section, whichever amount is more;".

[269]Public Law 100-408 (102 Stat. 1070), August 8, 1988; section 6 added new language to paragraph (2). Paragraph (2) formerly read: "In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in subsection 170i of this section and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude".

[270]Public Law 100-408 (102 Stat. 1070), August 8, 1988; section 6 added paragraph (3).

[271]Public Law 109-58 (119 Stat. 781), August 8, 2005, Title VI, section 605(b) struck out □100,000,000" and inserted "$500,000,000" following "shall not exceed".

[272]Public Law 100-408 (102 Stat. 1080), August 8, 1988, section 16(e)(4) inserted subsection heading "Collection of Fees by Nuclear Regulatory Commission".

increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.[273]

Private insurance organizations. Use of services.

41 USC 252 (c) (See 41 USC 260 (b)).

g. Use of Services of Private Insurers[274]–In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (41 USC 5), as amended, upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonable practicable and advance payments may be made.

Terms of settlement.

h. Conditions of Agreements of Indemnification[275]–The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.[276]

i. Compensation Plans.[277]–(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), the Secretary or the Commission, as appropriate, shall–

(A) make a survey of the causes and extent of damage; and

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[273]Public Law 100-408 (102 Stat. 1066) (1988), amended subsection 170f. by adding, "or the Secretary, as appropriate." Public Law 94-197 (89 Stat. 1111) (1975), section 7, amended subsection 170f. by adding the proviso to the second sentence.

[274]Public Law 100-408 (102 Stat. 1081), August 8, 1988; section 16(e)(5) inserted subsection heading "Use of Services of Private Insurers".

[275]Public Law 100-408 (102 Stat. 1081), August 8, 1988; section 16(e)(6) inserted subsection heading "Conditions of Agreements of Indemnification".

[276]Public Law 100-408 (102 Stat. 1066), August 8, 1988), section 2(C)(3) struck out the fifth and sixth sentences of existing paragraph (1) which had authorized the Commissioner to establish a minimum amount which the aggregate deferred premiums charged for each facility within one calendar year could not exceed and which had authorized the Commissioner to establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. See paragraph (2) for successor provisions.

[277]Public Law 100-408 (102 stat. 1071), August 8, 1988, section 7(a) inserted subsection heading "Compensation Plans".

Reports, Defense and national security.

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

President of U.S.

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1) the President shall submit to the Congress–

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection e. (1);

Claims.

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e.(1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

Claims.

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection 170e.(2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6 of this subsection.

(5) For the purpose of paragraph (4) of this subsection–

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

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted–

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term "resolution" means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: That the _____ approves the compensation plan numbered _____ submitted to the Congress on _____ , 19__, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.[278]

Contracts in advance of appropriations.

j. Contracts in Advance of Appropriations[279]–In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code

Educational activities.

k. With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and December 31, 2025[280], for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including such legal costs of the licensee as are approved by the Commission;[281]

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025[282], the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.[283, 284]

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[278]Public Law 100-408 (102 Stat. 1066), August 8, 1988, section 2(C)(4), added paragraph (2).

[279]Public Law 100-408 (102 Stat. 1081) August 8, 1988, section 16(e)(7) inserted subsection heading "Contracts in Advance of Appropriations".

[280]Public Law 109-58 (119 Stat 779), August 8, 2005, Title VI, section 602(C), following "August 30, 1954, and" struck out "August 1, 2002" and inserted "December 31, 2025".

[281]*See* Public Law 100-408 (102 Stat. 1074), August 20, 1988, section 8(a)(2).

[282]Public Law 109-58 (119 Stat 779), August 8, 2005, Title VI, section 602(C), following "August 30, 1954, and" struck out "August 1, 2002" and inserted "December 31, 2025".

[283]Public Law 85-744 (72 Stat. 837) (1958), amended section 170 by adding new subsection k.

Public Law 88-394 (78 Stat. 376) (1964), section 3, amended subsection 170k., by adding the last sentence.

Public Law 89-210 (79 Stat. 855) (1965), section 4, amended subsection 170k. By amending the date "August 1, 1967" wherever it appeared to "August 1, 1977".

Public Law 94-197 (89 Stat. 1111) (1975), section 10 amended subsection 170k. By substituting the date "August 1, 1987" for the date "August 1, 1977" wherever it appeared and by substituting the word "excluding" for the words "including the reasonable".

[284]Public Law 109-58 (119 Stat 779), August 8, 2005, Title VI, section 602(C), following "August 30, 1954, and" struck out "August 1, 2002" and inserted "December 31, 2025".

l. Presidential Commission On Catastrophic Nuclear Accidents.–* (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1988, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 USC App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e.(1).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who–

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

Reports.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e.(1), and shall submit to the Congress a final report setting forth–

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendation for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 USC App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such

facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 USC App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 USC App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

Reports.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988.

Termination date.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.[285]

Emergency Assistance payments.

m. Coordinated Procedures for Prompt Settlement of Claims and Emergency Assistance[286]–The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriate to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.[287]

Waiver of defenses.

n. Waiver of Defenses and Judicial Procedures[288]–

(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which–

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[285]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) inserted immediately following the subsection designation "(d)" in the original a subsection heading "Indemnification of contractors by Department of Defense."

[286]Public Law 100-408 (102 Stat. 1081), August 8, 1988, section 16(e)(9) inserted subsection heading "Coordinated Procedures for Prompt Settlement of Claims and Emergency Assistance".

[287]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) added paragraphs (3) and (4).

[288]Public Law 100-408 (102 Stat. 1081), August 8, 1988, section 16(e)(10) inserted subsection heading "Waiver of Defenses and Judicial Procedures".

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production of utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or by-product material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of , results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.

The Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonable could have know, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to claimants property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection e.

42 USC 2210.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the

Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to his paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price Anderson Amendments Act of 1988, whichever occurs later.

Courts, U.S.

(3) (A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the 'management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if–

(i) a court, acting pursuant to subsection o. determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel–

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.[289]

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[289]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) designated the second proviso of the existing second sentence of subsec. (D) as paragraph (5) and, in paragraph (5) as so designated, substituted "indemnity provided by the Secretary under this subsection" for "indemnity provided by the Commission".

Allocation of funds.

o. Plan For Distribution Of Funds.–(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection e.(1):

42 USC 2210.

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court of such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary, as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b.(1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under para-graph (1)(D) only if the person requesting such payment has–

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court–

(i) that such costs are reasonable and equitable; and

(ii) that such person has–

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.[290]

p. Reports To Congress.–The Commission and the Secretary shall submit to the Congress by December 31, 2021[291], detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private, insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.[292]

q. Limitation On Awarding Of Precautionary Evacuation Costs.–No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

r. Limitation Of Liability Of Lessors.–No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incidents resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

s. Limitation On Punitive Damages.–No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

t. Inflation Adjustment.–(1) The Commission shall adjust the amount of the maximum total and annual[293] standard deferred premium under subsection b.(1) not less than once during each 5-year period following August 20, 2003[294] in accordance with the aggregate percentage change in the Consumer Price Index since–

(A) August 20, 2003,[295] in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

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[290]Public Law 100-408 (102 Stat. 1066) (1988), added 170 subsection o.1.D and E and subsection o.2. Public Law 89-645 (80 Stat. 891) (1966), section 3, amended section 170 by adding new subsection o. Public Law 94-197 (89 Stat. 111) (1975), section 13, amended subsection 170o. By adding new subparagraph (4) and by adding the following language to the second sentence of subparagraph (3):

"and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.".

[291]Public Law 109-58 (119 Stat. 781), August 8, 2005, Title VI, section 606, struck out "August 1, 1998" and inserted "December 31, 2021" following "to the Congress by".

[292]Public Law 100-408 (102 Stat. 1068), August 8, 1988, section 4(a) designated the existing fourth sentence of subsec. (D) as paragraph (7) and, in paragraph (7) as so designated, substituted "executed under paragraph (1)(A)" for "executed" and "indemnified under this subsection" for "indemnified under this section".

[293]Public Law 109-58 (119 Stat. 780), August 8, 2005; Title VI, section 603(2)(A), (B), in the matter preceding subparagraph (A) inserted "total and annual" after "amount of the maximum" and substituted "August 20, 2003" for "August 20, 1988", respectively.

[294]Public Law 108-375 (118 Stat. 2171), Div. C, Title XXXI, section 3141; subsection (D)(1)(A), in subparagraph (A) substituted "until December 31, 2006" for until "December 31, 2004".

[295]Public Law 109-58 (119 Stat. 780), August 8, 2005, Title VI, section 603(2)(C), struck out "August 20, 1988" and inserted "August 20, 2003".

(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since–

(A) that date, in the case of the first adjustment under this paragraph; or

(B) the previous adjustment under this paragraph.

(3) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.[296]

Sec. 170A. Conflicts Of Interest Relating To Contracts And Other Arrangements.

42 USC 2210a. Conflict of interest.

a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to–

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) or such person in the case of any subcontract for more than $10,000.

b. EVALUATION[297]–

(1) IN GENERAL[298]–Except as provided in paragraph (2)[299], the Nuclear Regulatory Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that–

(A) it is unlikely that a conflict of interest would exist, or

(B) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

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[296]Public Law 109-58 (119 Stat. 781), August 8, 2005, Title VI, section 607, redesignated former paragraph (2) as (3) and inserted a new paragraph (2).

[297]Public Law 109-58 (119 Stat. 794), August 8, 2005, Title VI, section 639(2), struck out the editorially-supplied heading and inserted "(b) Evaluation".

[298]Public Law 109-58 (119 Stat. 794), August 8, 2005, Title VI, section 639(2), added paragraph (1) by inserting "(1) In general" following the subsection (b) heading, and redesignated former paragraph (1) as subparagraph (A).

[299]Public Law 109-58 (119 Stat. 794), August 8, 2005, Title VI, section 639(2), struck out "the Commission" and inserted "except as provided in paragraph (2), the Nuclear Regulatory Commission".

(2)[300] NUCLEAR REGULATORY COMMISSION.– Notwithstanding any conflict of interest, the Nuclear Regulatory Commission may enter into a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, if the Nuclear Regulatory Commission determines that–

(A) the conflict of interest cannot be mitigated; and

(B) adequate justification exists to proceed without mitigation of the conflict of interest.[301]

Publication.

c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section, but in no event later than 120 days after such date.[302]

Sec. 170B. Uranium Supply.

42 USC 2210b.
42 USC 2231.
Report to Congress and President.
Regulations.

a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

Proprietary information, disclosure.

b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

Criteria.

c. The criteria referred to in subsection a. shall also include, but not be limited to–

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

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[300]Public Law 109-58 (119 Stat. 794), August 8, 2005, Title VI, section 639(3), added paragraph (2).
[301]Public Law 109-58 (119 Stat. 794), August 8, 2005, Title VI, section 639(1), redesignated former paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.
[302]Public Law 95-601 (92 Stat. 2950) (1978), section 8(a) added to a new section 170A.

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

Imported material, impact on domestic industry and national security.

d. The Secretary or Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 USC 2251).

e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 USC 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

Investigations.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.[303]

Sec. 170C. Elimination of Pension Offset For Certain Rehired Federal Retirees.

42 USC 2210c.

a. IN GENERAL.–The Commission may waive the application of section 8344 or 8468 of title 5, United States Code, on a case-by-case basis for employment of an annuitant.–

(1) in a position of the Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(2) when a temporary emergency hiring need exists.

b. PROCEDURES.–The Commission shall prescribe procedures for the exercise of authority under this section, including–

[303]Public Law 97-415, section 23(b)(1), amended chapter 14 to include a new section 170B.

(1) criteria for any exercise of authority; and

(2) procedures for a delegation of authority.

c. EFFECT OF WAIVER.–An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5, United States Code.[304]

Sec. 170D. Security Evaluations.

42 USC 2210d.
Deadline.

a. SECURITY RESPONSE EVALUATIONS.–Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate, to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat.

b. FORCE-ON-FORCE EXERCISES.–

(1) The security evaluations shall include force-on-force exercises.

(2) The force-on-force exercises shall, to the maximum extent practicable, simulate security threats in accordance with any design basis threat applicable to a facility.

(3) In conducting a security evaluation, the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.

c. ACTION BY LICENSEES.–The Commission shall ensure that an affected licensee corrects those material defects in performance that adversely affect the ability of a private security force at that facility to defend against any applicable design basis threat.

d. FACILITIES UNDER HEIGHTENED THREAT LEVELS.–The Commission may suspend a security evaluation under this section if the Commission determines that the evaluation would compromise security at a nuclear facility under a heightened threat level.

e. REPORT.–Not less often than once each year, the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report, in classified form and unclassified form, that describes the results of each security response evaluation conducted and any relevant corrective action taken by a licensee during the previous year.[305]

Sec. 170E. Design Basis Threat Rulemaking.

42 USC 2210e.
Deadlines.

a. RULEMAKING.–The Commission shall–

(1) not later than 90 days after the date of enactment of this section, initiate a rulemaking proceeding, including notice and opportunity for public comment, to be completed not later than 18 months after that date, to revise the design basis threats of the Commission; or

(2) not later than 18 months after the date of enactment of this section, complete any ongoing rulemaking to revise the design basis threats.

b. FACTORS.–When conducting its rulemaking, the Commission shall consider the following, but not be limited to–

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

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[304]Public Law 109-58 (119 Stat. 783), August 8, 2005, section 624(a), added new section 170C.

[305]Public Law 109-58 (119 Stat. 799), August 8, 2005, section 651(a)(1), added new section 170D.

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration;

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

(12) the potential for theft and diversion of nuclear materials from such facilities.

(3) FEDERAL SECURITY COORDINATORS.–

Deadline.

(A) REGIONAL OFFICES.–Not later than 18 months after the date of enactment of this Act, the Nuclear Regulatory Commission (referred to in this section as the "Commission") shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(B) RESPONSIBILITIES.–The Federal security coordinator shall be responsible for–

(i) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against such classes of facilities as the Commission determines to be appropriate;

(ii) monitoring such classes of facilities as the Commission determines to be appropriate to ensure that they maintain security consistent with the security plan in accordance with the appropriate threat level; and

(iii) assisting in the coordination of security measures among the private security forces at such classes of facilities as the Commission determines to be appropriate and Federal, State, and local authorities, as appropriate.

(b) BACKUP POWER FOR CERTAIN EMERGENCY NOTIFICATION SYSTEMS.–For any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after enactment of this Act, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost.[306]

Deadline.

Sec. 170F. Recruitment Tools.

42 USC 2210f.

a. The Commission may purchase promotional items of nominal value for use in the recruitment of individuals for employment.[307]

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[306]Public Law 109-58 (119 Stat. 799), August 8, 2005, section 651(a)(1), added new section 170E.

[307]Public Law 109-58 (119 Stat. 801), August 8, 2005, section 651(c)(2), added new section 170F.

Sec. 170G. Expenses Authorized To Be Paid By The Commission.

42 USC 2210g.

The Commission may–

(1) pay transportation, lodging, and subsistence expenses of employees who–

(A) assist scientific, professional, administrative, or technical employees of the Commission; and

(B) are students in good standing at an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) pursuing courses related to the field in which the students are employed by the Commission; and

(2) pay the costs of health and medical services furnished, pursuant to an agreement between the Commission and the Department of State, to employees of the Commission and dependents of the employees serving in foreign countries.[308]

Sec. 170H. Radiation Source Protection.

42 USC 2210h.

a. DEFINITIONS.–In this section:

(1) CODE OF CONDUCT.–The term 'Code of Conduct' means the code entitled the 'Code of Conduct on the Safety and Security of Radioactive Sources', approved by the Board of Governors of the International Atomic Energy Agency and dated September 8, 2003.

(2) RADIATION SOURCE.–The term 'radiation source' means–

(A) a Category 1 Source or a Category 2 Source, as defined in the Code of Conduct; and

(B) any other material that poses a threat such that the material is subject to this section, as determined by the Commission, by regulation, other than spent nuclear fuel and special nuclear materials.

Deadline.
Regulations.

b. COMMISSION APPROVAL.–Not later than 180 days after the date of enactment of this section, the Commission shall issue regulations prohibiting a person from–

(1) exporting a radiation source, unless the Commission has specifically determined under section 57 or 82, consistent with the Code of Conduct, with respect to the exportation, that–

(A) the recipient of the radiation source may receive and possess the radiation source under the laws and regulations of the country of the recipient;

(B) the recipient country has the appropriate technical and administrative capability, resources, and regulatory structure to ensure that the radiation source will be managed in a safe and secure manner; and

Deadline.
Notification.

(C) before the date on which the radiation source is shipped–

(i) a notification has been provided to the recipient country; and

(ii) a notification has been received from the recipient country;

as the Commission determines to be appropriate;

(2) importing a radiation source, unless the Commission has determined, with respect to the importation, that–

(A) the proposed recipient is authorized by law to receive the radiation source; and

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[308]Public Law 109-58 (119 Stat. 801), August 8, 2005, section 651(c)(3), added new section 170G.

(B) the shipment will be made in accordance with any applicable Federal or State law or regulation; and

(3) selling or otherwise transferring ownership of a radiation source, unless the Commission–

(A) has determined that the licensee has verified that the proposed recipient is authorized under law to receive the radiation source; and

(B) has required that the transfer shall be made in accordance with any applicable Federal or State law or regulation.

Deadline.
Regulations.

c. TRACKING SYSTEM.–

(1)(A) Not later than 1 year after the date of enactment of this section, the Commission shall issue regulations establishing a mandatory tracking system for radiation sources in the United States.

(B) In establishing the tracking system under subparagraph (A), the Commission shall coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources.

(2) The tracking system under paragraph (1) shall–

(A) enable the identification of each radiation source by serial number or other unique identifier;

(B) require reporting within 7 days of any change of possession of a radiation source;

(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and

(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

d. PENALTY.–A violation of a regulation issued under subsection a. or b. shall be punishable by a civil penalty not to exceed $1,000,000.

e. NATIONAL ACADEMY OF SCIENCES STUDY.–

Deadline.
Contracts.

(1) Not later than 60 days after the date of enactment of this section, the Commission shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study of industrial, research, and commercial uses for radiation sources.

(2) The study under paragraph (1) shall include a review of uses of radiation sources in existence on the date on which the study is conducted, including an identification of any industrial or other process that–

(A) uses a radiation source that could be replaced with an economically and technically equivalent (or improved) process that does not require the use of a radiation source; or

(B) may be used with a radiation source that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source.

Deadline.

(3) Not later than 2 years after the date of enactment of this section, the Commission shall submit to Congress the results of the study under paragraph (1).

f. TASK FORCE ON RADIATION SOURCE PROTECTION AND SECURITY.–

Establishment.

(1) There is established a task force on radiation source protection and security (referred to in this section as the 'task force').

(2)(A) The chairperson of the task force shall be the Chairperson of the Commission (or a designee).

(B) The membership of the task force shall consist of the following:

(i) The Secretary of Homeland Security (or a designee).

(ii) The Secretary of Defense (or a designee).

(iii) The Secretary of Energy (or a designee).

(iv) The Secretary of Transportation (or a designee).

(v) The Attorney General (or a designee).

(vi) The Secretary of State (or a designee).

(vii) The Director of National Intelligence (or a designee).

(viii) The Director of the Central Intelligence Agency (or a designee).

(ix) The Director of the Federal Emergency Management Agency (or a designee).

(x) The Director of the Federal Bureau of Investigation (or a designee).

(xi) The Administrator of the Environmental Protection Agency (or a designee).

(3)(A) The task force, in consultation with Federal, State, and local agencies, the Conference of Radiation Control Program Directors, and the Organization of Agreement States, and after public notice and an opportunity for comment, shall evaluate, and provide recommendations relating to, the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device.

Deadlines.
Reports.

(B) Not later than 1 year after the date of enactment of this section, and not less than once every 4 years thereafter, the task force shall submit to Congress and the President a report, in unclassified form with a classified annex if necessary, providing recommendations, including recommendations for appropriate regulatory and legislative changes, for–

(i) a list of additional radiation sources that should be required to be secured under this Act, based on the potential attractiveness of the sources to terrorists and the extent of the threat to public health and safety of the sources, taking into consideration–

(I) radiation source radioactivity levels;

(II) radioactive half-life of a radiation source;

(III) dispersability;

(IV) chemical and material form;

(V) for radioactive materials with a medical use, the availability of the sources to physicians and patients for medical treatment; and

(VI) any other factor that the Chairperson of the Commission determines to be appropriate;

(ii) the establishment of, or modifications to, a national system for recovery of lost or stolen radiation sources;

(iii) the storage of radiation sources that are not used in a safe and secure manner as of the date on which the report is submitted;

(iv) modifications to the national tracking system for radiation sources;

(v) the establishment of, or modifications to, a national system (including user fees and other methods) to provide for the proper disposal of radiation sources secured under this Act;

(vi) modifications to export controls on radiation sources to ensure that foreign recipients of radiation sources are able and willing to adequately control radiation sources from the United States;

(vii)(I) any alternative technologies available as of the date on which the report is submitted that may perform some or all of the

functions performed by devices or processes that employ radiation sources; and

(II) the establishment of appropriate regulations and incentives for the replacement of the devices and processes described in subclause (I)–

(aa) with alternative technologies in order to reduce the number of radiation sources in the United States; or

(bb) with radiation sources that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source; and

(viii) the creation of, or modifications to, procedures for improving the security of use, transportation, and storage of radiation sources, including–

(I) periodic audits or inspections by the Commission to ensure that radiation sources are properly secured and can be fully accounted for;

(II) evaluation of the security measures by the Commission;

(III) increased fines for violations of Commission regulations relating to security and safety measures applicable to licensees that possess radiation sources;

(IV) criminal and security background checks for certain individuals with access to radiation sources (including individuals involved with transporting radiation sources);

(V) requirements for effective and timely exchanges of information relating to the results of criminal and security background checks between the Commission and any State with which the Commission has entered into an agreement under section 274b.;

(VI) assurances of the physical security of facilities that contain radiation sources (including facilities used to temporarily store radiation sources being transported); and

(VII) the screening of shipments to facilities that the Commission determines to be particularly at risk for sabotage of radiation sources to ensure that the shipments do not contain explosives.

Deadline.

g. ACTION BY COMMISSION.–Not later than 60 days after the date of receipt by Congress and the President of a report under subsection f.(3)(B), the Commission, in accordance with the recommendations of the task force, shall–

(1) take any action the Commission determines to be appropriate, including revising the system of the Commission for licensing radiation sources; and

(2) ensure that States that have entered into agreements with the Commission under section 274b. take similar action in a timely manner.[309]

Sec. 170I. Secure Transfer Of Nuclear Materials.

42 USC 2210i.

Procedures

a. The Commission shall establish a system to ensure that materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

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[309]Public Law 109-58 (119 Stat. 802), August 8, 2005, section 651(d)(1), added new section 170H.

b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16)).

Deadline. 42 USC 2210i note.

(b) REGULATIONS.–Not later than 1 year after the date of the enactment of this Act, and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials or classes of individuals that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the requirements of section 170D[310] of the Atomic Energy Act of 1954, as added by subsection (a) of this section.

42 USC 2210i note.

(c) EFFECTIVE DATE.–The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b), except that the background check requirement shall become effective on a date established by the Commission.

42 USC 2210i note.

(d) EFFECT ON OTHER LAW.–Nothing in this section or the amendment made by this section shall waive, modify, or affect the application of chapter 51 of title 49, United States Code, part A of subtitle V of title 49, United States Code, part B of subtitle VI of title 49, United States Code, and title 23, United States Code.[311]

Chapter 15–Compensation For Private Property Acquired

Sec. 171. Just Compensation.

42 USC 2221. Just compensation.

The United States shall make just compensation for any property or interests therein taken or requisitioned pursuant to sections 43,[312] 55,[313] 66, and 108. Except in case of real property or any interest therein, the Commission shall determine and pay such just compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States Court of Federal Claims,[314] or in any district court of the United States for the district in which such claimant is a resident in the manner provided by section 1346 of title 28 of the United States Code to recover such further sum as added to said 75 per centum will constitute just compensation.

Sec. 172. Condemnation Of Real Property.

42 USC 2222. Condemnation of real property. 40 USC 3113. 40 USC 3116, 3117, 3118.

Proceedings for condemnation shall be instituted pursuant to the provisions of the Act approved August 1, 1988, as amended and section 1403 of title 28 of the United States Code. The Act approved February 26, 1931, as amended, shall be applicable to any such proceedings.

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[310]Public Law 109-58 (119 Stat. 814), August 8, 2005, section 656(b) refers to section 170D of the Atomic Energy Act; incorrect citation. Should refer to 170I.

[311]Public Law 109-58 (119 Stat. 813), August 8, 2005, section 656(a), added new section 170I.

[312]Public Law 88-489 (78 Stat. 602) (1964), section 17 deleted the phrase "52 (with respect to the material for which the United States is required to pay just compensation)," after 43.

[313]Public Law 88-489 (78 Stat. 602) (1964), section 17 added 55.

[314]Public Law 102-572 (106 Stat. 4516), section 902(b)(1) states: Reference to "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims."

Sec. 173. Patent Application Disclosures.

42 USC 2223. Patent application disclosures.

In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States Court of Federal Claims[315] or in any district court of the United States for the district in which such claimant is a resident in a manner provided by section 1346 of title 28 of the United States Code to recover such further sum as added to such 75 per centum will constitute just compensation.

Sec. 174. Attorney General Approval Of Title.

42 USC 2224. Attorney General approval of title.

All real property acquired under this Act shall be subject to the provisions of section 355 of the Revised Statutes, as amended: *Provided, however,* That real property acquired by purchase or donation, or other means of transfer may also be occupied, used, and improved for the purposes of this Act prior to approval of title by the Attorney General in those cases where the President determines that such action is required in the interest of the common defense and security

40 USC 3111.

Chapter 16–Judicial Review And Administrative Procedure

Sec. 181. General.

42 USC 2231. General.

The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms "agency" and "agency action" shall have the meaning specified in the Administrative Procedure Act: *Provided, however,* That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 147[316] or information protected from dissemination under authority of section 148[317] the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such safeguards information, or information protected from dissemination under the authority of section 148 to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, or such safeguards information, or information protected from dissemination under the authority of section 148 were not involved.

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[315]Public Law 102-572 (106 Stat. 4516), section 902(b)(1) states: Reference to "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims."

[316]Public Law 96-295 (94 Stat. 789) (1980), section 207(b)(2), substituted "defense information, or safeguards information protected from disclosure under the authority of section 147" for "or defense information"; and substituted ", defense information, or such safeguards information," for "or defense information" in two places.

[317]Public Law 97-90 (95 Stat. 1163) (1981), section 210(b) amended section 181 (42 USC 2231) as follows:

(1) by striking out "or" before "safeguards information protected",

(2) by inserting "or information protected from dissemination under the authority of section 148" after section 147; and

(3) by striking out "defense information, or such safeguards information," each place it appears and inserting in lieu thereof "defense information, such safeguards information, or information protected from dissemination under the authority of section 148."

42 USC 2232.
License applications.

Sec. 182. License Applications.

a. Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.[318]

ACRS Report.

b. The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104 b. for a construction permit or an operating license for a facility, any application under section 104c. for a construction permit or an operating license for a testing facility, any application under section 104a. or c. specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 103 or 104a., b., or c. specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure[319]

Commercial power.

c. The Commission shall not issue any license under section 103 for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production

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[318]Public Law 84-1006 (70 Stat. 1069), section 5, amended the third from last sentence of subsection 182a. and added the present last two sentences. Before amendment, the third from last sentence read: All applications and statements shall be signed by the applicant or licensee under oath or affirmation.

[319]Public Law 85-256 (71 Stat. 576) (1957), section 6, added subsection b. and re-lettered former subsections b. and c. as subsections c. and d.

Public Law 87-615 (76 Stat. 409) (1962), section 3, amended subsection b. Before amendment, it read:

b. The Advisory Committee on Reactor Safeguards shall review each application under section 103 or 104b. for a license for a facility, any application under section 104c. for a testing facility, any application under section 104a. or c. specifically referred to it by the Commission, and shall submit a report thereon, which shall be made part of the record of the application and available to the public, except to the extent that security classification prevents disclosure.

facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.[320]

d. The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 103, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.

Sec. 183. Terms Of Licenses.

42 USC 2233. Terms of licenses.

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this Act, including the following provisions:

b.[321] No right to the special nuclear material shall be conferred by the license except as defined by the license.

c. Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act.

d. Every license issued under this Act shall be subject to the right of recapture or control reserved by section 108, and to all of the other provisions of this Act, now or hereafter in effect and to all valid rules and regulations of the Commission.

Sec. 184. Inalienability Of Licenses.

42 USC 2234. Inalienability of licenses.

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material,[322] owned or thereafter acquired by a licensee, or upon any leasehold or other interest to such facility,[323] and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security.

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[320]Public Law 91-560 (84 Stat. 1472) (1970), section 9 amended subsection 182c. Before amendment, it read as follows:

> c. the Commission shall not issue any license for a utilization or production facility for the generation of commercial power under section 103, until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services of the proposed activity, to municipalities, private utilities, public bodies, and cooperatives within transmission distance authorized to engage in the distribution of electric energy and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

[321]Public Law 88-489 (78 Stat. 602) (1964), section 18, deleted subsection 183a. Subsection a. read as follows: "a. Title to all special nuclear material utilized or produced by facilities pursuant to the license, shall at all times be in the United States.".

[322]Public Law 88-489 (78 Stat. 602) (1964), section 19, added "or special nuclear material."

[323]Public Law 88-489 (78 Stat. 602) (1964), section 19, substituted the word "facility" for the word "property."

Sec. 185. Construction Permits And Operating Licenses.

42 USC 2235. Construction permits.

a. All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a "license."

b. After holding a public hearing under section 189a.(1)(A), the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189a.(1)(B). [324] and NOTE.

Sec. 186. Revocation.

42 USC 2236. Revocation.

a. Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.

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[324]Public Law 102-486 (106 Stat. 3120), Oct. 24, 1992 added new heading and (a) to section 185 and new (b) at end of section 185(a).

NOTE: Sections 185b. and 189a.(1)(b) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.

5 USC 558(b).

b. The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act in revoking any license.

5 USC 551.

c. Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedures Act. Just compensation shall be paid for the use of the facility.

Sec. 187. Modification Of License.

42 USC 2237. Modification of license.

The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this Act, or by reason of rules and regulations issued in accordance with the terms of this Act.

Sec. 188. Continued Operation Of Facilities.

42 USC 2238. Continued operation of facilities.

Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 186, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

Sec. 189. Hearings And Judicial Review.

42 USC 2239. Hearings and judicial review.

a. (1)(A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under section 153, 157, 186c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104b. for a construction permit for a facility, and on any application under section 104c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.[325]

Federal Register Publication.

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[325]Public Law 87-615 (76 Stat. 409) (1962), section 2, amended this section. Before amendment, it read: SEC. 189. HEARINGS AND JUDICIAL REVIEW.-

(B)(i) Not less than 180 days before the date schedules for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).[326]

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by

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a. In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under section 153, 157, 186c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days notice and publication once in the Federal Register on each application under section 103 or 104b. for a license for a facility, and on any application under section 104c. for a license for a testing facility.

Public Law 85-256 (71 Stat. 576)(1957), section 7, had previously amended section 189a. by adding the last sentence thereof.

Public Law 102-486 (106 Stat. 3120) added a subparagraph designator (A), to section 189a(1) and added a new subsection (B)(i).

[326]Public Law 102-486 (106 Stat. 3121), Oct. 24, 1992 amends section 189a(2) of the Atomic Energy Act of 1954 (42 USC 2239 (a)(2)) is amended by inserting "or any amendment to a combined construction and operating license" after "any amendment to an operating license" each time it occurs.

*Note: Sections 185b. and 189a.(1)(b) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.

the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

Notice publication.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

Regulations establishing standards, criteria, and procedures.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.[327]

42 USC 2239(b).

b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code, and chapter 7 of title 5, United States Code:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.[328]

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[327]Public Law 97-415 (96 Stat. 2067) (1983), section 12 amended section 189 by inserting (1) after subsection (a) designation and by adding at end thereof new paragraph (2)(A)(B)(C).

[328]Public Law 104-134 (110 Stat. 1321-349), April 26, 1996, Title III, Ch 1, Subch A, section 3116(c). Substituted subsection (b) for one which read:

(b) Any final order entered in any proceeding of the kind specified in subsection (a) above or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as

Sec. 190. Licensee Incident Reports.

42 USC 2240.

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.[329]

Sec. 191. Atomic Safety And Licensing Board.

42 USC 2241. Atomic Safety and Licensing Board

5 USC 556. 5 USC 557.

a. Notwithstanding the provisions of sections 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder.[330]

The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

b. Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 163 shall be applicable to board members appointed from private life.[331]

Sec. 192. Temporary Operating License.

42 USC 2242. Temporary licensing authority.

42 USC 2133. 42 USC 2134. Initial petition.

a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104b. of this Act, in which a hearing is otherwise required pursuant to section 189a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated

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amended (Ch. 1189, 64 Stat. 1129), and to the provisions of section 10 of the Administrative Procedure Act, as amended.

[329]Section 190 was added by Public Law 87-206 (75 Stat. 475) (1961), section 16.

[330]Public Law 91-560 (84 Stat. 1472) (1970), section 10, amended the first sentence of subsection191a. Before amendment, it read as follows:

> Notwithstanding the provisions of sections 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each composed of three members, two of whom shall be technically qualified and one of whom shall be qualified in the conduct of administrative proceedings, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued hereunder.

[331]Section 191 was added by Public Law 87-615 (76 Stat. 409) (1962), section 1.

full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 182b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific fact upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

Affidavits.

Publication in Federal Register.

b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that–

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

Final order, transmittal to congressional committees.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committee

on Natural Resources and on[332] Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28, United States Code. The requirements of section 189a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

Judicial review. 28 USC 2341 *et seq.*

Hearing.

c. Any hearing on the application for the final operating license for a facility required pursuant to section 189a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189a; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

Infra.

d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

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[332] Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "Interior and Insular Affairs and" and substituted "Natural Resources and on".

Expiration date.

e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.[333]

Sec. 193. Licensing Of Uranium Enrichment Facilities.

42 USC 2243.

(a) Environmental Impact Statement.–

(1) Major Federal Action.–The issuance of a license under sections 53 and 63 for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*).

(2) Timing.–An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.

(b) Adjudicatory Hearing.–

(1) In General.–The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 53 and 63.

(2) Timing.–Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.

(3) Single Proceeding.–No further Commission licensing action shall be required to authorize operation.

(c) Inspection and Operation.–Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.

Federal Register, publication.

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[333]Section 192 was added by Public Law 92-307 (86 Stat. 191) (1972) and amended by Public Law 97-415 (96 Stat. 2067) (1983) prior to which section 192 read as follows:

Sec. 192. Temporary Operating Licenses.–

a. In an proceeding upon an application for an operating license for a nuclear power reactor, in which a hearing is otherwise required pursuant to section 189a., the applicant may petition the Commission for a temporary operating license authorizing operation of the facility pending final action by the Commission on the application. Such petition may be filed at any time after filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by subsection 182b.; (2) the safety evaluation of the application by the Commission's regulatory staff; and (3) the regulatory staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853) or, in the case of an application for operating license filed on or before September 9, 1971, if the regulatory staff's final detailed statement required under section 102(2)(C) is not completed, the Commission must satisfy the applicable requirements of the National Environmental Policy Act prior to issuing any temporary operating license under this section 192. The petition shall be accompanied by an affidavit or affidavits setting forth the facts upon which the petitioner relies to justify issuance of the temporary operating license. Any party to the proceeding may file affidavits in support of, or opposition to, the petition within fourteen days subject to judicial review pursuant to the Act of December 29, 1950, as amended (Ch. 1189, 64 Stat. 1129).

c. The hearing on the application for the final operating license otherwise required pursuant to section 189a. shall be concluded as promptly as practicable. The Commission shall vacate the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license pursuant to subsection b. of this section shall be without prejudice to the position of any party to the proceeding in which a hearing is otherwise required pursuant to section 189a.; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license.

d. The authority under this section shall expire on October 30, 1973.

Claims.
Nuclear materials.

(d) Insurance and Decommissioning.–"(1) The Commission shall require, as a condition of the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

(2) The Commission shall require, as a condition for the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

(A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).

(B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.

(C) External sinking fund in which deposits are made at least annually.

(e) No Price-Anderson Coverage.–Section 170 of this Act shall not apply to any license under section 53 or 63 for a uranium enrichment facility constructed after the date of enactment of this section.[334]

(f) LIMITATION.–No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or section 53, 63, or 1701, if the Commission determines that–[335]

(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(2) the issuance of such a license or certificate of compliance would be inimical to–

(A) the common defense and security of the United States; or

(B) the maintenance of a reliable and economical domestic source of enrichment services.

Chapter 17–Joint Committee On Atomic Energy

(Repealed[336])

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[334]Public Law 101-575 (104 Stat. 2835) (1990), added new section 193.

[335]Public Law 104-134 (110 Stat. 1321-349), April 26, 1996, Title III, Ch. 1, Subch. A, section 3116(b)(2), added subsection (f).

[336]Public Law 95-110 (91 Stat. 884) (1977), which added chapter 20, repealed chapter 17, which read as follows:

JOINT COMMITTEE ON ATOMIC ENERGY

Sec. 201. Membership.–There is hereby established a Joint Committee on Atomic Energy to be composed of nine Members of the Senate to be appointed by the President of the Senate, and nine Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. In each instance not more than five Members shall be members of the same political party.

Sec. 202. Authority and Duty.–

a. The Joint Committee shall make continuing studies of the activities of the Atomic Energy Commission and of problems relating to the development, use, and control of atomic energy. During the first ninety[a] days of each session of the Congress, the Joint Committee may conduct hearings in either open or executive session for

the purpose of receiving information concerning the development, growth, and state of the atomic energy industry[b] The Commission shall keep the Joint Committee fully and currently informed with respect to all of the Commission's activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy. Any Government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy. All bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the Commission or to the development, use, or control of atomic energy shall be referred to the Joint Committee. The members of the Joint Committee who are Members of the Senate shall from time to time report to the Senate, and the members of the Joint Committee who are Members of the House of Representatives shall from time to time report to the House, by bill or otherwise, their recommendations with respect to matters within the jurisdiction of their respective Houses which are referred to the Joint Committee or otherwise within the jurisdiction of the Joint Committee.

b. The members of the Joint Committee who are Members of the Senate and the Members of the Joint Committee who are Members of the House of Representatives shall, on or before June 30 of each year, report to their respective Houses on the development, use, and control of nuclear energy for the common defense and security and for peaceful purposes. Each report shall provide facts and information available to the Joint Committee concerning nuclear energy which will assist the appropriate committees of the Congress and individual members in the exercise of informed judgment on matters of weaponry; foreign policy; defense; international trade; and in respect to the expenditure and appropriation of Government revenues. Each report shall be presented formally under circumstances which provide for clarification and discussion by the Senate and the House of Representatives. In recognition of the need for public understanding, presentations of the reports shall be made to the maximum extent possible in open session and by means of unclassified written materials.

Sec. 203. Chairman.–Vacancies in the membership of the Joint Committee shall not affect the power of the remaining members to execute the functions of the Joint Committee, and shall be filled in the same manner as in the case of the original selection. The Joint Committee shall select a Chairman and a Vice Chairman from among its members at the beginning of each Congress. The Vice Chairman shall act in the place and stead of the Chairman in the absence of the Chairman. The Chairmanship shall alternate between the Senate and the House of Representatives with each Congress, and the Chairman shall be selected by the Members from that House entitled to the Chairmanship. The Vice Chairman shall be chosen from the House other than that of the Chairman by the Members from that House.

Sec. 204 Powers.–In carrying out its duties under this Act, the Joint Committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings or investigations, to sit and act at such places and times to require, by subpoena or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The Joint Committee may make such rules respecting its organization and procedures as it deems necessary: *Provided, however,* That no measure or recommendation shall be reported from the Joint Committee unless a majority of the committee assent. Subpoenas may be issued over the signature of the Chairman of the Joint Committee or by any member designated by him or by the Joint Committee, and may be served by such person or persons as may be designated by such Chairman or member. The Chairman of the Joint Committee or any member thereof may administer oaths to witnesses. The Joint Committee may use a committee seal. The provisions of sections 102 to 104, inclusive, of the Revised Statutes, as amended, shall apply in case of any failure of any witness to comply with a subpoena or to testify when summoned under authority of this section. The expenses of the Joint Committee shall be paid from the contingent fund of the Senate from funds appropriated for the Joint Committee upon vouchers approved by the Chairman. The cost of stenographic service to report public hearings shall not be in excess of the amounts prescribed by law for reporting the hearings of standing committees of the Senate. The cost of stenographic service to report executive hearings shall be fixed at an equitable rate by the Joint Committee. Members of the Joint Committee, and its employees and consultants, while traveling on official business for the Joint Committee, may receive either the per diem allowance authorized to be paid to Members of Congress or its employees, or their actual and necessary expenses provided an itemized statement of such expenses is attached to the voucher.

Sec. 205. Staff and Assistance.– The Joint Committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and staff employees as it deems necessary and advisable. The Joint Committee is authorized to utilize the services, information, facilities, and personnel of the departments and establishments of the Government. The Joint Committee is authorized to permit such of its members, employees, and consultants as it deems necessary in the interest of common defense and security to carry firearms while in the discharge of their official duties for the committee.

Sec. 206. Classification of Information.-- The Joint Committee may classify information originating within the committee in accordance with standards used generally by the executive branch for classifying Restricted Data or defense information.

Sec. 221. General Provisions.

42 USC 2271. General provisions.

a. To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

b. The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.

c. No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States. And provided further, that nothing in this subsection shall be construed as applying to administrative action taken by the Commission.[337]

Sec. 222. Violations Of Specific Sections.

42 USC 2272. Violation of specific sections.

a. Whoever willfully violates, attempts to violate, or conspires to violate, any provisions of section 57 or 101, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than ten[338] years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both.[339]

b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than $2,000,000 and sentenced to a term of imprisonment not less than 25 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts

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Sec. 207. Records.– The Joint Committee shall keep a complete record of all committee actions, including a record of the votes on any question on which a record vote is demanded. All committee records, data, charts, and files shall be the property of the Joint Committee and shall be kept in the offices of the Joint Committee or other places as the Joint Committee may direct under such security safeguards as the Joint Committee shall determine in the interest of the common defense and security.

Public Law 87-206 (75 Stat. 475) (1961), section 17, substituted the word "ninety" for the word "sixty."

Public Law 88-294 (78 Stat. 172) (1964), amended the second sentence of section 202. Before amendment this sentence read:

During the first ninety days of each session of the Congress, the Joint Committee shall conduct hearings in either open or executive session for the purpose of receiving information concerning the development, growth, and state of the atomic energy industry.

Subsection 202b, was added by Public Law 93-514 (88 Stat. 1611) (1974).

[337]"Public Law 101-647 (104 Stat. 4789), section 1211, deleted :

"That no action shall be brought under section 222, 223, 224, 225 or 226 except by the express direction of the Attorney General: *and provided further,*".

[338]"Public Law 91-161 (83 Stat. 444) (1969), section 2, amended section 222 by substituting the word "ten" for the word "five." Section 7 provided that the amendment apply only to offenses committed on or after December 24, 1969.

[339]"Public Law 91-161 (83 Stat. 444) (1969), section 3(a), amended section 222 by substituting the words "*imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both*" in lieu of "death or imprisonment for life (but the penalty of death or imprisonment for life may be imposed only upon recommendation of the jury), or by a fine of not more than $20,000 or by imprisonment for not more than 20 years, or both." Section 7 provided that the amendment apply only to offenses committed on or after December 24, 1969. Public Law 108-458 (118 Stat 3771), Dec. 17, 2004 added "a." paragraph designation & struck "92" after "57".

or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life. If the death of another results from a person's violation of section 92, the person shall be fined not more than $2,000,000 and punished by imprisonment for life.".[340]

Sec. 223. Violation Of Sections Generally.

42 USC 2273. Violation of sections generally.

a. Whoever[341] willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal[342] penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsection 161b., i., or o,[343] shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such as offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure–

Basic component.

(1) the integrity of the reactor coolant pressure boundary,

(2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or

(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

42 USC 2133.
42 USC 2134.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104b. of the Act is under construction and on the premises of each plant where components for such a facility are fabricated.

Contracts.

c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any applicable nuclear safety-related rule, regulation or order

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[340]Public Law 108-458 (118 Stat. 3771), Dec. 17, 2004 added new section "b.".

[341]Public Law 96-295 (94 Stat. 786)(1980), section 203, designated the existing paragraph as subsection a.

[342]Public Law 91-161 (83 Stat. 444)(1969), section 6, amended section 223 by adding the word "criminal" before the word "penalty."

[343]Public Law 90-190 (81 Stat. 575) (1967), section 12 amended section 223 by striking out the letter "p." appearing after the word "or", and inserting in lieu thereof the letter "o."

issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11q. shall, upon conviction, notwithstanding section 3571 of title 18, United States Code, be subject to a fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, United States Code, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.[344]

Sec. 224. Communication Of Restricted Data.

42 USC 2274. Communication of restricted data.

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data–

a. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $100,000 or both;

b. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.[345]

Sec. 225. Receipt Of Restricted Data.

42 USC 2275. Receipt of restricted data.

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $100,000 or both.[346]

Sec. 226. Tampering With Restricted Data.

42 USC 2276. Tampering with restricted data.

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of

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[344]Public Law 100-408 (102 Stat. 1066) (1988), section 18 amended section 223 by adding a subsection c. Public Law 96-295 (94 Stat. 786) (1980), section 203 added a new subsection b.

[345]Public Law 79-585, August 1, 1946, Title I, section 224; Public Law 83-703 (68 Stat. 958), August 30, 1954, section 1; Public Law 91-161 (83 Stat. 444), December 24, 1969, section 3(b); Public Law 102-486 (106 Stat. 2944), October 24, 1992, Title IX, section 902(a)(8) (renumbered title I); Public Law 106-65 (113 Stat. 938), October 5, 1991, Div. C, Title XXXI, section 3148(a); Public Law 106-398 (114 Stat. 1654), October 30, 2000, section 1 (Div, A, title X, Title X, section 1087(g)(9).

[346]Public Law 106-65 (113 Stat. 938), October 30, 2000, Div. C, Title XXXI, Subtitle G, section 3148(b), as amended.

special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both.

Sec. 227. Disclosure Of Restricted Data.

42 USC 2277. Disclosure of restricted data.

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this Act or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than $12,500.[347]

Sec. 228. Statute Of Limitations.

42 USC 2278. Statute of limitations.

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 224 to 226, inclusive, of this Act, unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

Sec. 229. Trespass On Commission Installations.[348]

42 USC 2278a. Trespass on Commission installations.

a.(1) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this chapter or any other Act,

(2) Every such regulation of the Commission shall be posted conspicuously at the location involved.[349]

b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than $1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both.

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[347]Public Law 106-65 (113 Stat. 938), Oct 5, 1999, Div. C., Title XXXI, Subtitle G, section 3148(a), (substituted $12,500 for $2,500).

[348]Public Law 84-1006 (70 Stat. 1069) (1956), section 6, added a new section 229.

[349]Public Law 109-58 (119 Stat. 812), August 8, 2005, section 654(3)(B), designated the second sentence of subsection (a) as paragraph (2).

Sec. 230. Photographing, Etc., Of Commission Installations.

42 USC 2278b. Photographing of Commission installations.

It shall be an offense, punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both–[350]

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

Sec. 231. Other Laws.

42 USC 2279. Other laws.

Sections 224 to 230 shall not exclude the applicable provisions of any other laws.[351]

Sec. 232. Injunction Proceedings.

42 USC 2280. Injunction proceedings.

Whenever in the judgment of the Commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.[352]

Sec. 233. Contempt Proceedings.

42 USC 2281. Contempt proceedings.

In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161c., the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.[353]

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[350]Public Law 84-1006 (70 Stat. 1069) (1956), section 6, added a new section 230.

[351]Public Law 84-1006 (70 Stat 1069) (1956), section 7, amended former section 229 and redesignated it as section 231. Before amendment, section 229 read: "Sec. 229. Other Laws.–Sections 224 to 228 shall not exclude the applicable provisions of any other laws.".

[352]Public Law 84-1006 (70 Stat. 1069) (1956), section 6, renumbered former sections 230 and 231 to sections 232 and 233, respectively.

[353]Public Law 84-1006 (70 Stat. 1069) (1956), section 6, renumbered former sections 230 and 231 to sections 232 and 233, respectively.

Sec. 234. Civil Monetary Penalties For Violations Of Licensing Requirements.

42 USC 2282.

42 USC 2073.
42 USC 2077.
42 USC 2092.
42 USC 2093.
42 USC 2111.
42 USC 2112.
42 USC 2131.
42 USC 2133.
42 USC 2134.
42 USC 2137.
42 USC 2139.
42 USC 2236.

a.[354] Any person who (1) violates any licensing or certification[355] provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000[356] for each such violation.[357] If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

Civil penalties.

Written notification.

b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

Sec. 234A. Civil Monetary Penalties For Violations Of Department Of Energy Regulations.

42 USC 2282a.
Contracts.

a. Any person who has entered into an agreement of indemnification under subsection 170d. (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or

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[354]Public Law 100-408 (102 Stat. 1066) (1988), section 17 added section 234A. Public Law 91-161 (83 Stat. 444) (1069), section 4, added section 234.

[355] Public Law 104-134, (110 Stat. 1321) (1996), section 416, amended section 234 in the first sentence, by substituting "any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701" for "any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109," and "any license or certification issued thereunder" for "any license issued thereunder."

[356]The NRC by rulemaking periodically enlarges this number to account for inflation pursuant to the Federal Civil Penalties Act of 1990, as amended. The current number is $140,000. 73 Fed. Reg. 54671 (September 23, 2008).

[357]Public Law 96-295 (94 Stat. 787) (1980), section 206, amended section (a) by striking all that followed "exceed" and inserted "$100,000 for each violation." Prior to amendment, the portion deleted read as follows:

> $5,000 for each violation: *Provided,* That in no event shall the total penalty payable by any person exceed $25,000 for all violations by such person occurring within any period of thirty consecutive days.

order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.[358]

c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those paragraph (2)) apply with respect to such assessment.

(2) (A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

Courts, U.S.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a final judgment affirming, modifying or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) (A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

Courts, U.S.

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

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[358]Public Law 109-58 (119 Stat. 781), August 8, 2005, section 610(a), struck out the last sentence which read: "In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section."

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

Courts, U.S.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the Untied States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

Schools and colleges. Corporations.

d. (1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

(2) For purposes of this section, the term 'not-for-profit' means that no part of the net earning of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.[359].

Sec. 235. Protection Of Nuclear Inspectors.

42 USC 2283.

a. Whoever kills any person who performs any inspections which–

(1) are related to any activity or facility licensed by the Commission, and

42 USC 2133.
42 USC 2134.

(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104b, or the safety of radioactive materials, shall be punished as provided under sections 1111 and 1112 of title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under

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[359]Public Law 109-58 (119 Stat. 781), August 8, 2005, section 610(a), struck out the last sentence, which read: "In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section"; and section 610(b), rewrote subsection (d), which formerly read:

(d) The provisions of this section shall not apply to:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone an [sic.; probably should read 'and'] Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI national Laboratory;

(5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

Note: Effective and Applicability Provisions

Public Law 109-58 (119 Stat. 782), August 8, 2005, Title VI, section 610(c), provided that: "The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) occurring under a contract entered into before the date of enactment of this section ".

subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code.[360]

Sec. 236. Sabotage Of Nuclear Facilities Or Fuel.

42 USC 2284.

a. Any person who knowingly[361] destroys or causes physical damage to–

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste treatment, storage, or disposal facility licensed under this Act;

(3) any nuclear fuel for a utilization facility licensed under this Act,[362] or any spent nuclear fuel from such a facility;

(4) any uranium enrichment, uranium conversion, or nuclear fuel fabrication facility licensed or certified[363] by the Nuclear Regulatory Commission;

(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 Commission that, before the date of the offense, the 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;[364]

Penalties.

or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

b. Any person who knowingly[365] causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.[366]

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[360]Public Law 96-295 (94 Stat. 786) (1980), section 202, added new section 235.

[361]Public Law 109-58 (119 Stat. 813), August 8, 2005, Title VI, section 655.

[362]Public Law 109-58 (119 Stat. 813), August 8, 2005, Title VI, section 655, amended paragraph 3 by deleting "such a utilization facility" and inserting "a utilization facility licensed under this act".

[363]Public Law 109-58 (119 Stat. 813), August 8, 2005, Title VI, section 655, added "uranium conversion and nuclear fuel fabrication facilities" to this paragraph. Previous amendments:

August 30, 1954, Chapter 1073, Title I, Chapter 18 as added June 30, 1980, Public Law 96-295 (94 Stat. 787); Jan. 4, 1983, Title II, section 204(a); Public Law 97-415 (96 Stat. 2076), Nov. 15, 1990, section 16; Public Law 101-575 (104 Stat. 2835), Oct. 24, 1992, section 5(d); Public Law 102-486 (106 Stat. 2944), Title IX, section 902(a)(8); Public Law 107–56 (115 Stat. 380, 381), October 26, 2001, Title VIII, section 810(f), 811(h).

[364]Public Law 109-58 (119 Stat. 813), August 8, 2005, Title VI, section 655, added paragraphs (5), (6) and (7) to subsection a. of section 236.

[365]Public Law 109-58 (119 Stat. 813), August 8, 2005, Title VI, section 655, changed "intentionally and willfully" to "knowingly" in section 236.

[366]Public Law 107–56 (115 Stat. 380, 381), October 26, 2001, Title VIII, section 810(f), 811(h).

42 USC 2015. Transfer of property.

Sec. 241. Transfer Of Property.

Nothing in this Act shall be deemed to repeal, modify, amend, or alter the provisions of section 9(a) of the Atomic Energy Act of 1946, as heretofore amended.[367]

42 USC 2015a.

Sec. 242. Cold Standby.

The Secretary is authorized to expend such funds as may be necessary for the purposes of maintaining enrichment capability at the Portsmouth, Ohio, facility.[368]

42 USC 2015b.

Sec. 243. Scholarship And Fellowship Program.

a. SCHOLARSHIP PROGRAM.–To enable students to study, for at least 1 academic semester or equivalent term, science, engineering, or another field of study that the Commission determines is in a critical skill area related to the regulatory mission of the Commission, the Commission may carry out a program to–

(1) award scholarships to undergraduate students who–

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Commission in the area of study for which the scholarship is awarded.

b. FELLOWSHIP PROGRAM.–To enable students to pursue education in science, engineering, or another field of study that the Commission determines is in a critical skill area related to its regulatory mission, in a graduate or professional degree program offered by an institution of higher education in the United States, the Commission may carry out a program to–

(1) award fellowships to graduate students who–

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Commission in the area of study for which the fellowship is awarded.

c. REQUIREMENTS.–

(1) IN GENERAL.–As a condition of receiving a scholarship or fellowship under subsection a. or b., a recipient of the scholarship or fellowship shall enter into an agreement with the Commission under which, in return for the assistance, the recipient shall–

(A) maintain satisfactory academic progress in the studies of the recipient, as determined by criteria established by the Commission;

(B) agree that failure to maintain satisfactory academic progress shall constitute grounds on which the Commission may terminate the assistance;

(C) on completion of the academic course of study in connection with which the assistance was provided, and in accordance with criteria established by the Commission, engage in employment by the Commission for a period specified by the Commission, that shall be not less than 1 time and not more than 3 times the period for which the assistance was provided; and

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[367]Aug. 30, 1954, Chapter 1073, Title I, Ch. 19, section 241, 68 Stat. 960; Oct. 24, 1992, Public Law 102-486 (106 Stat. 2944), Title IX, section 902(a)(8).

[368]Public Law 107-222 (116 Stat. 1336), August 21, 2002, Energy Policy Act of 1992 [Thorium Reimbursement Program Authorization].

(D) if the recipient fails to meet the requirements of subparagraph (A), (B), or (C), reimburse the United States Government for–

(i) the entire amount of the assistance provided the recipient under the scholarship or fellowship; and

(ii) interest at a rate determined by the Commission.

(2) WAIVER OR SUSPENSION.–The Commission may establish criteria for the partial or total waiver or suspension of any obligation of service or payment incurred by a recipient of a scholarship or fellowship under this section.

d. COMPETITIVE PROCESS.–Recipients of scholarships or fellowships under this section shall be selected through a competitive process primarily on the basis of academic merit and such other criteria as the Commission may establish, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b.).

e. DIRECT APPOINTMENT.–The Commission may appoint directly, with no further competition, public notice, or consideration of any other potential candidate, an individual who has–

(1) received a scholarship or fellowship awarded by the Commission under this section; and

(2) completed the academic program for which the scholarship or fellowship was awarded.[369]

Sec. 244. Partnership Program With Institutions Of Higher Education.

42 USC 2015c.

a. DEFINITIONS.–In this section:

(1) HISPANIC-SERVING INSTITUTION.–The term 'Hispanic-serving institution' has the meaning given the term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(2) HISTORICALLY BLACK COLLEGE AND UNIVERSITY.–The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(3) TRIBAL COLLEGE.–The term 'Tribal college' has the meaning given the term 'tribally controlled college or university' in section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)).

b. PARTNERSHIP PROGRAM.–The Commission may establish and participate in activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-serving institutions, historically Black colleges or universities, and Tribal colleges, to strengthen the capacity of the institutions–

(1) to educate and train students (including present or potential employees of the Commission); and

(2) to conduct research in the field of science, engineering, or law, or any other field that the Commission determines is important to the work of the Commission.[370]

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[369]Public Law 109-58 (119 Stat. 182), August 8, 2005, section 622.

[370]Public Law 109-58 (119 Stat. 802), August 8, 2005, Title VI, section 651(c)(4).

Sec. 251. Report To Congress. [Repealed]

42 USC 2016. Report to Congress.

The Commission shall submit to the Congress, in January[371] of each year, a report concerning the activities of the Commission. The Commission shall include in such report, and shall at such other times as it deems desirable submit to the Congress, such recommendations *for* additional legislation as the Commission deems necessary or desirable.

Sec. 261. Appropriations.

42 USC 2017.

a.[372] No appropriation[373] shall be made to the Commission, nor shall the Commission waive charges for the use of materials under the Cooperative Power Reactor Demonstration Program, unless previously authorized by legislation enacted by the Congress.[374]

b. Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

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[371]This section (Act Aug. 30, 1954, Ch 1073, title I, Ch 19, section 251, (68 Stat. 960); June 11, 1959, Public Law 86-43, (73 Stat. 73); Oct. 24, 1992, Public Law 102-486, title IX, section 902(a)(8), (106 Stat. 2944)) was repealed by Act Nov. 18, 1997, Public Law 105-85, Div. C, title XXI, Subtitle D, section 3152(a), (111 Stat. 2042). It provided for a report to Congress on the activities of the Atomic Energy Commission.

[372]Public Law 88-72 (77 Stat. 84) (1963), section 107, the AEC Fiscal Year 1964 Authorization Act, amended section 261. Before amendment this section read as follows:

Sec. 261. APPROPRIATIONS--

a. There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act, except--

(1) Such as may be necessary for acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction or expansion: *Provided,* That for the purposes of this subsection a., any nonmilitary experimental reactor which is designed to produce more than 10,000 thermal kilowatts of heat (except for intermittent excursions) or which is designed to be used in the production of electric power shall be deemed to be a facility.

(2) Such as may be necessary to carry out cooperative programs with persons for the development and construction of reactors for the demonstration of their use, in whole or in part, in the production of electric power or process heat, or for propulsion, or solely or principally for the commercial provision of byproduct material, irradiation, or other special services, for civilian use, by arrangements (including contracts, agreements, and loans) or amendments thereto, providing for the payment of funds, the rendering of services, and the undertaking of research and development without full reimbursement, the waiver of charges accompanying such arrangement, or the provision by the Commission of any other financial assistance pursuant to such arrangement, or which involves the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction or expansion undertaken by the Commission as a part of such arrangements.

b. The acts appropriating such sums may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

c. Funds are hereby authorized to be appropriated for advance planning, construction design, and architectural services in connection with any plant or facility not otherwise authorized, and for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

d. Funds hereafter authorized to be appropriated for any project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another project not otherwise authorized. If the substituted project is within the limit of cost of the project for which substitution is to be made, and the Commission certifies that–

(1) the substituted project is essential to the common defense and security;

(2) the substituted project is required by changes in weapon characteristics or weapon logistic operations; and

(3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project. Subsections c. and d. added by Public Law 87-615 (76 Stat. 409), section 8. For previous amendments of this section see "Atomic Energy Legislation Through 87th Congress, 2nd Session," p.79.

[373]Excerpts from legislation appropriating funds to the Atomic Energy Commission are set forth in Appendix 5.

[374]Legislation authorizing appropriations to the Commission is set forth in Part II, *Infra.*

c. Notwithstanding the provisions of subsection a., funds are hereby authorized to be appropriated for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

d. Funds authorized to be appropriated for any construction project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another construction project not otherwise authorized if the substituted construction project is within the limit of cost of the construction project for which substitution is to be made, and the Commission certifies that–

(1) the substituted project is essential to the common defense and security;

(2) the substituted project is required by changes in weapon characteristics or weapon logistics operations; and

(3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.

Sec. 271. Agency Jurisdiction.

42 USC 2018. Agency jurisdiction.

Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or Local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided,* That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.[375]

Sec. 272. Applicability Of Federal Power Act.

42 USC 2019. Applicability of Federal Power Act.

Every licensee under this Act who holds a license from the Commission for a utilization of production facility for the generation of commercial electric energy under section 103 and who transmits such electric energy in interstate commerce or sells it as wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act.

Sec. 273. Licensing Of Government Agencies.

42 USC 2020. Licensing of Government agencies.

Nothing in this Act shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under section 103, if qualified under the provisions of section 103, for the construction and operation of production of utilization facilities for the primary purpose of producing electric energy for disposition for ultimate public consumption.

Sec. 274. Cooperation With States.

42 USC 2021. Cooperation with States.

a.[376] It is the purpose of this section–

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

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[375]Public Law 89-135 (79 Stat. 551) (1965), amended section 271. Prior to amendment, this section read as follows:

Sec. 271. AGENCY JURISDICTION–Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power.

[376]Public Law 86-373 (73 Stat. 688) (1959), section 1, added section 274.

(2) to recognize the need, and establish programs for cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

Agreements with States.

b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under Chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State:

(1) Byproduct materials (as defined in section 11e.).

(2) Source materials;

(3) Special nuclear materials in quantities not sufficient to form a critical mass.[377]

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of–

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;[378]

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

42 USC 2014.

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11e.(2).[379]

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[377]Public Law 109-58 (119 Stat. 807), August 8, 2005, Title VI, section 651(e)(2), revised paragraph (1), and renumbered paragraphs (3) and (4) of section 274b. as paragraphs (2) and (3).

[378]Public Law 102-486 (106 Stat. 2944), Oct. 24, 1992.

[379]Public Law 95-604 (92 Stat. 3038) (1978), section 204(f), added a new sentence after paragraph (4).

Conditions.

Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

d. The Commission shall enter into an agreement under subsection b. of this section with any State if–

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects[380] compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

Publication in Federal Register.

e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

Exemptions. Licensing requirements.

f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in Chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

Federal Radiation Council.

h. There is hereby established a Federal Radiation Council,[381] consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President

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[380]Public Law 95-604 (92 Stat. 3037) (1978), section 904(b), amended section 274(d)(2) by inserting the words "in accordance with the requirements of subsection o, and in all other respects" before the word "compatible."

[381]Reorganization Plan No. 3 of 1970 abolished the Federal Radiation Council and transferred its functions to the Administrator of the Environmental Protection Agency.

for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

Inspections.

i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

Termination of agreement.

j. (1)[382] The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of[383] its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1)[384] such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of this section.[385]

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

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[382]Public Law 96-295 (94 Stat. 787) (1980), section 205, inserted "(1)" after j.

[383]Public Law 95-604 (92 Stat. 3037) (1978), section 204(d)(1), amended section 274j by adding the words "all or part of" after "suspend."

[384]Public Law 95-604 (92 Stat. 3037) (1978), section 204(d)(2), amended section 274j by inserting "(1)" after "finds that."

[385]Public Law 95-604 (92 Stat. 3037) (1978), section 204(d)(3), amended section 274j by adding at the end before the period :

or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.[386]

k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

Notice of filing.

l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i.; to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

Definition.

Agreement.

n. As used in this section, the term "State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.[387]

o. In the licensing and regulation of byproduct material, as defined in section 11e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require–

(1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, and

(3) procedures which–

(A) in the case of licenses, provide procedures under State law which include–

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence

[386]Public Law 96-295 (94 Stat. 787) (1980), section 205 added new subsection j. (2).

[387]Public Law 95-604 (92 Stat. 3037) (1978), section 204(c), added last sentence to section 274n.

presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include–

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11e.(2); and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161x. of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission.[388]

42 USC 2201.

42 USC 2014.

In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the

[388]Public Law 95-604 (92 Stat. 3037) (1978), section 204(e), added a new subsection o.

42 USC 2022.

Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.[389]

Sec. 275. Health And Environmental Standards For Uranium Mill Tailings.

42 USC 2022.
Rule.

a. As soon as practicable, but not later than October 1, 1982,[390] the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.[391] The Administrator may periodically revise any standard promulgated pursuant to this subsection.

42 USC 7911.

After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.[392]

42 USC 2014.
42 USC 6901 note.

b.(1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose and within 11 months thereafter promulgate in final form,[393] standards, general application for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11e.(2) of this Act, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material.

Promulgation authority.

If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this Act without regard to any provision of this Act requiring such actions to comply with, or be taken in accordance with,

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[389]Public Law 97-415 (96 Stat. 2067) (1983), section 19 added this paragraph.
[390]Public Law 97-415 (96 Stat. 2067) (1983), section 18 substituted "October 1, 1982" for "one year after the date of enactment of this section."
[391]Public Law 97-415 (96 Stat. 2067) (1983), section 22 added this language to section 275a.
[392]Public Law 97-415 (96 Stat. 2067) (1983), section 18 substituted this language for "one year after enactment of this section."
[393]Public Law 97-415 (96 Stat. 2067) (1983), section 22 added this language to section 275b(1).

standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this Act. Requirements established by the Commission under this Act with respect to byproduct material as defined in section 11e.(2) shall confirm to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection f.(3). Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 11e.(2) pending promulgation by the Commission of any such standard of general application.[394] In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.[395]

42 USC 2014.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards: *Provided, however*, That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11e.(2) of this Act. The Administration may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 274b.(2) shall apply such revised standard in the case of any license for byproduct material as defined in section 11e.(2) or any revision thereof.

42 USC 2021.

Consultation. Notice, hearing opportunity. Publication in Federal Register.

c. (1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

Judicial review.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator. The Administrator thereupon shall file in the court the written submission to, and transcript of, the written or oral proceedings on which such rule

[394]Public Law 97-415 (96 Stat. 2067) (1983), section 18 changed subsectioin b from "eighteen months after enactment of this section" to current language.
[395]Public Law 97-415 (96 Stat. 2067) (1983). section 22 added this language at end of subsection b.

5 USC *et seq.*

was based as provided in section 2112 of title 28, United States Code. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. The judgment of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

42 USC 2021.

d. Implementation and enforcement of the standards promulgated pursuant to subsection b. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274b.(2) of this Act shall implement and enforce such standards in accordance with subsection o. of such section.

42 USC 2014.
42 USC 7401 note.

e. Nothing in this Act applicable to byproduct material, as defined in section 11e.(2) of this Act, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.[396]

Uranium mill licensing requirement regulations. Implementation and Enforcement.

f.(1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations") After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

Review, public comment, and suspension.

(2) Following the proposal by the Administrator of standards under subsection b., the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if–

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in section 11e.(2)) under this Act on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

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[396]Public Law 95-604 (92 Stat. 3039) (1978), section 206(a), added section 275.

42 USC 2114.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 84 to promulgate regulations to protect the public health and safety and the environment.[397]

Sec. 276. State Authority To Regulate Radiation Below Level Of Regulatory Concern Of Nuclear Regulatory Commission.

42 USC 2023.

(a)[398] IN GENERAL.–No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992 exempts such waste from regulation.

(b) RELATION TO OTHER STATE AUTHORITY.–This section may not be construed to imply preemption of existing State authority. Except as expressly provided in subsection (a), this section may not be construed to confer on any State any additional authority to regulate activities licensed by the Nuclear Regulatory Commission.

(c) DEFINITIONS.–For purposes of this section:

(1) The term "low-level radioactive waste" means radioactive material classified by the Nuclear Regulatory Commission as low-level radioactive waste on the date of the enactment of the Energy Policy Act of 1992.

(2) The term "off-site incineration" means any incineration of radioactive materials at a facility that is located off the site where such materials were generated.

(3) The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) REVOCATION OF RELATED NRC POLICY STATEMENTS.–The policy statements of the Nuclear Regulatory Commission published in the Federal Register on July 3, 1990 (55 Fed. Reg. 27522) and August 29, 1986 (51 Fed. Reg. 30839), relating to radioactive waste below regulatory concern, shall have no effect after the date of the enactment of this Act.[399]

Sec. 281. Separability.

Separability.

If any provision of this Act or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 291. Short Title.

Short title.

This Act may be cited as the "Atomic Energy Act of 1954 ."

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[397]Public Law 97-415 (96 Stat. 2067) (1983), section 18 added new subsection f.
[398]Public Law 102-486 (106 Stat. 3122)
[399]Public Law 102-486 (106 Stat. 3122); Oct. 24, 1992 added new section 276.

Chapter 20–Joint Committee On Atomic Energy Abolished; Functions And Responsibilities Reassigned

Sec. 301. Joint Committee On Atomic Energy Abolished.

42 USC 2258.

a. The Joint Committee on Atomic Energy is abolished.

b. Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after the date of enactment of this section, be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

Records, transfer.

c. All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

Sec. 302. Transfer Of Certain Functions Of The Joint Committee On Atomic Energy And Conforming Amendments To Certain Other Laws.

42 USC 2251 *et seq.* Repealed.

a. Effective on the date of enactment of this section, chapter 17 of this Act is repealed.

Repealed. 42 USC 2315.

b. Section 103 of the Atomic Energy Community Act of 1955, as amended, is repealed.

c. Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by–

(1) striking the subsection designation "(a)"; and

(2) repealing subsection (b).

Repealed. 2 USC 190j. Repeal.

d. Section 252(a)(3) of the Legislative Reorganization Act of 1970 is repealed.

Sec. 303. Information And Assistance To Congressional Committees.

42 USC 2259.

a. The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

b. The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

c. Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

d. The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization or application of nuclear energy, are

authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Administration.[400]

Chapter 21–Defense Nuclear Facilities Safety Board

Sec. 311. Establishment.

42 USC 2286.

(a) Establishment.–There is hereby established an independent establishment in the executive branch, to be known as the "Defense Nuclear Facilities Safety Board" (hereafter in this chapter referred to as the "Board").

President of U.S.

(b) Membership.–(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

42 USC 2286.
President of U.S.
Reports.

(4) Not later than 180 days after the date of the enactment of this chapter, the President shall submit to the Senate nominations for appointment to the Board. In the event that the President is unable to submit the nominations within such 180-day period, the President shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a report describing the reasons for such inability and a plan for submitting the nominations within the next 90 days. If the President is unable to submit the nominations within that 90-day period, the President shall again submit to such committees and the Speaker such a report and plan. The President shall continue to submit to such committees and the Speaker such a report and plan every 90 days until the nominations are submitted.

President of U.S.

(c) Chairman and Vice Chairman.–(1) The President shall designate a Chairman and Vice Chairman of the board from among members of the Board.

(2) The Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to–

(A) the appointment and supervision of employees of the Board;

(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

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[400]Public Law 95-110 (91 Stat. 884) (1977) added Chapter 20.

(3) The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

(4) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

(d) Terms.–(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. Members of the Board may be reappointed.

(2) Of the members first appointed–

(A) one shall be appointed for a term of one year;

(B) one shall be appointed for a term of two years;

(C) one shall be appointed for a term of three years;

(D) one shall be appointed for a term of four years; and

(E) one shall be appointed for a term of five years, as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of that member's term until a successor has taken office.

(e) Quorum.–Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

Sec. 312. Functions Of The Board.

42 USC 2286a.

The Board shall perform the following functions:

(1) Review And Evaluation Of Standards.–The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

(2) Investigations.–(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be–

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the

implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

(3) Analysis Of Design And Operational Data.–The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) Review Of Facility Design And Construction.–The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations.–The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider the technical and economic feasibility of implementing the recommended measures.

Sec. 313. Powers Of Board.

42 USC 2286b.

(a) Hearings.–(1) The Board or a member authorized by the Board may, for the purpose of carrying out this chapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2) (A) Subpoenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the Untied States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court

under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) Staff.–The Board may, for the purpose of performing its responsibilities under this Chapter–

(1) hire such staff as it considers necessary to perform the functions of the Board, but not more than the equivalent of 100 full-time employees; and

(2) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Board determines to be reasonable.

(c) Regulations.–The Board may prescribe regulations to carry out the

Classified information.

(d) Reporting Requirements.–The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 147 or 148 of this Act.

42 USC 2286b.

(e) Use Of Government Facilities, Etc.–The Board may, for the purpose of carrying out its responsibilities under this chapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) Assistance From Certain Agencies Of The Federal Government.–With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) Assistance From Organizations Outside The Federal Government–The Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this chapter.

(h) Resident Inspectors.–The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

(i) Special Studies.–The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) Evaluation Of Information.–The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to–

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 312(1), the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

Sec. 314. Responsibilities Of The Secretary Of Energy.

42 USC 2286c.
Contracts.

(a) Cooperation.–The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this chapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this chapter.

(b) Access To Information.–The Secretary of Energy may deny access to information provided to the Board to any person who–

(1) has not been granted an appropriate security clearance or access authorization by the Secretary of Energy; or

(2) does not need such access in connection with the duties of such person.

Sec. 315. Board Recommendations.

42 USC 2286d.
Federal Register, publication.

(a) Public Availability And Comment.–Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under section 312, the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

(b) Response By Secretary.–

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 312, a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (a), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

Federal Register, publication.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h), shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(c) Provision Of Information To Secretary.–The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b).

(d) Final Decision.–If the Secretary of Energy, in a response under subsection (b)(1), rejects (in whole or part) any recommendation made by the Board under section 312, the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (h), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a written report containing that decision and reasoning.

Federal Register, publication.

Reports.

(e) Implementation Plan.–The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

Reports.

(f) Implementation.–

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (e), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives setting forth the reasons for the delay and when implementation will be completed.

Reports.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 91 of this Act, the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

Public health and safety.

(g) Imminent Or Severe Threat.–

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 312 relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (d).

President of U.S.

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of

Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

Public information.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives. The President shall promptly notify such committees and the Speaker of his decision and the reasons for that decision.

(h) Limitation.–Notwithstanding any other provision of this section, the requirements to make information available to the public under this section–

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under section 147 and 148 of this Act to prohibit dissemination of certain information.

Sec. 316. Reports.

42 USC 2286e.

(a) Board Report.–

(1) The Board shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United States Code, a written report concerning its activities under this chapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of–

(A) The improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

(b) DOE Report.–The Secretary of Energy shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United State Code, a written report concerning the activities of the Department of Energy under this chapter during the year preceding the year in which the report is submitted.

Sec. 317. Judicial Review.

42 USC 2286f.

Chapter 7 of title 5, United States Code, shall apply to the activities of the Board under this chapter.

Sec. 318. Definition.

42 USC 2286g.

As used in this chapter, the term "Department of Energy defense nuclear facility" means any of the following:

(1) A production facility or utilization facility (as defined in section 11 of this Act) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include–

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the assembly or testing of nuclear explosives or with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 USC 10101 *et seq.*) and licensed by the Nuclear Regulatory Commission.

Sec. 319. Contract Authority Subject To Appropriations.

42 USC 2286h. The authority of the Board to enter into contracts under this chapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.

Sec. 320. Transmittal Of Certain Information to Congress.

42 USC 2286h-1. Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative recommendation, or any statement or information in preparation of a report to be submitted to the Congress pursuant to section 316(a), the Board shall submit at the same time a copy thereof to the Congress.[401]

Sec. 321. Annual Authorization Of Appropriations.

42 USC 2286i. Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorizations Acts.

(2) The table of contents at the beginning of the Atomic Energy Act of 1954 is amended by adding at the end the following:

Chapter 21–Defense Nuclear Facilities Safety Board
Sec. 311. Establishment.
Sec. 312. Functions of the Board.
Sec. 313. Powers of Board.
Sec. 314. Responsibilities of the Secretary of Energy.
Sec. 315. Board recommendations.
Sec. 316. Reports.
Sec. 317. Judicial review.
Sec. 318. Definition.
Sec. 319. Contract authority subject to appropriations.
Sec. 320. Annual authorization of appropriations.

(b) Salary For Board Members At Executive Schedule Level III. – Section 5314 of title 5, United States Code, is amended by inserting after "Members, Nuclear Regulatory Commission." the following: Members, Defense Nuclear Facilities Safety Board.

42 USC 2286e note. (c) Requirements For First Annual Report.–(1) Before submission of the first annual report by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 (as added by subsection (a)), the Board shall conduct a study on whether nuclear

[401]Public Law 103-160 (107 Stat 1959), Nov. 30, 1993, Div C., Title XXXII, section 3202(a)(2).

facilities of the Department of Energy that are excluded from the definition of "Department of Energy defense nuclear facility" in section 318(1)(C) of such Act (hereafter in this subsection referred to as "non-defense nuclear facilities") should be subject to independent external oversight. The Board shall include in such first annual report the results of such study and the recommendation of the Board on whether non-defense nuclear facilities should be subject to independent external oversight.

(2) If the Board recommends in the report that non-defense nuclear facilities should be subject to such oversight, the report shall include a discussion of alternative mechanisms for implementing such oversight, including mechanisms such as a separate executive agency and oversight as a part of the Board's responsibilities. The discussion of alternative mechanisms of oversight also shall include considerations of budgetary costs, protection of the security of sensitive nuclear weapons information, and the similarities and differences in the design, construction, operation, and decommissioning of defense and non-defense nuclear facilities of the Department of Energy.

(d) Requirements For Fifth Annual Report.–The fifth annual report submitted by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 (as added by subsection (a)) shall include–

(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and

(3) recommendations for appropriate transition requirements in the event that modifications are recommended.

SEC. 1442. TRANSFER–The Secretary of Energy, to the extent provided in appropriations Acts, shall transfer to the Defense Nuclear Facilities Safety Board established by section 311 of the Atomic Energy Act of 1954 (as added by section 1441) from sums available for obligation for national security programs such sums as may be necessary, as determined by such Board, for the operation of the Board during fiscal year 1989, but in no case may more that $7,000,000 transferred for such purpose. Sums transferred shall be available to such Board to carry out its responsibilities under chapter 21 of the Atomic Energy Act of 1954 (as added by section 1441) and shall remain available until expended.[402]

NEGOTIATED RULEMAKING ON FINANCIAL PROTECTION FOR RADIOPHARMACEUTICAL LICENSEES.

42 USC 2210 note.
Contracts.

(A) Rulemaking Proceeding.–

(1) Purpose.–The Nuclear Regulatory Commission (hereafter in this section referred to as the "Commission") shall initiate a proceeding, in accordance with the requirements of this section, to determine whether to enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 USC 2210) with persons licensed by the Commission under section 81, 104(a), or 104(c) of the Atomic Energy Act of 1954 (42 USC 2111, 2134(a), and 2134(c)) or

[402]Public Law 100-456 (102 Stat. 2076) (1988) added Chapter 21.

by a State under section 274(b) of the Atomic Energy Act of 1954 (42 USC 2021(b)) for the manufacture, production, possession, or use of radioisotopes or radiopharmaceutical for medical purposes (hereafter in this section referred to as "radiopharmaceutical licensees")

(2) Final Determination.–A final determination with respect to whether radiopharmaceutical licensees, or any class of such licensees, shall be indemnified pursuant to section 170 of the Atomic Energy Act of 1954 (42 USC2210) and if so, the terms and conditions of such indemnification, shall be rendered by the Commission within 18 months of the date of the enactment of this Act.

(b) Negotiated Rulemaking.–

(1) Administrative Conference Guidelines.–For the purpose of making the determination required under subsection (a), the Commission shall, to the extent consistent with the provisions of this Act, conduct a negotiated rulemaking in accordance with the guidance provided by the Administrative Conference of the United States in Recommendation 82-4, "Procedures for Negotiating Proposed Regulations" (42 Fed. Reg. 30708, July 15, 1982).

(2) Designation Of Convener.–Within 30 days of the date of the enactment of this Act, the Commission shall designate an individual or individuals recommended by the Administrative Conference of the United States to serve as a convener for such negotiations.

Contracts.

(3) Submission Recommendations Of The Convener.–The convener shall, not later than seven months after the date of the enactment of this Act, submit to the Commission recommendations for a proposed rule regarding whether the Commission should enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 USC 2210) with radiopharmaceutical licensees and, if so, the terms and conditions of such indemnification. If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the proposed rule submitted by the convener shall set forth the procedures for the execution if indemnification agreements with radiopharmaceutical licensees.

(4) Publication Of Recommendations And Proposed Rule.–If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the Commission shall publish the recommendations of the convener submitted under paragraph (3) as a notice of proposed rulemaking within 30 days of the submission of such recommendations under such paragraph.

(5) Administrative Procedures.–To the extent consistent with the provisions of this Act, the Commission shall conduct the proceeding required under subsection (a) in accordance with section 553 of title 5, United States Code.[403]

[403]Public Law 100-408 (102 Stat. 1066) (1988), section 19, provided for this rulemaking which is not part of the Atomic Energy Act.

Sec. 1201. Definitions.

42 USC 2297. For purposes of this title:[404] [405]

(1) The term "alternative technologies for uranium enrichment" means technologies to enrich uranium by methods other than the gaseous diffusion process.

(2) The term "AVLIS" means atomic vapor laser isotope separation technology.

(3) The term "Board" means the Board of Directors of the Corporation established under section 1304.

(4) The term "Corporation" means the United States Enrichment Corporation.

(5) The term "corrective actions" has the meaning given such term by the Administrator of the Environmental Protection Agency under section 3004(u) of the Solid Waste Disposal Act (42 USC 6924(u)).

(6) The term "decontamination and decommissioning" means those activities, other than response actions or corrective actions, undertaken to decontaminate and decommission inactive uranium enrichment facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination, including depleted tailings.

(7) The term "Department" means the Department of Energy.

(8) The term "highly enriched uranium" means uranium enriched to 20 percent or more of the uranium-235 isotope.

(9) The term "low-enriched uranium" means uranium enriched to less than 20 percent of the uranium-235 isotope.

(10) The term "releases" has the meaning given the term "release" in section 101(22) of the Comprehensive Environmental response, Compensation, and Liability Act of 1980 (42 USC 9601(22)).

(11) The term "remedial action" has the meaning given such term in section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC 9601(24)).

(12) the term "response actions" has the meaning given the term "response" in section 101(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC 9601(25)).

(13) The term "Secretary" means the Secretary of Energy.

(14) The term "uranium enrichment" means the separation of uranium of a given isotopic content into 2 components, 1 having a higher percentage of a fissile isotope and 1 having a lower percentage.[406]

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[404] Added by Public Law 102-486 (106 Stat. 2924).

[405] **Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, Subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

[406] Severability provisions for Title IX of Public Law 102-486 (106 Stat. 2946), Oct 24, 1992, section 904, provides:

Sec. 1202. Purposes.

42 USC 2297a.

The Corporation is created for the following purposes:

(1) To operate as a business enterprise on a profitable and efficient basis.

(2) To maximize the long-term value of the Corporation to the Treasury of the United States.

(3) To lease Department uranium enrichment facilities, as needed.

(4) To acquire uranium for uranium enrichment, low-enriched uranium for resale, and highly enriched uranium for conversion into low-enriched uranium, as needed.

(5) To market and sell its enriched uranium and uranium enrichment and related services to–

(A) the Department for governmental purposes; and

(B) domestic and foreign persons, as provided in section 1303(6).

(6) To conduct research and development as required to meet business objectives for the purposes of identifying, evaluating, improving, and testing alternative technologies for uranium enrichment.

(7) To conduct the business as a self-financing corporation and eliminate the need for Federal Government appropriations or sources of Federal financing other than those provided in this title.

(8) To help maintain a reliable and economical domestic source of uranium enrichment services.

(9) To comply with laws, and regulations promulgated thereunder, to protect the public health, safety, and the environment.

(10) To continue at all times to meet the objectives of ensuring the Nation's common defense and security, including abiding by United States laws and policies concerning special nuclear materials and nonproliferation of atomic weapons and other nonpeaceful uses of atomic energy.

(11) To take all other lawful actions in furtherance of these purposes.

If any provision of this title [42 USCS sections 2297 *et seq.*, generally, for full classification, consult USCS Tables volumes], or the amendments made by this title [42 USCS sections 2297 *et seq.*, generally, for full classification, consult USCS Tables volumes], or the application of any provision to any entity, person, or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, the remainder of this title, and the amendments made by this title [adding 42 USCS sections 2297 *et seq.*, generally, for full classification, consult USCS Tables volumes], or its application shall not be affected.

References to the Corporation after privatization date. Public Law 104-134 (110 Stat. 1321-350), April 26, 1996, Title III, chapter 1, subchapter A, section 3116(e), provides:

Following the privatization date, all references in the Atomic Energy Act of 1954 [42 USCS sections 2011 *et seq.*] to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

Chapter 23–Establishment, Powers, And Organization Of Corporation

Sec. 1301. Establishment Of The Corporation.

42 USC 2297b. (a)[407] [408] IN GENERAL.–There is established a body corporate to be known as the United States Enrichment Corporation.

(b) GOVERNMENT CORPORATION.–The Corporation shall be established as a wholly owned Government corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act), except as otherwise provided in this title.

(c) FEDERAL AGENCY.–The Corporation shall be an agency and instrumentality of the United States.

Sec. 1302. Corporate Offices.

42 USC 2297b-1. The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

Sec. 1303. Powers Of The Corporation.

42 USC 2297b-2. In order to accomplish its purposes, the Corporation–

(1) shall, except as provided in this title or applicable Federal law, have all the powers of a private corporation incorporated under the District of Columbia Business Corporation Act;

(2) shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

(3) may obtain from the Administrator of General Services the services the Administrator is authorized to provide agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(4) shall enrich uranium, provide for uranium to be enriched by others, or acquire enriched uranium (including low-enriched uranium derived from highly enriched uranium provided under section 1408);

(5) may conduct, or provide for conducting, those research and development activities related to uranium enrichment and related processes and activities the Corporation considers necessary or advisable to maintain the Corporation as a commercial enterprise operating on a profitable and efficient basis;

(6) may enter into transactions regarding uranium, enriched uranium, or depleted uranium with–

(A) persons licensed under section 53, 63, 103, or 104 in accordance with the licenses held by those persons;

(B) persons in accordance with, and within the period of, an agreement for cooperation arranged under section 123; or

(C) persons otherwise authorized by law to enter into such transactions;

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[407] Added by Public Law 102-486 (106 Stat. 2925).

[408] **Section will be repealed on privatization date.** Public Law 104-134 (110 Stat. 1321-349), April 26, 1996, Title III, Chapter 1, Subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

(7) may enter into contracts with persons licensed under section 53, 63, 103, or 104, for as long as the Corporation considers necessary or desirable, to provide uranium or uranium enrichment and related services;

(8) may enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged under section 123 or as otherwise authorized by law; and

(9) shall sell to the Department as provided in this title, without regard to section 57e., the amounts of uranium enrichment and related services that the Department determines from time to time are required for it to–

(A) carry out Presidential directions and authorizations under section 91; and

(B) conduct other Department programs.

Sec. 1304. Board Of Directors.

42 USC 2297b-3.

(a) IN GENERAL.–The powers of the Corporation are vested in the Board of Directors.

(b) APPOINTMENT.–The Board of Directors shall consist of five individuals, to be appointed by the President by and with the advice and consent of the Senate. The President shall designate a Chairman of the Board from among members of the Board.

(c) QUALIFICATIONS.–Members of the Board shall be citizens of the United States. No member of the Board shall be an employee of the Corporation or have any direct financial relationship with the Corporation other than that of being a member of the Board.

(d) TERMS.–

(1) IN GENERAL.–Except as provided in paragraph (2), members of the Board shall serve five-year terms or until the election of a new Board of Directors under section 1704, whichever comes first.

(2) INITIAL MEMBERS.–Of the members first appointed to the Board–

(A) 1 shall be appointed for a 1-year term;

(B) 1 shall be appointed for a 2-year term;

(C) 1 shall be appointed for a 3-year term; and

(D) 1 shall be appointed for a 4-year term.

(3) REAPPOINTMENT.–Members of the Board may be reappointed by the President, by and with the advice and consent of the Senate.

(e) VACANCIES.–Upon the occurrence of a vacancy on the Board, the President by and with the advice and consent of the Senate shall appoint an individual to fill such vacancy for the remainder of the applicable term.

(f) MEETINGS AND QUORUM.–The Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. Three voting members of the Board shall constitute a quorum. A majority of the Board shall adopt and from time to time may amend bylaws for the operation of the Board.

(g) POWERS.–The Board shall be responsible for general management of the Corporation and shall have the same authority, privileges, and responsibilities as the board of directors of a private corporation incorporated under the District of Columbia Business Corporation Act.

(h) COMPENSATION.–Members of the Board shall serve on a part-time basis and shall receive per diem, when engaged in the actual performance of Corporation duties, plus reimbursement for travel,

subsistence, and other necessary expenses incurred in the performance of their duties.

(i) MEMBERSHIP OF SECRETARY OF TREASURY.–The President may appoint the Secretary of the Treasury or his designee to serve as a member of the Board or as a nonvoting, ex officio member of the Board.

(j) CONFLICT OF INTEREST REQUIREMENTS.–No director, officer, or other management level employee of the Corporation may have a financial interest in any customer, contractor, or competitor of the Corporation or in any business that may be adversely affected by the success of the Corporation.

Sec. 1305. Employees Of The Corporation.

42 USC 2297b-4.

(a) APPOINTMENT.–The Board shall appoint such officers and employees as are necessary for the transaction of its business.

(b) COMPENSATION, DUTIES, AND REMOVAL.–The Board shall, without regard to section 5301 of title 6, United States Code, fix the compensation of all officers and employees of the Corporation, define their duties, and provide a system of organization to fix responsibility and promote efficiency. Any officer or employee of the Corporation may be removed in the discretion of the Board.

(c) APPLICABLE CRITERIA.–The Board shall ensure that the personnel function and organization is consistent with the principles of section 2301(b) of title 5, United States Code, relating to merit system principles. Officers and employees shall be appointed, promoted, and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

(d) TREATMENT OF PERSONS EMPLOYED PRIOR TO TRANSITION DATE.–Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the transition date, whether provided by statute or by rules of the Department or the executive branch, shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Board.

(e) PROTECTION OF EXISTING EMPLOYEES.–

(1) IN GENERAL.–It is the purpose of this subsection to ensure that the establishment of the Corporation pursuant to this chapter shall not result in any adverse effects on the employment rights, wages, or benefits of employees at facilities that are operated, directly or under contract, in the performance of the functions vested in the Corporation.

(2) APPLICABILITY OF EXISTING COLLECTIVE BARGAINING AGREEMENT.–Any employer (including the Corporation) at a facility described in paragraph (1) shall abide by the terms of a collective bargaining agreement in effect on April 30, 1991, at each individual facility until–

(A) the earlier of the date on which a new bargaining agreement is signed; or

(B) the end of the 2-year period beginning on the date of the enactment of this title.

(3) APPLICABILITY OF NLRA.–Except as specifically provided in this subsection, the Corporation is subject to the provisions of the National Labor Relations Act (29 USC 151 *et seq.*).

(4) BENEFITS OF TRANSFEREES AND DETAILEES.–At the request of the Board and subject to the approval of the Secretary, an

employee of the Department may be transferred or detailed as provided for in section 1315, to the Corporation without any loss in accrued benefits or standing within the Civil Service System. For those employees who accept transfer to the Corporation, it shall be their option as to whether to have any accrued retirement benefits transferred to a retirement system established by the Corporation or to retain their coverage under either the Civil Service Retirement System or the Federal Employees' Retirement System, as applicable, in lieu of coverage by the Corporation's retirement system. For those employees electing to remain with one of the Federal retirement systems, the Corporation shall withhold pay and make such payments as are required under the Federal retirement system. For those Department employees detailed, the Department shall offer those employees a position of like grade, compensation, and proximity to their official duty station after their services are no longer required by the Corporation.

Sec. 1306. Audits.

42 USC 2297b-5.

(a) INDEPENDENT AUDITS.–

(1) IN GENERAL.–The financial statements of the Corporation shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.

(2) REVIEW BY GAO.–The Comptroller General may review any audit of the Corporation's financial statements conducted under paragraph (1). The Comptroller General shall report to the Congress and the Corporation the results of any such review and shall include in such report appropriate recommendations.

(b) GAO AUDITS.–

(1) IN GENERAL.–The Comptroller General may audit the financial statements of the Corporation for any year in the manner provided in subsection (a)(1).

(2) REIMBURSEMENT BY CORPORATION.–The Corporation shall reimburse the Comptroller General for the full cost of any audit conducted under this subsection, as determined by the Comptroller General.

(c) AVAILABILITY OF BOOKS AND RECORDS.–All books, accounts, financial records, reports, files, papers, and other property belonging to or in use by the Corporation and its auditor that the Comptroller General considers necessary to the performance of any audit or review under this section shall be made available to the Comptroller General, subject to section 1314.

(d) TREATMENT OF GAO AUDITS.–Activities the Comptroller General conducts under this section shall be in lieu of any other audit of the financial transactions of the Corporation the Comptroller General is required to make under chapter 91 of title 31, United States Code, or other law.

Sec. 1307. Annual Reports.

42 USC 2297b-6.

(a) IN GENERAL.–The Corporation shall prepare and submit an annual report of its activities to the President and the Congress. This report shall contain–

(1) a general description of the Corporation's operations;

(2) a summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends;

(3) copies of audit reports prepared under section 1305;

(4) the information required under regulations issued under section 13 of the Securities Exchange Act of 1934 (15 USC 78m); and

(5) an identification and assessment of any impairment of capital or ability of the Corporation to comply with this title.

(b) DEADLINE.–The report shall be completed not later than 150 days following the close of each of the Corporation's fiscal years and shall accurately reflect the financial position of the Corporation at fiscal year end.

Sec. 1308. Accounts.

42 USC 2297b-7.

(a) ESTABLISHMENT OF UNITED STATES ENRICHMENT CORPORATION FUND.–There is established in the Treasury of the United States a revolving fund, to be known as the "United States Enrichment Corporation Fund", which shall be available to the Corporation, without need for further appropriation and without fiscal year limitation, for carrying out its purposes, functions, and powers, and which shall not be subject to apportionment under subchapter II of chapter 15 of title 31, United States Code.

(b) TRANSFER OF UNEXPENDED BALANCES.–On the transfer date, the Secretary shall, without need of further appropriation, transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

Sec. 1309. Obligations.

42 USC 2297b-8.

(a) ISSUANCE.–

(1) IN GENERAL.–The Corporation may issue and sell bonds, notes, and other evidences of indebtedness (collectively referred to in this title as "bonds"), except that the Corporation may not issue or sell bonds for the purpose of constructing new uranium enrichment facilities or conducting directly related preconstruction activities. Borrowing under this paragraph during any fiscal year ending before October 1, 1996, shall be subject to approval in appropriation Acts.

(2) USE OF REVENUES.–The Corporation may pledge and use its revenues for payment of the principal of and interest on its bonds, for their purchase or redemption, and for other purposes incidental to these functions, including creation of reserve funds and other funds that may be similarly pledged and used.

(3) AGREEMENTS WITH HOLDERS AND TRUSTEES.– The Corporation may enter into binding covenants with the holders and trustees of its bonds with respect to

(A) the establishment of reserve and other funds;

(B) stipulations concerning the subsequent issuance of bonds; and

(C) other matters not inconsistent with this title; that the Corporation determines necessary or desirable to enhance the marketability of the bonds.

(b) NOT OBLIGATIONS OF UNITED STATES.–Bonds issued by the Corporation under this section shall not be obligations of, or guaranteed as to principal or interest by, the United States, and the bonds shall so plainly state.

(c) TERMS AND CONDITIONS.–

(1) NEGOTIABLE; MATURITY.–Bonds issued by the Corporation under this section shall be negotiable instruments unless

otherwise specified in the bond and shall mature not more than 50 years after their date of issuance.

(2) ROLE OF SECRETARY OF THE TREASURY.–

(A) RIGHT OF DISAPPROVAL.–The Corporation may set the terms and conditions of bonds issued under this section, subject to disapproval of such terms and conditions by the Secretary of the Treasury within 5 days after the Secretary of the Treasury is notified of the following terms and conditions of the bonds:

(i) Their forms and denominations.

(ii) The times, amounts, and prices at which they are sold.

(iii) Their rates of interest.

(iv) The terms at which they may be redeemed by the Corporation before maturity.

(v) The priority of their claims on the Corporation's net revenues with respect to principal and interest payments.

(vi) Any other terms and conditions.

(B) INAPPLICABILITY OF RIGHT TO PRESCRIBE TERMS.–Section 9108(a) of title 31, United States Code, shall not apply to the Corporation.

(d) INAPPLICABILITY OF SECURITIES REQUIREMENTS.– The Corporation shall be considered an executive department of the United States for purposes of section 3(c) of the Securities Exchange Act of 1934 (15 USC 78c(c)).

(e) INAPPLICABILITY OF FEE.–The Corporation shall not issue or sell any bonds to the Federal Financing Bank.

Sec. 1310. Exemption From Taxation And Payments In Lieu Of Taxes.

42 USC 2297b-9.

(a) EXEMPTION FROM TAXATION.–In order to render financial assistance to those States and localities in which the facilities of the Corporation are located, the Corporation shall, beginning in fiscal year 1998, make payments to State and local governments as provided in this section. These payments shall be in lieu of any and all State and local taxes on the real and personal property of the Corporation. All property of the Corporation is expressly exempted from taxation in any manner or form by any State, county, or other local government entity including State, county, or other local government sales tax.

(b) PAYMENTS IN LIEU OF TAXES.–Beginning in fiscal year 1998, the Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the State and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making these determinations, the Corporation shall be guided by the following criteria:

(1) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

(2) The payment made to any taxing authority for any period shall not be less than the payments that would have been made to the taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1404 and that would have been attributable to the ownership, management, operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately prior to the transition date.

(c) TIME OF PAYMENTS.–Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable.

(d) DETERMINATION OF AMOUNT DUE.–The determination by the Corporation of the amounts due under this section shall be final and conclusive.

Sec. 1311. Cooperation With Other Agencies.

42 USC 2297b-10.

The Corporation may request to use on a reimbursable basis the available services, equipment, personnel, and facilities of agencies of the United States, and on a similar basis may cooperate with such agencies in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of State, territorial, municipal, or other local agencies.

Sec. 1312. Applicability Of Certain Federal Laws.

42 USC 2297b-11.

(a) ANTITRUST LAWS.–The Corporation shall conduct its activities in a manner consistent with the policies expressed in the following antitrust laws:

(1) The Sherman Act (15 USC 1-7).

(2) The Clayton Act (15 USC 12-27).

(3) Sections 73 and 74 of the Wilson Tariff Act (15 USC 8 and 9).

(b) ENVIRONMENTAL LAWS.–The Corporation shall be subject to, and comply with, all Federal and State, interstate, and local environmental laws and requirements, both substantive and procedural, in the same manner, and to the same extent, as any person who is subject to such laws and requirements. For purposes of enforcing any such law or substantive or procedural requirements (including any injunctive relief, administrative order, or civil or administrative penalty or fine) against the Corporation, the United States expressly waives any immunity otherwise applicable to the Corporation. For the purposes of this subsection, the term "person" means an individual, trust, firm, joint stock company, corporation, partnership, association, State, municipality, or political subdivision of a State.

(c) OSHA REQUIREMENTS.–Notwithstanding sections 3(5), 4(b)(1), and 19 of the Occupational Safety and Health Act of 1970 (29 USC 652(5), 653(b) (1), and 668)), the Corporation shall be subject to, and comply with, such Act and all regulations and standards promulgated thereunder in the same manner, and to the same extent, as an employer is subject to such Act. For the purposes of enforcing such Act (including any injunctive relief, administrative order, or civil, administrative, or criminal penalty or fine) against the Corporation, the United States expressly waives any immunity otherwise applicable to the Corporation.

(d) LABOR STANDARDS.–The Act of March 3, 1931 (known as the Davis-Bacon Act) (40 USC 276a *et seq.*) and the Service Contract Act of 1965 (41 USC 351 *et seq.*) shall apply to the Corporation. All laborers and mechanics employed on the construction, alteration, or repair of projects funded, in whole or in part, by the Corporation shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with such Act of March 3, 1931. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267) and the Act of June 13, 1934 (40 USC 276c).

(e) ENERGY REORGANIZATION ACT REQUIREMENTS.– The Corporation is subject to the provisions of section 210 of the Energy Reorganization Act of 1974 (42 USC 5850) to the same extent as an

employer subject to such section, and, with respect to the operation of the facilities leased by the Corporation, section 206 of the Energy Reorganization Act of 1974 (42 USC 5846) shall apply to the directors and officers of the Corporation.

(f) EXEMPTION FROM FEDERAL PROPERTY REQUIREMENTS.–The Corporation shall not be subject to the Federal Property and Administrative Services Act of 1949 (41 USC 471 *et seq.*).

Sec. 1313. Security.

42 USC 2297b-12.

Any references to the term "Commission" or to the Department in sections 161k., 221a., and 230 shall be considered to include the Corporation.

Sec. 1314. Control Of Information.

42 USC 2297b-13.

(a) IN GENERAL.–Except as provided in subsection (b), the Corporation may protect trade secrets and commercial or financial information to the same extent as a privately owned corporation.

(b) OTHER APPLICABLE LAWS.–Section 552(d) of title 5, United States Code, shall apply to the Corporation, and such information shall be subject to the applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18, United States Code.

Sec. 1315. Transition.

42 USC 2297b-14.
President.

(a) TRANSITION MANAGER.–Within 30 days after the date of the enactment of this title, the President shall appoint a Transition Manager, who shall serve at the pleasure of the President until a quorum of the Board has been appointed and confirmed in accordance with section 1304.

(b) POWERS.–

(1) IN GENERAL.–Until a quorum of the Board has qualified, the Transition Manager shall exercise the powers and duties of the Board and shall be responsible for taking all actions needed to effect the transfer of the uranium enrichment enterprise from the Secretary to the Corporation on the transition date.

(2) CONTINUATION UNTIL BOARD HAS QUORUM.–In the event that a quorum of the Board has not qualified by the transition date, the Transition Manager shall continue to exercise the powers and duties of the Board until a quorum has qualified.

(c) RATIFICATION OF TRANSITION MANAGER'S ACTIONS.–All actions taken by the Transition Manager before the qualification of a quorum of the Board shall be subject to ratification by the Board.

(d) RESPONSIBILITIES OF SECRETARY.–Before the transition date, the Secretary shall–

(1) continue to be responsible for the management and operation of the uranium enrichment plants;

(2) provide funds, to the extent provided in appropriations Acts, to the Transition Manager to pay salaries and expenses;

(3) delegate Department employees to assist the Transition Manager in meeting his responsibilities under this section; and

(4) assist and cooperate with the Transition Manager in preparing for the transfer of the uranium enrichment enterprise to the Corporation on the transition date.

(e) TRANSITION DATE.–The transition date shall be July 1, 1993.

(f) DETAIL OF PERSONNEL.–For the purpose of continuity of operations, maintenance, and authority, the Department shall detail, for up to 18 months after the date of the enactment of this title, appropriate Department personnel as may be required in an acting capacity, until such time as a Board is confirmed and top officers of the Corporation are hired.

The Corporation shall reimburse the Department and its contractors for the detail of such personnel.

Sec. 1316. Working Capital Account.

42 USC 2297b-15. There shall be established within the Corporation a Working Capital Account in which the Corporation may retain all revenue necessary for legitimate business expenses, or investments, related to carrying out its purposes.

Chapter 24–Rights, Privileges, And Assets Of The Corporation

Sec. 1401. Marketing And Contracting Authority.

42 USC 2297c. (a)[409] [410] EXCLUSIVE MARKETING AGENT.–The Corporation shall act as the exclusive marketing agent on behalf of the United States Government for entering into contracts for providing enriched uranium (including low-enriched uranium derived from highly enriched uranium) and uranium enrichment and related services. The Department may not market enriched uranium (including low-enriched uranium derived from highly enriched uranium), or uranium enrichment and related services, after the transition date.

(b) TRANSFER OF CONTRACTS.

(1) IN GENERAL.–Except as provided in paragraph (2), all contracts, agreements, and leases with the Department, including all uranium enrichment contracts and power purchase contracts, that have been executed by the Department before the transition date and that relate to uranium enrichment and related services shall transfer to the Corporation.

(2) EXCEPTIONS.

(A) TVA SETTLEMENT.–The rights and responsibilities of the Department under the settlement agreement with the Tennessee Valley Authority, filed on December 18, 1987, with the United States Court of Federal Claims,[411] shall not transfer to the Corporation.

(B) NONTRANSFERABLE POWER CONTRACTS.–If the Secretary determines that a power purchase contract executed by the Department prior to the transition date cannot be transferred under its terms, the Secretary may continue to receive power under the contract and resell such power to the Corporation at cost.

(C) NONPOWER APPLICATIONS.–Contracts for enriched uranium and uranium services in existence as of the date of the enactment of this title for research and development or other nonpower applications shall remain with the Department. At the request of the Department, the Corporation, in consultation with

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[409] Added by Public Law 102-486 (106 Stat. 2934).

[410] **Section will be repealed on privatization date.** Public Law 104-134 (110 Stat. 1321-349), April 26, 1996, Title III, Chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

[411] Public Law 102-572 (106 Stat. 4516), Oct. 29, 1992 , Title IX, section902(b)(1), struck "United States Claims Court" and inserted "Court of Federal Claims."

the Department, may enter into such contracts it determines to be appropriate.[412]

Sec. 1402. Pricing.

42 USC 2297c-1.

(a) SERVICES PROVIDED TO COMMERCIAL CUSTOMERS. – The Corporation shall establish prices for its products, materials, and services provided to customers other than the Department on a basis that will allow it to attain the normal business objectives of a profitmaking corporation.

(b) SERVICES PROVIDED TO DOE.–The Corporation shall charge prices to the Department for uranium enrichment services provided under section 1303(9) on a basis that will allow it to recover its costs, on a yearly basis, for providing products, materials, and services, and provide for a reasonable profit.

Sec. 1403. Leasing Of Gaseous Diffusion Facilities Of Department.

42 USC 2297c-2.

(a) IN GENERAL.–The Corporation shall lease the Paducah Gaseous Diffusion Plant in Paducah, Kentucky, the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, and related property of the Department, for a period of 6 years from the transition date. Thereafter, the Corporation shall have the exclusive option to lease such facilities and related property for additional periods.

(b) TERMS OF LEASE.–The Corporation and the Department shall set mutually agreeable terms for a lease under subsection (a), including specifying annual payments to the Department by the Corporation to be made. The amount of annual payments shall be equal to the cost incurred by the Department in administering the lease and providing services related to the lease to the Corporation (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under subsection (d)).

(c) EXCLUSION OF FACILITIES FOR PRODUCTION OF HIGHLY ENRICHED URANIUM.–Subsection (a) shall not apply to Department facilities necessary for the production of highly enriched uranium. The Secretary may grant to the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

(d) DOE RESPONSIBILITY FOR PREEXISTING CONDITIONS.– The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before the transition date, in connection with property of the Department leased under subsection (a), shall remain the sole responsibility of the Department.

(e) ENVIRONMENTAL AUDIT.–The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall conduct a comprehensive environmental audit identifying environmental conditions that will remain the responsibility of the Department pursuant

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[412]The bracketed words "United States Court of Federal Claims" were inserted in subsection (B)(2)(A) of this section on the authority of section 902(b)(1) of Act Oct. 29, 1992, Public Law 102-572, which appears as 28 USCS section 171 note, and which provides that reference to the United States Claims Court in any Federal law or document shall be deemed to refer to the United States Court of Federal Claims.

Repeal of section as of privatization date. Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, subchapter A, section 3116(a), provides: "Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date." (The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

to subsection (d) after the transition date. Such audit shall be completed no later than the transition date.

(f) TREATMENT UNDER PRICE-ANDERSON PROVISIONS. – Any lease executed between the Secretary and the Corporation under this section shall be deemed to be a contract for purposes of section 170d.

(g) WAIVER OF EIS REQUIREMENT.–The execution of the lease by the Corporation and the Department shall not be considered a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969 (42 USC 4332).

Sec. 1404. Capital Structure Of Corporation.

42 USC 2297c-3.

(a) CAPITAL STOCK.–

(1) ISSUANCE TO SECRETARY OF THE TREASURY.– The Corporation shall issue capital stock representing an equity investment equal to the greater of–

(A) $3,000,000,000; or

(B) the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1991, modified to reflect continued depreciation and other usual changes that occur up to the transfer date.

The Secretary of the Treasury shall hold such stock for the United States, except that all rights and duties pertaining to management of the Corporation shall remain vested in the Board.

(2) RESTRICTION ON TRANSFERS OF STOCK BY UNITED STATES.–The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States, except to carry out the privatization of the Corporation under section 1502.

(3) ANNUAL ASSESSMENT.–The Secretary of the Treasury shall annually assess the value of the stock held by the Secretary under paragraph (1) and submit to the Congress a report setting forth such value. The annual assessment of the Secretary shall be subject to review by an independent auditor.

(b) PAYMENT OF DIVIDENDS.–The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as is provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. Until privatization occurs under section 1502, the Corporation shall pay as dividends to the Treasury of the United States all net revenues remaining at the end of each fiscal year not required for operating expenses or for deposit into the Working Capital Account established in section 1316.

(c) PROHIBITION ON ADDITIONAL FEDERAL ASSISTANCE. – Except as otherwise specifically provided in this title, the Corporation shall receive no appropriations, loans, or other financial assistance from the Federal Government.

(d) SOLE RECOVERY OF UNRECOVERED COSTS.–Receipt by the United States of the proceeds from the sale of stock issued by the Corporation under subsection (a)(1), and the dividends paid under subsection (b), shall constitute the sole recovery by the United States of previously unrecovered costs (including depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants) that have been incurred by the United States for uranium enrichment activities prior to the transition date.

Sec. 1405. Patents And Inventions.

42 USC 2297c-4.

The Corporation may at any time apply to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when the patent has not been declared to be affected with the public interest under section 153a. and when use of the patent is within the Corporation's authority. An application shall constitute an application under section 153c. subject to section 153c., d., e., f., g., and h.

Sec. 1406. Liabilities.

42 USC 2297c-5.

(a) LIABILITIES BASED ON OPERATIONS BEFORE TRANSITION.–Except as otherwise provided in this title, all liabilities attributable to operation of the uranium enrichment enterprise before the transition date shall remain direct liabilities of the Department.

(b) JUDGMENTS BASED ON OPERATIONS BEFORE TRANSITION.– Any judgment entered against the Corporation imposing liability arising out of the operation of the uranium enrichment enterprise before the transition date shall be considered a judgment against and shall be payable solely by the Department.

(c) REPRESENTATION.–With regard to any claim seeking to impose liability under subsection (a) or (b), the United States shall be represented by the Department of Justice.

(d) JUDGMENTS BASED ON OPERATIONS AFTER TRANSITION.–Any judgment entered against the Corporation arising from operations of the Corporation on or after the transition date shall be payable solely by the Corporation from its own funds. The Corporation shall not be considered a Federal agency for purposes of chapter 171 of title 28, United States Code.

Sec. 1407. Transfer Of Uranium Inventories.

42 USC 2297c-6.

The Secretary shall transfer to the Corporation without charge all raw and low-enriched uranium inventories of the Department necessary for the fulfillment of contracts transferred under section 1401(b).

Sec. 1408. Purchase Of Highly Enriched Uranium From Former Soviet Union.

42 USC 2297c-7.

(a) IN GENERAL.–The Corporation is authorized to negotiate the purchase of all highly enriched uranium made available by any State of the former Soviet Union under a government-to-government agreement or shall assume the obligations of the Department under any contractual agreement that has been reached with any such State or any private entity before the transition date. The Corporation may only purchase this material so long as the quality of the material can be made suitable for use in commercial reactors.

(b) ASSESSMENT OF POTENTIAL USE.–The Corporation shall prepare an assessment of the potential use of highly enriched uranium in the business operations of the Corporation.

(c) PLAN FOR BLENDING AND CONVERSION.–In the event that the agreement under subsection (a) provides for the Corporation to provide for the blending and conversion the assessment shall include a plan for such blending and conversion. The plan shall determine the least-cost approach to providing blending and conversion services, compatible with environmental, safety, security, and nonproliferation requirements. The plan shall include a competitive process that the Corporation shall use for selecting a provider of such services, including the public solicitation of proposals from the private sector to allow a determination of the least-cost approach.

(d) MINIMIZATION OF IMPACT ON DOMESTIC INDUSTRIES.–The Corporation shall seek to minimize the impact on domestic industries (including uranium mining) of the sale of low-enriched uranium derived from highly enriched uranium.

Chapter 25–Privatization Of The Corporation

Sec. 1501. Strategic Plan For Privatization.

42 USC 2297d.

(a)[413] [414] IN GENERAL.–Within 2 years after the transition date, the Corporation shall prepare a strategic plan for transferring ownership of the Corporation to private investors. The Corporation shall revise the plan as needed.

(b) CONSIDERATION OF ALTERNATIVE MEANS OF TRANSFERRING OWNERSHIP.–The plan shall include consideration of alternative means for transferring ownership of the Corporation to private investors, including public stock offering, private placement, or merger or acquisition. The plan may call for the phased transfer of ownership or for complete transfer at a single point of time. If the plan calls for phased transfer of ownership, then–

(1) privatization shall be deemed to occur when 100 percent of ownership has been transferred to private investors;

(2) prior to privatization, such stock shall be nonvoting stock; and

(3) at the time of privatization, such stock shall convert to voting stock.

(c) EVALUATION AND RECOMMENDATION.–The plan shall evaluate the relative merits of the alternatives considered and the estimated return on the Government's investment in the Corporation achievable through each alternative. The plan shall include the Corporation's recommendation on its preferred means of privatization.

(d) TRANSMITTAL.–The Corporation shall transmit copies of the strategic plan for privatization to the President and Congress upon completion.

Sec. 1502. Privatization.

42 USC 2297d-1.

(a) IMPLEMENTATION.–Subsequent to transmitting a plan for privatization pursuant to section 1501, and subject to subsections (b) and (c), the Corporation may implement the privatization plan if the Corporation determines, in consultation with appropriate agencies of the United States, that privatization will–

(1) result in a return to the United States at least equal to the net present value of the Corporation;

(2) not result in the Corporation being owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;

(3) not be inimical to the health and safety of the public or the common defense and security; and

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[413] Added by Public Law 102-486 (106 Stat. 2937)

[414] **Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

(4) provide reasonable assurance that adequate enrichment capacity will remain available to meet the domestic electric utility industry.

(b) REQUIREMENT OF PRESIDENTIAL APPROVAL.–The Corporation may not implement the privatization plan without the approval of the President.

(c) NOTIFICATION OF CONGRESS AND GAO EVALUATION.–The Corporation shall notify the Congress of its intent to implement the privatization plan. Within 30 days of notification, the Comptroller General shall submit a report to Congress evaluating the extent to which–

(1) the privatization plan would result in any ongoing obligation or undue cost to the Federal Government; and

(2) the revenues gained by the Federal Government under the privatization plan would represent at least the net present value of the Corporation.

(d) PERIOD FOR CONGRESSIONAL REVIEW.–The Corporation may not implement the privatization plan less than 60 days after notification of the Congress.

(e) DEPOSIT OF PROCEEDS.–Proceeds from the sale of capital stock of the Corporation under this section shall be deposited in the general fund of the Treasury.

Chapter 26–Avlis And Alternative Technologies For Uranium Enrichment

Sec. 1601. Assessment By United States Enrichment Corporation.

42 USC 2297e.

(a)[415] [416] IN GENERAL.–The Corporation shall prepare an assessment of the economic viability of proceeding with the commercialization of AVLIS and alternative technologies for uranium enrichment in accordance with this chapter. The assessment shall include–

(1) an evaluation of market conditions together with a marketing strategy;

(2) an analysis of the economic viability of competing enrichment technologies;

(3) an identification of predeployment and capital requirements for the commercialization of AVLIS and alternative technologies for uranium enrichment;

(4) an estimate of potential earnings from the licensing of AVLIS and alternative technologies for uranium enrichment to a private government sponsored corporation;

(5) an analysis of outstanding and potential patent and related claims with respect to AVLIS and alternative technologies for uranium enrichment, and a plan for resolving such claims; and

(6) a contingency plan for providing enriched uranium and related services in the event that deployment of AVLIS and alternative

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[415]Added by Public Law 102-486 (106 Stat. 2939).

[416]**Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

technologies for uranium enrichment is determined not to be economically viable.

(b) DETERMINATION BY CORPORATION TO PROCEED WITH COMMERCIALIZATION OF AVLIS OR ALTERNATIVE TECHNOLOGIES FOR URANIUM ENRICHMENT.–The succeeding sections of this chapter shall apply only to the extent the Corporation determines in its business judgment, on the basis of the assessment prepared under subsection (a), to proceed with the commercialization of AVLIS or alternative technologies for uranium enrichment.

Sec. 1602. Transfer Of Rights And Property To United States Enrichment Corporation.

42 USC 2297e-1.

(a) EXCLUSIVE RIGHT TO COMMERCIALIZE.–The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Department.

(b) TRANSFER OF RELATED PROPERTY TO CORPORATION.–

(1) IN GENERAL.–TO the extent requested by the Corporation, the President shall transfer without charge to the Corporation all of the Department's right, title, or interest in and to property owned by the Department, or by the United States but under control or custody of the Department, that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including–

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) EXCEPTION.–Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Department shall not transfer under paragraph (1)(B).

(3) EXPIRATION OF TRANSFER AUTHORITY.–The President's authority to transfer property under this subsection shall expire upon privatization under section 1502.

(c) LIABILITY FOR PATENT AND RELATED CLAIMS.–With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b), the Corporation shall have sole liability for any payments made or awards under section 157b.(3), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) shall provide for a reduction of royalty payments to the Department to offset any payments, awards, settlements, or judgments under this subsection.

Sec. 1603. Predeployment Activities By United States Enrichment Corporation.

42 USC 2297e-2.

The Corporation may begin activities necessary to prepare AVLIS or alternative technologies for uranium enrichment for commercialization including–

(1) completion of preapplication activities with the Nuclear Regulatory Commission;

(2) preparation of a transition plan to move AVLIS or alternative technologies for uranium enrichment from the laboratory to the marketplace;

(3) confirmation of technical performance;

(4) validation of economic projections;
(5) completion of feasibility and risk studies;
(6) initiation of preliminary plant design and engineering; and
(7) site selection, site characterization, and environmental documentation activities on the basis of site evaluations and recommendations prepared for the Department by the Argonne National Laboratory.

Sec. 1604. United States Enrichment Corporation Sponsorship Of Private For-Profit Corporation To Construct Avlis And Alternative Technologies For Uranium Enrichment.

42 USC 2297e-3.

(a) ESTABLISHMENT.–

(1) IN GENERAL.–If the Corporation determines to proceed with the commercialization of AVLIS or alternative technologies for uranium enrichment under this chapter, the Corporation may provide for the establishment of a private for-profit corporation, which shall have as its initial purpose the construction of a uranium enrichment facility using AVLIS technology or alternative technologies for uranium enrichment.

(2) PROCESS OF ORGANIZATION.–For purposes of the establishment of the private corporation under paragraph (1), the Corporation shall appoint not less than 3 persons to be incorporators. The incorporators so appointed shall each sign the articles of incorporation and shall serve as the initial board of directors until the members of the 1st regular board of directors shall have been appointed and elected. Such incorporators shall take whatever actions are necessary or appropriate to establish the private corporation, including the filing of articles of incorporation in such jurisdiction as the incorporators determine to be appropriate. The incorporators shall also develop a plan for the issuance by the private corporation of voting common stock to the public, which plan shall be subject to the approval of the Secretary of the Treasury.

(b) LEGAL STATUS OF PRIVATE CORPORATION.–

(1) NOT FEDERAL AGENCY.–The private corporation established under subsection (a) shall not be an agency, instrumentality, or establishment of the United States Government and shall not be a Government corporation or Government controlled corporation.

(2) NO RECOURSE AGAINST UNITED STATES.–Obligations of the private corporation established under subsection (a) shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) NO CLAIMS COURT JURISDICTION.–NO action under section 1491 of title 28, United States Code, shall be allowable against the United States based on the actions of the private corporation established under subsection (a).

(c) TRANSACTIONS BETWEEN UNITED STATES ENRICHMENT CORPORATION AND PRIVATE CORPORATION;–

(1) GRANTS FROM USEC.–The Corporation may make grants to the private corporation established under subsection (a) from amounts available in the AVLIS Commercialization Fund. Such grants shall be used by the private corporation to carry out any remaining predeployment activity assigned to the private corporation by the Corporation. Such grants may not be used for the costs of constructing an AVLIS, or alternative technologies for uranium enrichment,

production facility or engaging in directly related preconstruction activities (other than such assigned predeployment activities). The aggregate amount of such grants shall not exceed $364,000,000.

(2) LICENSING AGREEMENT.–The Corporation shall license to the private corporation established under subsection (a) the rights, titles, and interests provided to the Corporation under section 1602. The licensing agreement shall require the private corporation to make periodic payments to the Corporation in an amount that is not less than the aggregate amounts paid by the Corporation during the period involved under subsections (a) and (c) of section 1602.

(3) PURCHASE AGREEMENT.–The Corporation may enter into a commitment to purchase all enriched uranium produced at an AVLIS, or alternative technologies for uranium enrichment, facility of the private corporation established under subsection (a) at a price negotiated by the 2 corporations that–

(A) provides the private corporation with a reasonable return on its investment; and

(B) is less costly than enriched uranium available from other sources.

(4) ADDITIONAL ASSISTANCE.–The Corporation may provide to the private corporation established under subsection (a), on a reimbursable basis, such additional personnel, services, and equipment as the 2 corporations may determine to be appropriate.

Sec. 1605. Avlis Commercialization Fund Within United States Enrichment Corporation.

42 USC 2297e-4.

(a) ESTABLISHMENT.–The Corporation may establish within the Corporation an AVLIS Commercialization Fund, which shall consist of not more than $364,000,000 paid into the Fund by the Corporation from amounts provided in appropriation Acts for such purposes and from the retained earnings of the Corporation.

(b) EXPENDITURES FROM FUND.–Amounts in the AVLIS Commercialization Fund shall be available for–

(1) expenses of the Corporation in preparing the assessment under section 1601;

(2) expenses of predeployment activities under section 1603; and

(3) grants to the private corporation under section 1604.

(c) LIMITATIONS.–

(1) EXCLUSIVE SOURCE OF FUNDS.–The Corporation may not incur any obligation, or expend any amount, with respect to AVLIS or alternative technologies for uranium enrichment, except from amounts available in the AVLIS Commercialization Fund.

(2) UNAVAILABLE FOR CONSTRUCTION COSTS.–No amount may be used from the AVLIS Commercialization Fund for the costs of constructing an AVLIS, or alternative technologies for uranium enrichment, production facility or engaging in directly related preconstruction activities (other than activities specified in subsection (b)).

(d) AUTHORIZATION OF APPROPRIATIONS.–There is authorized to be appropriated $364,000,000 from the Uranium Enrichment Special Fund for purposes of this section.

(e) COST REPORT.–On the basis of the assessment under section 1601(a)(3), the Corporation shall submit to the Congress a report on the capital requirements for commercialization of AVLIS.

Sec. 1606. Department Research And Development Assistance.

42 USC 2297e-5. If requested by the Corporation, the Secretary shall provide, on a reimbursable basis, research and development of AVLIS and alternative technologies for uranium enrichment.

Sec. 1607. Site Selection.

42 USC 2297e-6. This chapter shall not prejudice consideration of the site of an existing uranium enrichment facility as a candidate site for future expansion or replacement of uranium enrichment capacity through AVLIS or alternative technologies for uranium enrichment. Selection of a site for the AVLIS, or alternative technologies for uranium enrichment, facility shall be made on a competitive basis, taking into consideration economic performance, environmental compatibility, and use of any existing uranium enrichment facilities.

Sec. 1608. Exclusion From Price-Anderson Coverage.

42 USC 2297e-7. Section 170 shall not apply to any license under section 53, 63, or 103 for a uranium enrichment facility constructed after the date of the enactment of this title.

Chapter 27–Licensing And Regulation Of Uranium Enrichment Facilities

Sec. 1701. Gaseous Diffusion Facilities.

42 USC 2297f. (a)[417] [418] ISSUANCE OF STANDARDS.–Within 2 years after the date of the enactment of this title [enacted October 24, 1992], the Nuclear Regulatory Commission shall establish by regulation such standards as are necessary to govern the gaseous diffusion uranium enrichment facilities of the Department in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Regulations promulgated pursuant to this subsection shall, among other things, require that adequate safeguards (within the meaning of section 147) are in place.

(b) ANNUAL REPORT.–

(1) IN GENERAL.–Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear Regulatory Commission in consultation with the Department and the Environmental Protection Agency, shall report to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion uranium enrichment facilities of the Department.

(2) REQUIRED DETERMINATION.–Such report shall include a determination regarding whether the gaseous diffusion uranium enrichment facilities of the Department are in compliance with the standards established under subsection (a) and all applicable laws.

(c) CERTIFICATION PROCESS.–

(1) ESTABLISHMENT.–The Nuclear Regulatory Commission shall establish a certification process to ensure that the Corporation complies with standards established under subsection (a).

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[417]Added by Public Law 102-486 (106 Stat. 2951), October 24, 1992, as amended by Public 104-134 , (110 Stat. 1321–349), April 26, 1996, Title III, Chapter 1, subchapter A, section 3116(b)(3); Public Law 105–362 (112 Stat. 3292), November 10, 1998, Title II, section 1202.

[418]**Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

(2) PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.–The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.[419]

(3) TREATMENT OF CERTIFICATE OF COMPLIANCE.–The requirement for a certificate of compliance under paragraph (1) shall be in lieu of any requirement for a license for any gaseous diffusion facility of the Department leased by the Corporation.

(4) NRC REVIEW.–

(A) IN GENERAL.–The Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review the operations of the Corporation with respect to any gaseous diffusion uranium enrichment facilities of the Department leased by the Corporation to ensure that public health and safety are adequately protected.

(B) ACCESS TO FACILITIES AND INFORMATION.– The Corporation and the Department shall cooperate fully with the Nuclear Regulatory Commission and the Environmental Protection Agency and shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with the ready access to the facilities, personnel, and information the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection. A contractor operating a Corporation facility for the Corporation shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with ready access to the facilities, personnel, and information of the contractor as the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection.

(C) LIMITATION.–The Nuclear Regulatory Commission shall limit its finding under subsection (b)(2) to a determination of whether the facilities are in compliance with the standards established under subsection (a).

(d) REQUIREMENT FOR OPERATION.–The gaseous diffusion uranium enrichment facilities of the Department may not be operated by the Corporation unless the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, makes a determination of compliance under subsection (b) or approves a plan prepared by the Department for achieving compliance required under subsection (b).

Sec. 1702. Licensing Of Other Technologies.

42 USC 2297f-1.

(a) IN GENERAL.–Corporation facilities using alternative technologies for uranium enrichment, including than AVLIS, shall be licensed under sections 53, 63, and 193.[420]

(b) COSTS FOR DECONTAMINATION AND DECOMMISSIONING.–The Corporation shall provide for the costs of

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[419]As amended April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Nov. 10, 1998, Title III, Chapter 1, subchapter A, section 3116(b)(3); Public Law 105-362 (112 Stat. 3292), Title XII, section 1202.

[420]Public Law 104-134 (110 Stat. 1321-349), April 26, 1996, Title III, Chapter 1, subchapter A, section 3116(b)(4).

decontamination and decommissioning of any Corporation facilities described in subsection (a) in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.

Sec. 1703. Regulation Of Restricted Data.

42 USC 2297f-2.

The Corporation shall be subject to this Act with respect to the use of, or access to, Restricted Data to the same extent as any private corporation.

Chapter 28–Decontamination And Decommissioning

Sec. 1801. Uranium Enrichment Decontamination And Decommissioning Fund.

42 USC 2297g.

(a)[421] [422] ESTABLISHMENT.–There is established in the Treasury of the United States an account to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this chapter as the "Fund"). The Fund, and any amounts deposited in it, including any interest earned thereon, shall be available to the Secretary subject to appropriations for the exclusive purpose of carrying out this chapter.

(b) ADMINISTRATION.–

(1) IN GENERAL.–The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) INVESTMENTS.–The Secretary of the Treasury shall invest amounts contained within the Fund in obligations of the United State–

(A) having maturities determined by the Secretary of the Treasury to be appropriate for what the Department determines to be the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to these obligations.

Sec. 1802. Deposits.

42 USC 2297g-1.

(a) AMOUNT.–The Fund shall consist of deposits in the amount of $488,333,333[423] per fiscal year (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) as provided in this section.

(b) SOURCE.–Deposits described in subsection (a) shall be from the following sources:

(1) Sums collected pursuant to subsection (c).

(2) Appropriations made pursuant to subsection (d).

(c) SPECIAL ASSESSMENT.–The Secretary shall collect a special assessment from domestic utilities. The total amount collected for a fiscal year shall not exceed $160,000,000 (to be annually adjusted for inflation

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[421] Added by Public Law 102-486 (106 Stat. 2953)

[422] **Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

[423] Public Law 105-388 (112 Stat. 3485), Nov. 13, 1998 struck "$488,333,333".

using the Consumer Price Index for all-urban consumers published by the Department of Labor). The amount collected from each utility pursuant to this subsection on for a fiscal year shall be in the same ratio to the amount required under subsection (a) to be deposited for such fiscal year as the total amount of separative work units such utility has purchased from the Department of Energy for the purpose of commercial electricity generation, before the date of the enactment of this title, bears to the total amount of separative work units purchased from the Department of Energy for all purposes (including units purchased or produced for defense purposes) before the date of the enactment of this title. For purposes of this subsection–

(1) a utility shall be considered to have purchased a separative work unit from the Department if such separative work unit was produced by the Department, but purchased by the utility from another source; and

(2) a utility shall not be considered to have purchased a separative work unit from the Department if such separative work unit was purchased by the utility, but sold to another source.

(d) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated to the Fund, for the period encompassing 15 years after the date of the enactment of this title, such sums as are necessary to ensure that the amount required under subsection (a) is deposited for each fiscal year.

(e) TERMINATION OF ASSESSMENTS.–The collection of amounts under subsection (c) shall cease after the earlier of–

(1) 16 years after the date of the enactment of this title; or

(2) the collection of $2,260,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) under such subsection.

(f) CONTINUATION OF DEPOSITS.–Except as provided in subsection (e), deposits shall continue to be made into the Fund under subsection (d) for the period specified in such subsection.

(g) TREATMENT OF ASSESSMENT.–Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.

Sec. 1803. Department Facilities.

42 USC 2297g-2.

(a) STUDY BY NATIONAL ACADEMY OF SCIENCES.–The National Academy of Sciences shall conduct a study and provide recommendations for reducing costs associated with decontamination and decommissioning, and shall report its findings to the Congress within 3 years after the date of the enactment of this title. Such report shall include a determination of the decontamination and decommissioning required for each facility shall identify alternative methods, using different technologies, shall include sit-specific surveys of the actual contamination, and shall provide estimated costs of those activities.

(b) PAYMENT OF DECONTAMINATION AND DECOMMISSIONING COSTS.–The costs of all decontamination and decommissioning activities of the Department shall be paid from the Fund until such time as the Secretary certifies and the Congress concurs, by law, that such activities are complete.

(c) PAYMENT OF REMEDIAL ACTION COSTS.–The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the

Department shall be responsible for the cost of remedial action. No provision of this title may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.

Sec. 1804. Employee Provisions.

42 USC 2297g-3.

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of uranium enrichment facilities of the Department shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 USC 276a *et seq.*). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176, 64 Stat. 1267) and the Act of June 13, 1934 (40 USC 276c). This section may not be construed to require the contracting out of activities associated with the decontamination or decommissioning of uranium enrichment facilities.

Sec. 1805. Reports To Congress.

42 USC 2297g-4.

Within 3 years after the date of the enactment of this title, and at least once every 3 years thereafter, the Secretary shall report to the Congress on progress under this chapter. The 5th report submitted under this section shall contain recommendations of the Secretary for the reauthorization of the program and Fund under this title.

Title III–Rescissions And Offsets

Chapter 1–Energy And Water Development Uranium Enrichment Capacity

Subchapter A–United States Enrichment Corporation Privatization

Sec. 3101. Short Title.

42 USC 2011 note.

This subchapter may be cited as the "USEC Privatization Act."[424] [425]

Sec. 3102. Definitions.

42 USC 2297h.

Except as provided in section 3112A, for purposes of this subchapter:[426]

(1) The term "AVLIS" means atomic vapor laser isotope separation technology.

(2) The term "Corporation" means the United States Enrichment Corporation and, unless the context otherwise requires, includes the private corporation and any successor thereto following privatization.

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[424]This section was enacted as part of the USEC Privatization Act (Public Law 104-134 (110 Stat. 1321-335), Title III, Chapter 1, subchapter A) and not as part of the Atomic Energy Act of 1954, which generally comprises this Chapter.

[425]**Section will be repealed on privatization date.** Act April 26, 1996, Public Law 104-134 (110 Stat. 1321-349), Title III, Chapter 1, subchapter A, section 3116(a), provides:

Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 USC 2297–2297e-7) are repealed as of the privatization date.

(The "privatization date" is defined at 42 USCS section 2297h(9) as the date on which 100 percent of the ownership of the United States Enrichment Corporation has been transferred to private investors.)

[426] Public Law 110-329 (122 Stat. 3647) struck out "For purposes" and inserted "Except as provided in section 3112A".

(3) The term "gaseous diffusion plants" means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

(4) The term "highly enriched uranium" means uranium enriched to 20 percent or more of the uranium-235 isotope.

(5) The term "low-enriched uranium" means uranium enriched to less than 20 percent of the uranium-235 isotope, including that which is derived from highly enriched uranium.

(6) The term "low-level radioactive waste" has the meaning given such term in section 2(9) of the Low-Level Radioactive Waste Policy Act (42 USC 2021b(9)).

(7) The term "private corporation" means the corporation established under section 3105.

(8) The term "privatization" means the transfer of ownership of the Corporation to private investors.

(9) The term "privatization date" means the date on which 100 percent of the ownership of the Corporation has been transferred to private investors.

(10) The term "public offering" means an underwritten offering to the public of the common stock of the private corporation pursuant to section 3104.

(11) The "Russian HEU Agreement" means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

(12) The term "Secretary" means the Secretary of Energy.

(13) The "Suspension Agreement" means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.

(14) The term "uranium enrichment" means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

Sec. 3103. Sale Of The Corporation.

42 USC 2297h-1.

(a) Authorization.–The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer the interest of the United States in the United States Enrichment Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of the operation of the Department of Energy's gaseous diffusion plants, provides for the protection of the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment and conversion services, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(b) Proceeds.–Proceeds from the sale of the United States' interest in the Corporation shall be deposited in the general fund of the Treasury.

Sec. 3104. Method Of Sale.

42 USC 2297h-2.

(a) Authorization.–The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer ownership of the assets and obligations of the Corporation to the private corporation established under section 3105 (which may be consummated through a merger or consolidation effected in accordance with, and having the effects provided under, the law of the State of incorporation of the private corporation, as if the Corporation were incorporated thereunder).

(b) Board Determination.–The Board, with the approval of the Secretary of the Treasury, shall select the method of transfer and establish terms and conditions for the transfer that will provide the maximum proceeds to the Treasury of the United States and will provide for the long-term viability of the private corporation, the continued operation of the gaseous diffusion plants, and the public interest in maintaining reliable and economical domestic uranium mining and enrichment industries.

(c) Adequate Proceeds.–The Secretary of the Treasury shall not allow the privatization of the Corporation unless before the sale date the Secretary of the Treasury determines that the method of transfer will provide the maximum proceeds to the Treasury consistent with the principles set forth in section 3103(a).

(d) Application of Securities Laws.–Any offering or sale of securities by the private corporation shall be subject to the Securities Act of 1933 (15 USC 77a *et seq.*), the Securities Exchange Act of 1934 (15 USC 78a *et seq.*), and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.

(e) Expenses.–Expenses of privatization shall be paid from Corporation revenue accounts in the United States Treasury.

Sec. 3105. Establishment Of Private Corporation.

42 USC 2297h-3.

(a) Incorporation.–

(1) The directors of the Corporation shall establish a private for-profit corporation under the laws of a State for the purpose of receiving the assets and obligations of the Corporation at privatization and continuing the business operations of the Corporation following privatization.

(2) The directors of the Corporation may serve as incorporators of the private corporation and shall take all steps necessary to establish the private corporation, including the filing of articles of incorporation consistent with the provisions of this subchapter.

(3) Employees and officers of the Corporation (including members of the Board of Directors) acting in accordance with this section on behalf of the private corporation shall be deemed to be acting in their official capacities as employees or officers of the Corporation for purposes of section 205 of title 18, United States Code.

(b) Status of the Private Corporation.–

(1) The private corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation.

(2) Except as otherwise provided by this subchapter, financial obligations of the private corporation shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) No action under section 1491 of title 28, United States Code, shall be allowable against the United States based on actions of the private corporation.

(c) Application of Post-Government Employment Restrictions.–

Beginning on the privatization date, the restrictions stated in section 207(a), (b), (c), and (d) of title 18, United States Code, shall not apply to the acts of an individual done in carrying out official duties as a director, officer, or employee of the private corporation, if the individual was an officer or employee of the Corporation (including a director) continuously during the 45 days prior to the privatization date.

(d) Dissolution.–In the event that the privatization does not occur, the Corporation will provide for the dissolution of the private corporation

within one year of the private corporation's incorporation unless the Secretary of the Treasury or his delegate, upon the Corporation's request, agrees to delay any such dissolution for an additional year.

Sec. 3106. Transfers To The Private Corporation.

42 USC 2297h-4.

Concurrent with privatization, the Corporation shall transfer to the private corporation–

(1) the lease of the gaseous diffusion plants in accordance with section 3107,

(2) all personal property and inventories of the Corporation,

(3) all contracts, agreements, and leases under section 3108(a),

(4) the Corporation's right to purchase power from the Secretary under section 3108(b),

(5) such funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution as approved by the Secretary of the Treasury, and

Records.

(6) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or characteristics, made or received by the Corporation.

Sec. 3107. Leasing Of Gaseous Diffusion Facilities.

42 USC 2297h-5.

(a) Transfer of Lease.–Concurrent with privatization, the Corporation shall transfer to the private corporation the lease of the gaseous diffusion plants and related property for the remainder of the term of such lease in accordance with the terms of such lease.

(b) Renewal.–The private corporation shall have the exclusive option to lease the gaseous diffusion plants and related property for additional periods following the expiration of the initial term of the lease.

(c) Exclusion of Facilities for Production of Highly Enriched Uranium.–The Secretary shall not lease to the private corporation any facilities necessary for the production of highly enriched uranium but may, subject to the requirements of the Atomic Energy Act of 1954 (42 USC 2011 *et seq.*), grant the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

(d) DOE Responsibility for Preexisting Conditions.–The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before July 1, 1993, at the gaseous diffusion plants shall remain the sole responsibility of the Secretary.

(e) Environmental Audit.–For purposes of subsection (d), the conditions existing before July 1, 1993, at the gaseous diffusion plants shall be determined from the environmental audit conducted pursuant to section 1403(e) of the Atomic Energy Act of 1954 (42 USC 2297c-2(e)).

(f) Treatment Under Price-Anderson Provisions.–Any lease executed between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, under this section shall be deemed to be a contract for purposes of section 170d. of the Atomic Energy Act of 1954 (42 USC 2210(d)).

(g) Waiver of EIS Requirement.–The execution or transfer of the lease between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, shall not be considered to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969 (42 USC 4332).

(h) Maintenance of Security

(1) In General–With respect to the Paducah Gaseous Diffusion Plant, Kentucky, and the Portsmouth Gaseous Diffusion Plant, Ohio, the guidelines relating to the authority of the Department of Energy's

contractors (including any Federal agency, or private entity operating a gaseous diffusion plant under a contract or lease with the Department of Energy) and any subcontractor (at any tier) to carry firearms and make arrests in providing security at Federal installations, issued under section 161k. of the Atomic Energy Act of 1954 (42 USC 2201k.) shall require, at a minimum, the presence of all security police officers[427] carrying sidearms at all times to ensure maintenance of security at the gaseous diffusion plants (whether a gaseous diffusion plant is operated directly by a Federal agency or by a private entity under a contract or lease with a Federal agency).

(2) Funding[428]

(A) The costs of arming and providing arrest authority to the security policy officers required under paragraph (1) shall be paid as follows:

(i) the Department of Energy (the "Department") shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are: (I) employees of the Department or the contractor or subcontractors of the Department; or (II) employees of the private entity leasing the gaseous diffusion plant who perform work on behalf of the Department (including employees of a contractor or subcontractor of the private entity); and

(ii) the private entity leasing the gaseous diffusion plant shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are employees of the private entity (including employees of a contractor or subcontractor) other than those employees who perform work for the Department.

(B) Neither the private entity leasing the gaseous diffusion plant nor the Department shall reduce its payments under any contract or lease or take other action to offset its share of the costs referred to in subparagraph (A), and the Department shall not reimburse the private entity for the entity's share of these costs.

(C) Nothing in this subsection shall alter the Department's responsibilities to pay the safety, safeguards and security costs associated with the Department's highly enriched uranium activities.[429]

Sec. 3108. Transfer Of Contracts.

42 USC 2297h-6.

(a) Transfer of Contracts.–Concurrent with privatization, the Corporation shall transfer to the private corporation all contracts, agreements, and leases, including all uranium enrichment contracts, that were–

(1) transferred by the Secretary to the Corporation pursuant to section 1401(b) of the Atomic Energy Act of 1954 (42 USC 2297c(b)), or

(2) entered into by the Corporation before the privatization date.

(b) Nontransferable Power Contracts.–The Corporation shall transfer to the private corporation the right to purchase power from the Secretary under the power purchase contracts for the gaseous diffusion plants

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[427]Public Law 105-245 (112 Stat. 1853), Title III, section 310, Oct. 7, 1998.

[428]Public Law 105-245 (112 Stat. 1853), Oct. 7, 1998, Title III, section 310: added new paragraph (2).

[429]Public Law 104-134 (110 Stat. 1321-338), Apr. 26, 1996, Title III, Chapter 1, subchapter A, section 3107; Public Law 105-62 (111 Stat. 1341), Oct. 13, 1997, Title V, section 511; Public Law 105-245 (112 Stat. 1853), Oct. 7, 1998, Title III, section 310.

executed by the Secretary before July 1, 1993. The Secretary shall continue to receive power for the gaseous diffusion plants under such contracts and shall continue to resell such power to the private corporation at cost during the term of such contracts.

(c) Effect of Transfer.–(1) Notwithstanding subsection (a), the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred under subsection (a) for the performance of its obligations under such contracts, agreements, or leases during their terms. Performance of such obligations by the private corporation shall be considered performance by the United States.

(2) If a contract, agreement, or lease transferred under subsection (a) is terminated, extended, or materially amended after the privatization date–

(A) the private corporation shall be responsible for any obligation arising under such contract, agreement, or lease after any extension or material amendment, and

(B) the United States shall be responsible for any obligation arising under the contract, agreement, or lease before the termination, extension, or material amendment.

(3) The private corporation shall reimburse the United States for any amount paid by the United States under a settlement agreement entered into with the consent of the private corporation or under a judgment, if the settlement or judgment–

(A) arises out of an obligation under a contract, agreement, or lease transferred under subsection (a), and

(B) arises out of actions of the private corporation between the privatization date and the date of a termination, extension, or material amendment of such contract, agreement, or lease.

(d) Pricing.–The Corporation may establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profit making corporation.

Sec. 3109. Liabilities.

42 USC 2297h-7.

(a) Liability of the United States.–

(1) Except as otherwise provided in this subchapter, all liabilities arising out of the operation of the uranium enrichment enterprise before July 1, 1993, shall remain the direct liabilities of the Secretary.

(2) Except as provided in subsection (a)(3) or otherwise provided in a memorandum of agreement entered into by the Corporation and the Office of Management and Budget prior to the privatization date, all liabilities arising out of the operation of the Corporation between July 1, 1993, and the privatization date shall remain the direct liabilities of the United States.

(3) All liabilities arising out of the disposal of depleted uranium generated by the Corporation between July 1, 1993, and the privatization date shall become the direct liabilities of the Secretary.

(4) Any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising from any action taken by any agent or officer of the United States in connection with the privatization of the Corporation is hereby withdrawn.

(5) To the extent that any claim against the United States under this section is of the type otherwise required by Federal statute or regulation to be presented to a Federal agency or official for adjudication or review, such claim shall be presented to the Department of Energy in accordance with procedures to be established

by the Secretary. Nothing in this paragraph shall be construed to impose on the Department of Energy liability to pay any claim presented pursuant to this paragraph.

(6) The Attorney General shall represent the United States in any action seeking to impose liability under this subsection.

(b) Liability of the Corporation.–Notwithstanding any provision of any agreement to which the Corporation is a party, the Corporation shall not be considered in breach, default, or violation of any agreement because of the transfer of such agreement to the private corporation under section 3108 or any other action the Corporation is required to take under this subchapter.

(c) Liability of the Private Corporation.–Except as provided in this subchapter, the private corporation shall be liable for any liabilities arising out of its operations after the privatization date.

(d) Liability of Officers and Directors.–

(1) No officer, director, employee, or agent of the Corporation shall be liable in any civil proceeding to any party in connection with any action taken in connection with the privatization if, with respect to the subject matter of the action, suit, or proceeding, such person was acting within the scope of his employment.

(2) This subsection shall not apply to claims arising under the Securities Act of 1933 (15 USC 77a. *et seq.*), the Securities Exchange Act of 1934 (15 USC 78a. *et seq.*), or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities.

Sec. 3110. Employee Protections.

42 USC 2297h-8.

(a) Contractor Employees.–

(1) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

(2) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plant to a pension plan sponsored by the new contractor or the private corporation or a joint labor-management plan, as the case may be.

(3) In addition to any obligations arising under the National Labor Relations Act (29 USC 151 *et seq.*), any employer (including the private corporation if it operates a gaseous diffusion plant without a contractor or any contractor of the private corporation) at a gaseous diffusion plant shall–

(A) abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the stated expiration or termination date of the agreement; or

(B) in the event a collective bargaining agreement is not in effect upon the privatization date, have the same bargaining obligations under section 8(d) of the National Labor Relations Act (29 USC 158(d)) as it had immediately before the privatization date.

(4) If the private corporation replaces its operating contractor at a gaseous diffusion plant, the new employer (including the new contractor or the private corporation if it operates a gaseous diffusion plant without a contractor) shall–

(A) offer employment to non-management employees of the predecessor contractor to the extent that their jobs still exist or they are qualified for new jobs, and

(B) abide by the terms of the predecessor contractor's collective bargaining agreement until the agreement expires or a new agreement is signed.

(5) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a) (2) and (3) of title 29, United States Code) at either of the gaseous diffusion plants, the Secretary of Energy shall treat any adversely affected employee of an operating contractor at either plant who was an employee at such plant on July 1, 1993, as a Department of Energy employee for purposes of sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993 (42 USC 7274h-7274i).

(6)(A) The Secretary and the private corporation shall cause the post-retirement health benefits plan provider (or its successor) to continue to provide benefits for eligible persons, as described under subparagraph (B), employed by an operating contractor at either of the gaseous diffusion plants in an economically efficient manner and at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date.

(B) Persons eligible for coverage under subparagraph (A) shall be limited to:

(i) persons who retired from active employment at one of the gaseous diffusion plants on or before the privatization date as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant; and

(ii) persons who are employed by the Corporation's operating contractor on or before the privatization date and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant.

(C) The Secretary shall fund the entire cost of post-retirement health benefits for persons who retired from employment with an operating contractor prior to July 1, 1993.

(D) The Secretary and the Corporation shall fund the cost of post-retirement health benefits for persons who retire from employment with an operating contractor on or after July 1, 1993, in proportion to the retired person's years and months of service at a gaseous diffusion plant under their respective management.

(7)(A) Any suit under this subsection alleging a violation of an agreement between an employer and a labor organization shall be brought in accordance with section 301 of the Labor Management Relations Act (29 USC 185).

(B) Any charge under this subsection alleging an unfair labor practice violative of section 8 of the National Labor Relations Act (29 USC 158) shall be pursued in accordance with section 10 of the National Labor Relations Act (29 USC 160).

(C) Any suit alleging a violation of any provision of this subsection, to the extent it does not allege a violation of the National Labor Relations Act, may be brought in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy or the citizenship of the parties.

Deadline.
Ohio.
Kentucky.

(8) CONTINUITY OF BENEFITS–To the extend appropriations are provided in advance for this purpose or are otherwise available, not later than 30 days after the date of enactment of this paragraph, the Secretary shall implement such actions as are necessary to ensure that any employee who–

(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans,

shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.[430]

(b) Former Federal Employees.–

(1)(A) An employee of the Corporation that was subject to either the Civil Service Retirement System (referred to in this section as "CSRS") or the Federal Employees' Retirement System (referred to in this section as "FERS") on the day immediately preceding the privatization date shall elect–

(i) to retain the employee's coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation's retirement system, or

(ii) to receive a deferred annuity or lump-sum benefit payable to a terminated employee under CSRS or FERS, as applicable.

(B) An employee that makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee's Thrift Savings Plan account to a defined contribution plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's defined contribution plan.

(2) The Corporation shall pay to the Civil Service Retirement and Disability Fund–

(A) such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5, United States Code, for those employees who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1);

(B) such additional agency contributions as are determined necessary by the Office of Personnel Management to pay, in combination with the sums under subparagraph (A), the "normal cost" (determined using dynamic assumptions) of retirement benefits for those employees who elect to retain their coverage under CSRS pursuant to paragraph (1), with the concept of "normal cost" being used consistent with generally accepted actuarial standards and principles; and

(C) such additional amounts, not to exceed two percent of the amounts under subparagraphs (A) and (B), as are determined necessary by the Office of Personnel Management to pay the cost

[430]Public Law 109-58 (119 Stat. 790), August 8, 2005, section 633, added new section (8).

of administering retirement benefits for employees who retire from the Corporation after the privatization date under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the privatization date (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5, United States Code).

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5, United States Code, for those employees who elect to retain their coverage under FERS pursuant to paragraph (1).

(4) Any employee of the Corporation who was subject to the Federal Employee Health Benefits Program (referred to in this section as "FEHBP") on the day immediately preceding the privatization date and who elects to retain coverage under either CSRS or FERS pursuant to paragraph (1) shall have the option to receive health benefits from a health benefit plan established by the Corporation or to continue without interruption coverage under the FEHBP, in lieu of coverage by the Corporation's health benefit system.

(5) The Corporation shall pay to the Employees Health Benefits Fund–

(A) such employee deductions and agency contributions as are required by section 8906(a)-(f) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4); and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4).

(6) The amounts required under paragraph (5)(B) shall pay the Government contributions for retired employees who retire from the Corporation after the privatization date under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the privatization date, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the privatization date.

Sec. 3111. Ownership Limitations.

42 USC 2297h-9.

(a) Securities Limitations.–No director, officer, or employee of the Corporation may acquire any securities, or any rights to acquire any securities of the private corporation on terms more favorable than those offered to the general public–

(1) in a public offering designed to transfer ownership of the Corporation to private investors,

(2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or

(3) before the election of the directors of the private corporation.

(b) Ownership Limitation.–Immediately following the consummation of the transaction or series of transactions pursuant to which 100 percent of the ownership of the Corporation is transferred to private investors, and for a period of three years thereafter, no person may acquire, directly or indirectly, beneficial ownership of securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation. The foregoing limitation shall not apply to–

(1) any employee stock ownership plan of the Corporation,

(2) members of the underwriting syndicate purchasing shares in stabilization transactions in connection with the privatization, or

(3) in the case of shares beneficially held in the ordinary course of business for others, any commercial bank, broker-dealer, or clearing agency.

Sec. 3112. Uranium Transfers And Sales.

42 USC 2297h-10.

(a) Transfers and Sales by the Secretary.–The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except as consistent with this section.

(b) Russian HEU.

(1) On or before December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge title to an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the Russian Executive Agent under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U^{235}. Uranium hexafluoride transferred to the Secretary pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(2) Within seven years of the date of enactment of this Act, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold–

(A) at any time for use in the United States for the purpose of overfeeding;

(B) at any time for end use outside the United States;

(C) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,

(D) in calendar year 2001 for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U_3O_8 equivalent per year.

(3) With respect to all enriched uranium delivered to the United States Executive Agent under the Russian HEU Agreement on or after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, enter into an agreement to deliver concurrently to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U^{235}. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent, with such delivery to take place at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed under U.S. law for all purposes to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity for delivery and use in the United States only as permitted in subsections (b)(5), (b)(6) and (b)(7) of this section.

(4) In the event that the Russian Executive Agent does not exercise its right to enter into an agreement to take delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, or upon request of the Russian Executive Agent, then the United States Executive Agent shall engage an independent entity through a competitive selection process to auction an amount of uranium hexafluoride or U_3O_8 (in the event that the conversion component of such hexafluoride has previously been sold) equivalent to the natural uranium component of such low-enriched uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. Such independent entity shall sell such uranium hexafluoride in one or more lots to any person or entity to maximize the proceeds from such sales, for disposition consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all reasonable transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U^{235}. Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auctioned pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(5) Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States either directly or indirectly prior to January 1, 1998, and thereafter only in accordance with the following schedule:

Annual Maximum Deliveries to End Users

Year:	(millions lbs. U_3O_8 equivalent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20.

(6) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a matched sale pursuant to the Suspension Agreement, and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

(7) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

(8) Nothing in this subsection (b) shall restrict the sale of the conversion component of such uranium hexafluoride.

(9) The Secretary of Commerce shall have responsibility for the administration and enforcement of the limitations set forth in this subsection. The Secretary of Commerce may require any person to provide any certifications, information, or take any action that may be necessary to enforce these limitations. The United States Customs Service shall maintain and provide any information required by the Secretary of Commerce and shall take any action requested by the Secretary of Commerce which is necessary for the administration and enforcement of the uranium delivery limitations set forth in this section.

President. Reports.

(10) The President shall monitor the actions of the United States Executive Agent under the Russian HEU Agreement and shall report to the Congress not later than December 31 of each year on the effect the low-enriched uranium delivered under the Russian HEU Agreement is having on the domestic uranium mining, conversion, and enrichment industries, and the operation of the gaseous diffusion plants. Such report shall include a description of actions taken or proposed to be taken by the President to prevent or mitigate any material adverse impact on such industries or any loss of employment at the gaseous diffusion plants as a result of the Russian HEU Agreement.

(c) Transfers to the Corporation.–(1) The Secretary shall transfer to the Corporation without charge up to 50 metric tons of enriched uranium and up to 7,000 metric tons of natural uranium from the Department of Energy's stockpile, subject to the restrictions in subsection (c)(2).

(2) The Corporation shall not deliver for commercial end use in the United States–

(A) any of the uranium transferred under this subsection before January 1, 1998;

(B) more than 10 percent of the uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4,000,000 pounds, whichever is less, in any calendar year after 1997; or

(C) more than 800,000 separative work units contained in low-enriched uranium transferred under this subsection in any calendar year.

(d) Inventory Sales.–(1) In addition to the transfers authorized under subsections (c) and (e), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of natural or low-enriched uranium shall be made unless–

President.

(A) the President determines that the material is not necessary for national security needs,

(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

(C) the price paid to the Secretary will not be less than the fair market value of the material.

(e) Government Transfers.–Notwithstanding subsection (d)(2), the Secretary may transfer or sell enriched uranium–

(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications;

(2) to any person for national security purposes, as determined by the Secretary; or

(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(f) Savings Provision.–Nothing in this subchapter shall be read to modify the terms of the Russian HEU Agreement.

Sec. 3112a. Incentives For Additional Downblending Of Highly Enriched Uranium By The Russian Federation.

42 USC 2297h-10a.

(a) DEFINITIONS.—In this section:

(1) COMPLETION OF THE RUSSIAN HEU AGREEMENT.—The term 'completion of the Russian HEU Agreement' means the importation into the United States from the Russian Federation pursuant to the Russian HEU Agreement of uranium derived from the downblending of not less than 500 metric tons of highly enriched uranium of weapons origin.

(2) DOWNBLENDING.—The term 'downblending' means processing highly enriched uranium into a uranium product in any form in which the uranium contains less than 20 percent uranium-235.

(3) HIGHLY ENRICHED URANIUM.—The term 'highly enriched uranium' has the meaning given that term in section 3102(4).

(4) HIGHLY ENRICHED URANIUM OF WEAPONS ORIGIN.—The term 'highly enriched uranium of weapons origin' means highly enriched uranium that—

(A) contains 90 percent or more uranium-235; and

(B) is verified by the Secretary of Energy to be of weapons origin.

(5) LOW-ENRICHED URANIUM.—The term 'low-enriched uranium' means a uranium product in any form, including uranium hexafluoride (UF6) and uranium oxide (UO2), in which the uranium contains less than 20 percent uranium-235, including natural uranium, without regard to whether the uranium is incorporated into fuel rods or complete fuel assemblies.

(6) RUSSIAN HEU AGREEMENT.—The term 'Russian HEU Agreement' has the meaning given that term in section 3102(11).

(7) URANIUM-235.—The term 'uranium-235' means the isotope 235U.

(b) STATEMENT OF POLICY.—It is the policy of the United States to support the continued downblending of highly enriched uranium of weapons origin in the Russian Federation in order to protect the essential security interests of the United States with respect to the nonproliferation of nuclear weapons.

(c) PROMOTION OF DOWNBLENDING OF RUSSIAN HIGHLY ENRICHED URANIUM.—

(1) COMPLETION OF THE RUSSIAN HEU AGREEMENT.—Prior to the completion of the Russian HEU Agreement, the importation into the United States of low-enriched uranium, including low-enriched uranium obtained under contracts for separative work units, that is produced in the Russian Federation and is not imported pursuant to the Russian HEU Agreement, may not exceed the following amounts:

(A) In the 4-year period beginning with calendar year 2008, 16,559 kilograms.

(B) In calendar year 2012, 24,839 kilograms.

(C) In calendar year 2013 and each calendar year thereafter through the calendar year of the completion of the Russian HEU Agreement, 41,398 kilograms.

(2) INCENTIVES TO CONTINUE DOWNBLENDING RUSSIAN HIGHLY ENRICHED URANIUM AFTER THE COMPLETION OF THE RUSSIAN HEU AGREEMENT.—

(A) IN GENERAL.—After the completion of the Russian HEU Agreement, the importation into the United States of low-enriched uranium, including low-enriched uranium obtained under contracts for separative work units, that is produced in the Russian Federation, whether or not such low-enriched uranium is derived from highly enriched uranium of weapons origin, may not exceed—

(i) in calendar year 2014, 485,279 kilograms;

(ii) in calendar year 2015, 455,142 kilograms;

(iii) in calendar year 2016, 480,146 kilograms;

(iv) in calendar year 2017, 490,710 kilograms;

(v) in calendar year 2018, 492,731 kilograms;

(vi) in calendar year 2019, 509,058 kilograms; and

(vii) in calendar year 2020, 514,754 kilograms.

(B) ADDITIONAL IMPORTS IN EXCHANGE FOR A COMMITMENT TO DOWNBLEND AN ADDITIONAL 300 METRIC TONS OF HIGHLY ENRICHED URANIUM.—

(i) IN GENERAL.—In addition to the amount authorized to be imported under subparagraph (A) and except as provided in clause (ii), if the Russian Federation enters into a bilateral agreement with the United States under which the Russian Federation agrees to downblend an additional 300 metric tons of highly enriched uranium after the completion of the Russian HEU Agreement, 4 kilograms of low-enriched uranium, whether or not such low-enriched uranium is derived from highly enriched uranium of weapons origin and including low-enriched uranium obtained under contracts for separative work units, may be imported in a calendar year for every 1 kilogram of Russian highly enriched uranium of weapons origin that was downblended in the preceding calendar year, subject to the verification of the Secretary of Energy under paragraph (10).

(ii) MAXIMUM ANNUAL IMPORTS.—Not more than 120,000 kilograms of low-enriched uranium may be imported in a calendar year under clause (i).

(3) EXCEPTIONS.—The import limitations described in paragraphs (1) and (2) shall not apply to low-enriched uranium produced in the Russian Federation that is imported into the United States—

(A) for use in the initial core of a new nuclear reactor;

(B) for processing and to be certified for reexportation and not for consumption in the United States; or

(C) to be added to the inventory of the Department of Energy.

(4) LIMITED WAIVER AUTHORITY.—

Deadline.

(A) IN GENERAL.—Notwithstanding paragraph (1)(C), if the completion of the Russian HEU Agreement does not occur before December 31, 2013, the import limitations under paragraph (1)(C) shall be waived, and low-enriched uranium may be imported into

the United States in the quantities specified in paragraph (2) in a calendar year after 2013, if—

(i) the Secretary of Energy and the Secretary of State jointly determine that—

(I) the failure of the completion of the Russian HEU Agreement arises from causes beyond the control and without the fault or negligence of the Government of the Russian Federation; and

(II) the Government of the Russian Federation has made reasonable efforts to avoid and mitigate the effects of the failure of the completion of the Russian HEU Agreement; and

Notification. Federal Register, publication.

(ii) the Secretary of Energy and the Secretary of State jointly notify Congress of, and publish in the Federal Register, the determination under clause (i) and the reasons for the determination.

Effective date.

(B) NOTICE AND WAIT.—A waiver under subparagraph (A) may not take effect until the date that is 180 days after the date on which Secretary of Energy and the Secretary of State notify Congress under subparagraph (A)(ii).

(C) TERMINATION.—A waiver under subparagraph (A) shall terminate on December 31 of the calendar year with respect to which the Secretary makes the determination under subparagraph (A)(i).

(5) ADJUSTMENTS TO IMPORT LIMITATIONS.—

(A) IN GENERAL.—The import limitations described in paragraph (2)(A) are based on the reference data in the 2005 Market Report on the Global Nuclear Fuel Market Supply and Demand 2005–2030 of the World Nuclear Association. In each of calendar years 2016 and 2019, the Secretary of Commerce shall review the projected demand for uranium for nuclear reactors in the United States and adjust the import limitations described in paragraph (2)(A) to account for changes in such demand in years after the year in which that report or a subsequent report is published.

Effective date.

(B) INCENTIVE ADJUSTMENT.—Beginning in the second calendar year after the calendar year of the completion of the Russian HEU Agreement, the Secretary of Energy shall increase or decrease the amount of low-enriched uranium that may be imported in a calendar year under paragraph (2)(B) (including the amount of low-enriched uranium that may be imported for each kilogram of highly enriched uranium downblended under paragraph (2)(B)(i)) by a percentage equal to the percentage increase or decrease, as the case may be, in the average amount of uranium loaded into nuclear power reactors in the United States in the most recent 3-calendar-year period for which data are available, as reported by the Energy Information Administration of the Department of Energy, compared to the average amount of uranium loaded into such reactors during the 3-calendar-year period beginning on January 1, 2011, as reported by the Energy Information Administration.

Deadline. Federal Register, publication.

(C) PUBLICATION OF ADJUSTMENTS.—As soon as practicable, but not later than July 31 of each calendar year, the Secretary of Energy shall publish in the Federal Register the amount of low-enriched uranium that may be imported in the current calendar year after the adjustments under subparagraph (B).

(6) AUTHORITY FOR ADDITIONAL ADJUSTMENT.—In addition to the adjustment under paragraph (5)(A), the Secretary of

Commerce may adjust the import limitations under paragraph (2)(A) for a calendar year if the Secretary—

(A) in consultation with the Secretary of Energy, determines that the available supply of low-enriched uranium and the available stockpiles of uranium of the Department of Energy are insufficient to meet demand in the United States in the following calendar year; and

Notification.

(B) notifies Congress of the adjustment not less than 45 days before making the adjustment.

(7) EQUIVALENT QUANTITIES OF LOW-ENRICHED URANIUM IMPORTS.—

(A) IN GENERAL.—The import limitations described in paragraphs (1) and (2) are expressed in terms of uranium containing 4.4 percent uranium-235 and a tails assay of 0.3 percent.

(B) ADJUSTMENT FOR OTHER URANIUM.—Imports of low-enriched uranium under paragraphs (1) and (2), including low-enriched uranium obtained under contracts for separative work units, shall count against the import limitations described in such paragraphs in amounts calculated as the quantity of low-enriched uranium containing 4.4 percent uranium-235 necessary to equal the total amount of uranium-235 contained in such imports.

(8) DOWNBLENDING OF OTHER HIGHLY ENRICHED URANIUM.—

(A) IN GENERAL.—The downblending of highly enriched uranium not of weapons origin may be counted for purposes of paragraph (2)(B), subject to verification under paragraph (10), if the Secretary of Energy determines that the highly enriched uranium to be downblended poses a risk to the national security of the United States.

(B) EQUIVALENT QUANTITIES OF HIGHLY ENRICHED URANIUM.— For purposes of determining the additional lowenriched uranium imports allowed under paragraph (2)(B), highly enriched uranium not of weapons origin downblended pursuant to subparagraph (A) shall count as downblended highly enriched uranium of weapons origin in amounts calculated as the quantity of highly enriched uranium containing 90 percent uranium-235 necessary to equal the total amount of uranium-235 contained in the highly enriched uranium not of weapons origin downblended pursuant to subparagraph (A).

(9) TERMINATION OF IMPORT RESTRICTIONS.—The provisions of this subsection shall terminate on December 31, 2020.

(10) TECHNICAL VERIFICATIONS BY SECRETARY OF ENERGY.—

(A) IN GENERAL.—The Secretary of Energy shall verify the origin, quantity, and uranium-235 content of the highly enriched uranium downblended for purposes of paragraphs (2)(B) and (8).

(B) METHODS OF VERIFICATION.—In conducting the verification required under subparagraph (A), the Secretary of Energy shall employ the transparency measures and access provisions agreed to under the Russian HEU Agreement for monitoring the downblending of Russian highly enriched uranium of weapons origin and such other methods as the Secretary determines appropriate.

(11) ENFORCEMENT OF IMPORT LIMITATIONS.—The Secretary of Commerce shall be responsible for enforcing the import limitations imposed under this subsection and shall enforce such

import limitations in a manner that imposes a minimal burden on the commercial nuclear industry.

(12) EFFECT ON OTHER AGREEMENTS.—

(A) RUSSIAN HEU AGREEMENT.—Nothing in this section shall be construed to modify the terms of the Russian HEU Agreement, including the provisions of the Agreement relating to the amount of low-enriched uranium that may be imported into the United States.

(B) OTHER AGREEMENTS.—If a provision of any agreement between the United States and the Russian Federation, other than the Russian HEU Agreement, relating to the importation of low-enriched uranium, including lowenriched uranium obtained under contracts for separative work units, into the United States conflicts with a provision of this section, the provision of this section shall supersede the provision of the agreement to the extent of the conflict.[431]

Sec. 3113. Low-Level Waste.

42 USC 2297h-11.

(a) Responsibility of DOE.–

(1) The Secretary, at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by–

(A) the Corporation as a result of the operations of the gaseous diffusion plants or as a result of the treatment of such wastes at a location other than the gaseous diffusion plants, or

(B) any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility under section 53, 63, and 193 of the Atomic Energy Act of 1954 (42 USC 2073, 2093, and 2243).

(2) Except as provided in paragraph (3), the generator shall reimburse the Secretary for the disposal of low-level radioactive waste pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs, but in no event more than an amount equal to that which would be charged by commercial, State, regional, or interstate compact entities for disposal of such waste.

(3) In the event depleted uranium were ultimately determined to be low-level radioactive waste, the generator shall reimburse the Secretary for the disposal of depleted uranium pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs.

(b) Agreements With Other Persons.–The generator may also enter into agreements for the disposal of low-level radioactive waste subject to subsection (a) with any person other than the Secretary that is authorized by applicable laws and regulations to dispose of such wastes.

(c) State or Interstate Compacts.–Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.

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[431] Public Law 110-329 (122 Stat. 3647), Section 8118 inserted Section 3112A.

Sec. 3114. Avlis.

42 USC 2297h-12.

(a) Exclusive Right to Commercialize.–The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Secretary.

(b) Transfer of Related Property to Corporation.–

President.

(1) In general.–To the extent requested by the Corporation and subject to the requirements of the Atomic Energy Act of 1954 (42 USC 2011, *et seq.*), the President shall transfer without charge to the Corporation all of the right, title, or interest in and to property owned by the United States under control or custody of the Secretary that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including–

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) Exception.–Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Secretary shall not transfer under paragraph (1)(B).

(3) Expiration of transfer authority.–The President's authority to transfer property under this subsection shall expire upon the privatization date.

(c) Liability for Patent and Related Claims.–With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b), the Corporation shall have sole liability for any payments made or awards under section 157b.(3) of the Atomic Energy Act of 1954 (42 USC 2187(b)(3)), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) of this section shall provide for a reduction of royalty payments to the Secretary to offset any payments, awards, settlements, or judgments under this subsection.

Sec. 3115. Application Of Certain Laws.

42 USC 2297h-13.

(a) OSHA.–

(1) As of the privatization date, the private corporation shall be subject to and comply with the Occupational Safety and Health Act of 1970 (29 USC 651 *et seq.*).

Contracts.

(2) The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, within 90 days after the date of enactment of this Act, enter into a memorandum of agreement to govern the exercise of their authority over occupational safety and health hazards at the gaseous diffusion plants, including inspection, investigation, enforcement, and rulemaking relating to such hazards.

(b) Antitrust Laws.–For purposes of the antitrust laws, the performance by the private corporation of a "matched import" contract under the Suspension Agreement shall be considered to have occurred prior to the privatization date, if at the time of privatization, such contract had been agreed to by the parties in all material terms and confirmed by the Secretary of Commerce under the Suspension Agreement.

(c) Energy Reorganization Act Requirements.–

(1) The private corporation and its contractors and subcontractors shall be subject to the provisions of section 211 of the Energy

Reorganization Act of 1974 (42 USC 5851) to the same extent as an employer subject to such section.

(2) With respect to the operation of the facilities leased by the private corporation, section 206 of the Energy Reorganization Act of 1974 (42 USC 5846) shall apply to the directors and officers of the private corporation.

2: Energy Reorganization Act of 1974, as Amended

2. *Energy Reorganization Act of 1974, as Amended*

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A. ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

Public Law 93-438 **88 STAT. 1233**

October 11, 1974
An Act

Energy Reorganization Act of 1974.

To reorganize and consolidate certain functions of the Federal Government in a new Energy Research and Development Administration and in a new Nuclear Regulatory Commission in order to promote more efficient management of such functions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Energy Reorganization Act of 1974, as amended, is amended to read as follows:

Sec. 1. Short Title

42 USC 5801 note.

The Act may be cited as the "Energy Reorganization Act of 1974".

Sec. 2. Declaration of Purpose

42 USC 5801.

(a) The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.

Energy Research and Development Administration, establishment.

(b) The Congress finds that, to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission's military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistent with warranted priorities.

Separation of AEC licensing and regulatory functions.

(c) The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner, pursuant to this Act, assuring adequacy of technical and other resources necessary for the performance of each.

Small business participation.

(d) The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and equitably in grants, contracts, purchases, and other Federal activities relating to research, development, and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out this policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.

Priorities.

(e) Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods of utilizing solar energy.

Title I–Energy Research And Development Administration

Sec. 101. Establishment

42 USC 5811.

There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this Act referred to as the "Administration").[1]

Sec. 102. Officers

42 USC 5812.

Administrator.

(a) There shall be at the head of the Administration an Administrator of Energy Research and Development (hereinafter in this Act referred to as the "Administrator"), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.

Deputy Administrator.

(b) There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.

Assistant Administrators.

(d) There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage the energy technology area assigned to such Assistant Administrator.

General Counsel.

(e) There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the please of and be removable by the Administrator.

Additional officers.

(f) There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to subsection 161d. of the Atomic Energy Act.

Director of Military Application.

(g) The Division of Military Application transferred to and established in the Administration by section 104(d) of this Act shall be under the direction of a Director of Military Application, who shall be appointed by

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[1] This title established the Energy Research and Development Administration. The Administration was terminated, and its functions were transferred to the Department of Energy, by the Department of Energy Organization Act, Public Law 95-91 (91 Stat. 565; 42 USC 7101), enacted August 4, 1977.

the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under the Atomic Energy Act of 1954, as amended, for the Assistant General Manager for Military Application.

42 USC 2011 note.

(h) Officers appointed pursuant to this section shall perform such functions as the Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.

International cooperation.

(i) The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel or such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

Order of succession.

Sec. 103. Responsibilities of the Administrator

42 USC 5813.

The responsibilities of the Administrator shall include, but not be limited to–

(1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;

(2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion , storage, transmission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;

(3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;

(4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

(5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;

(6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;

(7) establishing, in accordance with the National Energy Extension Service Act, an Energy Extension Service to provide technical assistance,

instruction, and practical demonstration on energy conservation measures and alternative energy systems to individuals, businesses, and State and local government officials;[2]

(8) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(9) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(10) encouraging and participating in international cooperation in energy and related environmental research and development;

(11) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(12) encouraging and conducting research and development in clean and renewable energy sources.

Sec. 104. Abolition and Transfers

42 USC 5814. Atomic Energy Commission.

(a) The Atomic Energy Commission is hereby abolished. Sections 21 and 22 of the Atomic Energy Act of 1954, as amended (42 USC 2031 and 2032) are repealed.

(b) All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this Act.

(c) There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this Act.

(d) The General Advisory Committee established pursuant to section 26 of the Atomic Energy Act of 1954, as amended (42 USC 2036), the Patent Compensation Board established pursuant to section 157 of the Atomic Energy Act of 1954, as amended (42 USC 2187) and the Divisions of Military Application and Naval Research established pursuant to section 25 of the Atomic Energy Act of 1954, as amended (42 USC 2035), are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 27 of the Atomic Energy Act of 1954, as amended (42 USC 2037), are transferred to the Administrator.

Interior Department functions.

(e) There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department–

[2]Public Law 95-39 (91 Stat. 200) (1977), section 510(a), amended section 103 by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively, and inserted a new paragraph (7).

(l) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960[3];

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the Bureau of Mines "energy centers" and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

(3) as relate to or are utilized for underground electric power transmission research.

Helium applications study. Report to President and Congress.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from the date of the enactment of this Act, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

National Science Foundation functions.

(f) There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with–

(1) solar heating and cooling development; and

(2) geothermal power development.

Environmental Protection Agency functions.

(g) There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, of alternative automotive power systems.

(h) To the extent necessary or appropriate to perform functions and carry out programs transferred by this Act, the Administrator and Commissions may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.

Use of other agencies' capabilities.

(i) In the exercise of his responsibilities under section 103, the Administrator shall utilize, with their consent, to the fullest extent he determines advisable the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that–

(1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and

(2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.

Sec. 105. Administrative Provisions

42 USC 5815. Regulations.

(a) The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to

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[3]74 Stat. 336; 30 USC 661-668.

be necessary or appropriate to perform functions now or hereafter vested in him.

Policy planning and evaluation.

(b) The Administrator shall engage in such policy planning, and perform, such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

Delegation of functions.

(c) Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive re-delegations of such functions as he may deem to be necessary or appropriate.

Organization.

(d) Except as provided in section 102 and in section 104(d), the Administrator may organize the Administration as he may deem to be necessary or appropriate.

Field offices.

(e) The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

Seal.

(f) The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

Working capital fund.

(g) The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

Information from other agencies.

(h) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this title.

Sec. 106. Personnel and Services

42 USC 5816. Appointment and pay.

(a) The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 161d. of the Atomic Energy Act of 1954, as amended (42 USC 2201(d)) as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.[4]

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[4]Sec. 5816a. [Repealed]. This section (Act June 3, 1977, Public Law 95-39, title III, section 308, 91 Stat. 189; October 19, 1980, Public Law 96-470, title II, section 203(d), 94 Stat. 2243) was repealed by Act February 10, 1996, Public Law 104-106, Div. D, title XLIII, Subtitle A, section 4304(b)(7), 110 Stat. 664 (effective and applicable as provided by section 4401 of such Act, which appears as 41 USCS section 251 note). It provided for financial statements of Department officers and employees.

Experts and consultants.

(b) The Administrator is authorized to obtain services as provided by section 3109 of title 5 of the United States Code.

Military personnel.

(c) The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(d) Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section shall in no way affect the status, office, rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, prerequisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

Transportation and per diem.

(e) The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 of the United States Code for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

Personnel of other agencies.

(f) The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Government.

5 USC App. I. Advisory boards.

(g) The Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463), to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.

Noncitizens.

(h) The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

Sec. 107. Powers

42 USC 5817. Research and development.

(a) The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, development, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him Such functions of the Administrator under this Act as are applicable to the nuclear activities transferred pursuant to this title shall be subject to the provisions of the Atomic Energy Act of 1954, as amended, and to other authority applicable to such nuclear activities. The non-nuclear responsibilities and functions of the Administrator referred to in sections 103 and 104 of this Act shall be carried out pursuant to the provisions of this Act, applicable authority existing immediately before

Contracts, etc.

42 USC 2011 note.

the effective date of this Act, or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 USC 2051-2053).

5 USC App. II. 40 USC 601 note. Facilities and real property.

(b) Except for public buildings as defined in the Public Buildings Act of 1959, as amended, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States.

Services for employees at remote locations.

(c)(1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

(A) Emergency medical services and supplies.

(B) Food and other subsistence supplies.

(C) Messing facilities.

(D) Audiovisual equipment, accessories, and supplies for recreation and training.

(E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.

(F) Living and working quarters and facilities.

(G) Transportation for school-age dependents of employees to the nearest appropriate education facilities.

(2) The furnishing of medical treatment under sub-paragraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.

(3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available for use by the Administrator for performing the work or services for which payment is received.

Acquisition of copyrights, patents, etc.

(d) The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him;

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applicants for patents.

(3) Releases, before suit is brought, for past infringement of patents or copyrights.

Dissemination of information.

(e) Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 USC 2161-2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this title through information programs and other appropriate means, and shall encourage the dissemination of

scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.

Gifts and bequests.

(f) The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to the United States.

Sec. 108. (Repealed)

(Repealed[5])

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[5]Public Law 95-91 (91 Stat. 608) (1977), repealed section 108, which read as follows:

(a) There is established in the Executive Office of the President an Energy Resources Council. The Council shall be composed of the Secretary of the Interior, the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, the Secretary of State, the Director, Office of Management and Budget, and such other officials of the Federal Government as the President may designate. The President shall designate one of the members of the Council to serve as Chairman.

(b) It shall be the duty and function of the Council to--

(1) insure communication and coordination among the agencies of the Federal Government which have responsibilities for the development and implementation of energy policy or for the management of energy resources:

(2) make recommendations to the President and to the Congress for measures to improve the implementation of Federal energy policies or the management of energy resources with particular emphasis upon policies and activities involving two or more Departments or independent agencies; (See I)

(3) advise the President in the preparation of the reorganization recommendations required by section 110 of this Act; and (See II)

(4) insure that Federal agencies fully discharge their responsibilities under section 507 and 508 of the National Energy Extension Service Act for coordinating and planning of their related activities under such Act and any other law, including but not limited to the Energy Policy and Conservation Act. (See III)

(5) prepare a report on national energy conservation activities which shall be submitted to the President and the Congress annually, beginning on July 1, 1977, and which shall include-

(A) a review of all Federal energy conservation expenditures and activities, the purpose of each such activity, the relation of the activity to national conservation targets and plans, and the success of the activity and the plans for the activity in future years;

(B) an analysis of all conservation targets established for industry, residential, transportation, and public sectors of the economy, whether the targets can be achieved or whether they can be further improved, and the progress toward their achievement in the past year;

(C) a review of the progress made pursuant to the State energy conservation plans under section 361 through 366 of the Energy Policy and Conservation Act and other similar efforts at the State and local level, and whether further conservation can be carried on by the States or by local governments, and whether further Federal assistance is required;

(D) a review of the principal conservation efforts in the private sector, the potential for more widespread implementation of such efforts and the Federal Government's efforts to promote more widespread use of private energy conservation initiatives; and

(E) an assessment of whether existing conservation targets and goals are sufficient to bridge the gap between domestic energy production capacity and domestic energy needs, whether additional incentives or programs are necessary or useful to close that gap further, and a discussion of what mandatory measures might be useful to further bring domestic demand into harmony with domestic supply.

The Chairman of the Energy Resources Council shall coordinate the preparation of the report required under paragraph (5). (See IV)

(c) The President through the Energy Resources Council shall--

(1) prepare a plan for the reorganization of the Federal Government's activities in energy and natural resources, including, but not limited to, a study of--

(A) the principal laws and directives that constitute the energy and natural resource policy of the United States;

(B) prospects of developing a consolidated national energy policy;

(C) the major problems and issues of existing energy and natural resource organizations;

(D) the options for Federal energy and natural resource organizations;

(E) an overview of available resources pertinent to energy and natural resource organization;

(F) recent proposals for a national energy and natural resource policy for the United States; and

(G) the relationship between energy policy goals and other national objectives;

(2) submit to Congress --

(A) no later than December 31, 1976, the plan prepared pursuant to subsection (c)(1) and a report containing his recommendations for the reorganization of the Federal Government's responsibility for energy and natural resource matters together with such proposed legislation as he deems necessary or appropriate for the implementation of such plans or recommendations; and

(B) not later than April 15, 1977, such revisions to the plan and report described in subparagraph (A) of this paragraph as he may consider appropriate; and

(3) provide interim and transitional policy planning for energy and natural resource matters in the Federal Government. (See V)

(d) The Chairman of the Council may not refuse to testify before the Congress or any duly authorized committee thereof regarding the duties of the Council or other matters concerning interagency coordination of energy policy and activities.

(e) There is hereby established an Energy Conservation Subcommittee within the Council which shall be chaired by the Administrator of the Energy Research and Development Administration to discharge the responsibilities specified in subsection (b)(4) of this section and other related functions associated with the coordination and management of Federal efforts in the areas of energy conservation and energy conservation research, development and demonstration.(See VI)

(f) This section shall be effective no later than sixty days after the enactment of this Act or such earlier date as the President shall prescribe and publish in the Federal Register, and shall terminate upon enactment of a permanent department responsible for energy and natural resources or not later than September 30, 1977, whichever shall occur first. (See VII)

(I) P.L. 94-385 (90 Stat. 1140) (1976) section 162(a)(1) amended section 108(b)(2) by striking out "and" at the end of the paragraph.

(II) Public Law 94-385 (90 Stat. 1140) (1976) section 162 (a)(2) amended section 108(b)(3) by striking out the period at the end of paragraph and inserting "; and".

(III) Public Law 95-39 (91 Stat. 200) (1977) section 510(b) inadvertently duplicated the paragraph number (4). (See IV) [This section also duplicated instructions in I and II].

(IV) Public Law 94-385 (90 Stat. 1140) (1976) section 162(a)(3) amended section 108(b) by adding a new paragraph (4). [There is no paragraph (5) in the original subsection (b)].

(V) Public Law 94-385 (90 Stat. 1141) (1976) section 162(b) amended section 108 by re-designating subsections (c) and (d) as subsections (d) and (e), respectively; and added a new subsection (c).

(VI) Public Law 95-39 (91 Stat. 200) (1977) section 510(c) inadvertently duplicated the subsection letter (e). (See V)

(VII) Public Law 94-385 (90 Stat. 1142)(1976) section 163 amended section 108(e) by striking out "two years after such effective date," and inserting "not later than September 30, 1977".

Sec. 109. Future Reorganization

42 USC 5819. Report to Congress.

(a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a consolidation in whole or in part of regulatory functions concerning energy.

(b) This report shall replace and serve the purposes of the report required by section 15(a)(4) of the Federal Energy Administration Act.

Sec. 110. Coordination with Environmental Efforts

42 USC 5820.

The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.

Sec. 111. Provisions Applicable to Annual Authorization Acts

42 USC 5821.

42 USC 2017.

(a) All appropriations made to the Energy research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 261 of the Atomic Energy Act of 1954, section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and section 305 of this Act. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as "annual authorization Acts").

Operating expenses, appropriations.

(b)(1) Funds appropriated pursuant to an annual authorization Act for "Operating expenses" may be used for–

(A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

Report to congressional committees.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

Expenditure limitations. Report to congressional committees.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds $5,000,000 in the case of such a facility or $2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of representatives and the Senate, or the Administrator–

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

Limitation.

(B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

Report, transmittal to congressional committees.

(c)(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because the new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

Notice.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless–

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed $50,000.

Report, transmittal to congressional committees. Notice.

(d)(1) Except as otherwise provided in the authorization Act involved–

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress, unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full

and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result of reprogramming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

Funds merger, limitations.

(e) Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided,* That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses."

(f) When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

Construction design services.

(g) The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484); except that–

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 or the Strategic and Critical Materials Stockpiling Act, as amended, or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (42 USC 2301; 50 USC 98h; 30 USC 7); and

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

Funds transfer.

(i) When so specified in an appropriation Act, transfers of sums from the "Operating expenses" appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in

such cases the sums so transferred may be merged with the appropriations to which they are transferred.[6]

Title II – Nuclear Regulatory Commission; Nuclear Whistleblower Protection

Sec. 201. Establishment and Transfers

42 USC 5841. Members and Chairman.

(a)(1)[7] [8] There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States.

The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

Seal. Commission Chairman. Functions.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman, and except as otherwise provided in the Energy Reorganization Act of 1974), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

42 USC 5801 note.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining

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[6]Public Law 95-238 (92 Stat. 56)(1978), section 201 added section 111; as amended, Public Law 103-437, section 15(c)(7), (108 Stat. 4592), November 2, 1994.
[7]New title II; P.L. 102-486 (106 Stat. 3124); October 24, 1992.
[8]Public Law 94-79 (89 Stat. 413)(1975), section 201 added "(1)" immediately after section 201.(a).

upon the distribution of appropriated funds according to major programs and purposes.[9]

(b) (1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

42 USC 5841. Term of Office.

(c) Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term "shall" be deemed to have begun July 1, 1975.[10]

Submission of appointments to Senate.

(d) Such initial appointments shall be submitted to the Senate within sixty days of the signing of this Act. Any individual who is serving as a member of the Atomic Energy commission at the time of the enactment of this Act, and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.

(e) Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as member of the Commission.

Transfer of AEC functions and personnel Additional transfers.

(f) There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and member of the Commission, the General Counsel, and other officers and components of the Commission–which functions, officers, components, and personnel are excepted from the transfer to the Administrator by section 104(c) of this Act.

(g) In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission–

(1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;

(2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 205, relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation

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[9]Public Law 94-79 (89 Stat. 413)(1975). Section 201 amended subsection 201(a) by adding new subparagraphs (2) through (5).

[10]Public Law 94-79 (89 Stat. 413)(1975), sections 202 and 203, amended subsection 201(c). Prior to amendment, this subsection read as follows:

(c) Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment.

under the provisions of the Atomic Energy Act of 1954, as amended, and of this Act.[11]

Sec. 202. Licensing and Related Regulatory Functions Respecting Selected Administration Facilities

42 USC 5842.

42 USC 2071-2112.

42 USC 2131-

Notwithstanding the exclusions provided for in section 110 a. or any other provisions of the Atomic Energy Act of 1954, as amended (42 USC 2140(a)), the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110 b. of the Atomic Energy Act of 1954, as amended (42 USC 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended, as to the following facilities of the Administration:

(1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(2) Other demonstration nuclear reactors–except those in existence on the effective date of this Act–when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act.

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act other than any such facility that is utilized for research, development, demonstration, testing, or analysis purposes.[12]

Sec. 203. Office of Nuclear Reactor Regulation

42 USC 5843.

Director.

Establishment.

(a) There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 209, and who shall serve at the pleasure of and be removable by the Commission.

Functions.

(b) Subject to the provisions of this Act, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:

42 USC 2011 note.

(1) Principal licensing and regulation involving all facilities, and materials licensed under the Atomic Energy Act of 1954, as amended, associated with the construction and operation of nuclear reactors licensed under the Atomic Energy Act of 1954, as amended;

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[11]Public Law 95-209 (91 Stat. 1482) (1977), section 2, added a new subsection h, which was subsequently deleted by Public Law 99-386 (100 Stat. 822)(1986).

[12]As amended Public Law 105-261, Div. C, title XXXI, Subtitle C, section 3134(a), Oct. 17, 1998, 112 Stat. 2247.)

(2) Review the safety and safeguards of all such facilities, materials, and activities, and such review functions shall include, but not be limited to–

(A) monitoring, testing and recommending upgrading of systems designed to prevent substantial health or safety hazards; and

(B) evaluating methods of transporting special nuclear and other nuclear materials and of transporting and storing high-level radioactive wastes to prevent radiation hazards to employees and the general public.

(3) Recommend research necessary for the discharge of the functions of the Commission.

(c) Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safe operation of all facilities resulting from all activities within the jurisdiction of the Administration pursuant to this Act.

Sec. 204. Office of Nuclear Material Safety and Safeguards

42 USC 5844. Director. Establishment.

(a) There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 209, and who shall serve at the pleasure of and be removable by the Commission.

Functions.

(b) Subject to the provisions of this Act, the Director of Nuclear Material Safety and Safeguards shall perform such functions as the Commission shall delegate including:

42 USC 2011 note.

(1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended, associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.

(2) Review safety and safeguards of all such facilities and materials licensed under the Atomic Energy Act of 1954, as amended, and such review shall include, but not be limited to–

(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended:

(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

Report to Congress.

(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this Act and promptly transmitted to the Congress by the Commission.

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this Act.

Sec. 205. Office of Nuclear Regulatory Research

42 USC 5845. Director. Establishment.

(a) There is hereby established in the Commission an Office of Nuclear Regulatory Research under the direction of a Director of Nuclear Regulatory research, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 209, and who shall serve at the pleasure of and be removable by the Commission.

Functions.

(b) Subject to the provisions of this Act, the Director of Nuclear Regulatory Research shall perform such functions as the Commission shall delegate including:

(1) Developing recommendations for research deemed necessary for performance by the Commission of its licensing and related regulatory functions.

(2) Engaging in or contracting for research which the Commission deems necessary for the performance of its licensing and related regulatory functions.

Cooperation of Federal Agencies.

(c) The Administrator of the Administration and the head of every other Federal agency shall–

(1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;

(2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and

(3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

(d) Nothing in subsections (a) and (b) of this section or section 201 of this Act shall be construed to limit in any way the functions of the Administration relating to the safety of activities within the jurisdiction of the Administration.

Information and research services.

(e) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and research services, on a reimbursable basis, as it may have or be reasonably able to acquire.

42 USC 5845. Improved safety systems research. Long-term plan development.

(f) The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear power plants.[13]

Sec. 206. Noncompliance

42 USC 5846. 42 USC 2011 note.

(a) Any individual director, or responsible officer of a firm constructing, owning, operation, or supplying the components of any facility or activity which is licensed or other wise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to this Act, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity–

(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or

(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall

[13]Public Law 95-209 (91 Stat. 1482)(1977), section 4, added a new subsection f.

promulgate, shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

42 USC 2282. Penalty.

(b) Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by section 234 of the Atomic energy Act of 1954, as amended.

42 USC 2011 note. Posting of requirements. Enforcement.

(c) The requirements of this section shall be prominently posted on the premises of any facility licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended.

(d) The Commission is authorized to conduct such reasonable inspections and other enforcement activities as needed to insure compliance with the provisions of this section.

Sec. 207. Nuclear Energy Center Site Survey

42 USC 5847. Federal-State-local Cooperation. Solicitation of views.

(a)(1) The Commission is authorized and directed to make or cause to be made under its direction, a national survey, which shall include consideration of each of the existing or future electric reliability regions, or other appropriate regional areas, to locate and identify possible nuclear energy center sites. This survey shall be conducted in cooperation with other interested Federal, State, and local agencies, and the views of interested persons, including electric utilities, citizens' groups, and others, shall be solicited and considered.

Definition.

(2) For purposes of this section, the term "nuclear energy center site" means any site, including a site not restricted to land, large enough to support utility operations or other elements of the total nuclear fuel cycle, or both including, if appropriate, nuclear fuel reprocessing facilities, nuclear fuel fabrication plants, retrievable nuclear waste storage facilities, and uranium enrichment facilities.

(3) The survey shall include–

(a) a regional evaluation of natural resources, including land, air, and water resources, available for use in connection with nuclear energy center sites; estimates of future electric power requirements that can be served by each nuclear energy center site; an assessment of the economic impact of each nuclear energy site; and consideration of any other relevant factors, including but not limited to population distribution, proximity to electric load centers and to other elements of the fuel cycle, transmission line rights-of-way, and the availability of other fuel resources;

(b) an evaluation of the environmental impact likely to result from construction and operation of such nuclear energy centers, including an evaluation whether such nuclear energy centers will result in greater or lesser environmental impact than separate siting of the reactors and/or fuel cycle facilities; and

(c) consideration of the use of federally owned property and other property designated for public use, but excluding national parks, national forests, national wilderness areas, and national historic monuments.

Report to Congress and Council on Environmental Quality; public availability.

(4) A report of the results of the survey shall be published and transmitted to the Congress and the Council on Environmental Quality not later than one year from the date of the enactment of this Act and shall be made available to the public, and shall be updated from time to time thereafter as the Commission, in its discretion, deems advisable. The report shall include the Commission's evaluation of the results of the survey and any conclusions and recommendations, including recommendations for legislation, which the Commission may have concerning the feasibility and practicality of locating nuclear power reactors and/or other elements of the nuclear fuel cycle or nuclear energy center sites. The Commission is authorized to adopt

policies which will encourage the location of nuclear power reactors and related fuel cycle facilities on nuclear energy center sites insofar as practicable.

Sec. 208. Abnormal Occurrence Reports

42 USC 5848. Reports to Congress. 42 USC 2011 note.

The Commission shall submit to the Congress an annual report listing for the previous fiscal year any abnormal occurrences at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to this Act. For the purposes of this section an abnormal occurrence is an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. Nothing in the preceding sentence shall limit the authority of a court to review the determination of the Commission. Each such report shall contain–

(1) the date and place of each occurrence;
(2) the nature and probable consequence of each occurrence;
(3) the cause or causes of each; and
(4) any action taken to prevent reoccurrence;

Public dissemination of information.

the Commission shall also provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within fifteen days of its receiving information of each abnormal occurrence and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available to it.[14]

Sec. 209. Other Officers

42 USC 5849. Executive Director. Functions.

(a). The Commission shall appoint an Executive Director for Operations, who shall serve at the pleasure of and be removable by the Commission.

(b) The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this Act to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Not withstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.[15]

Equal employment opportunity, Annual status report.

(c) The Executive Director shall report to the Commission at semiannual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.[16]

(d) The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under

Report to Congress.

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[14]Public Law 104-66, title II, Subtitle Q, section 2171, (109 Stat. 731); December 21, 1995.

[15]Public Law 95-601 (92 Stat. 2949) (1978), section 4(a) amended subsection 209(b) by adding the last sentence.

[16]Public Law 95-601 (92 Stat. 2949)(1978), section 4(b) amended subsection 209(c) by adding a new subsection (c) and redesignated existing subsection (c) accordingly. Existing subsection (c) was re-designated as subsection (e) because this law also added a new subsection (d).

section 307(c) of the Energy Reorganization Act of 1974) following the fiscal year to which such report applies.[17]

42 USC 5877. Other officers.

(e)[18] There shall be in the Commission not more than five additional officers appointed y the Commission. The positions of such officers shall be considered career positions and be subject to subsection 161 d. of the Atomic energy Act.

Sec. 210. Unresolved Safety Issues Plan

42 USC 5850. Progress reports. Submittal to Congress.

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plans shall be submitted to the Congress on or before January 1, 1978, and progress reports shall be included in the annual report of the Commission thereafter.[19]

Sec. 211. Employee Protection

42 USC 5851.

(a)(1)[20] No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)–

(A) notified his employer of an alleged violation of this Act or the Atomic Energy Act of 1954 (42 USC 2011 *et seq.*);

(B) refused to engage in any practice made unlawful by this act or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this Act or the Atomic Energy Act of 1954;

42 USC 2011 note.

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term "employer" includes–

(A) a licensee of the Commission or of an Agreement State under section 274 of the Atomic Energy Act of 1954 (42 USC 2021);

(B) an applicant for a license from the Commission or such an Agreement State;

(C) a contractor or subcontractor of such a licensee or applicant;

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170d. of the Atomic Energy Act of 1954 (42 USC 2210(d)), but such term shall

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[17]Public Law 95-601 (92 Stat. 2949)(1978), section 6 added subsection 209(d). Note: As a result of Public Law 104–66, section 3003, (109 Stat. 734), December 21, 1995, "ceased to be effective" on December 21, 1999.

[18]Public Law 95-601 (92 Stat. 2949)(1978), section 4(b) amended subsection 209(c) by adding a new subsection (c) and redesignated existing subsection (c) accordingly. Existing subsection (c) was redesignated as subsection (e) because this law also added a new subsection (d).

[19]Public Law 95-209 (91 Stat. 1482)(1977), section 3, added section 210.

[20]New section 211 added by P.L. 102-486 (106 Stat 3123); October 24, 1992.

not include any contractor or subcontractor covered by Executive Order No. 12344;

(E) a contractor or subcontractor of the Commission;

(F) the Commission; and

(G) the Department of Energy.[21]

Complaint, filing and notification.

(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission and the Department of Energy.

Investigation and notification.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

Order.

Notice and hearing.

Settlement.

Relief.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of

[21]Public Law 109-58 (119 Stat. 785), August 8, 2005; section 629 added new sections (E), (F) and (G).

subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

Review. 5 USC 701 *et seq.*

(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless order by the court, operate as a stay of the Secretary's order.

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

Jurisdiction.

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

(e)(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

Litigative costs.

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

(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

42 USC 2011.

(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this Act or of the Atomic Energy Act of 1954, as amended.[22]

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[22]Public Law 95-601 (92 Stat. 2951) (1978), section 10, duplicated the section numbered 210.

(h) This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j)(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of–

(A) the filing of a complaint under subsection (b)(1) arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

Deadline.

(4) If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount of controversy.[23]

Sec. 212. Limitation on Legal Fee Reimbursement

42 USC 5853.

The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this section, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to–

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of this Act; or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of this Act, or any comparable State law, unless the adverse determination or final judgment is reversed upon further administrative or judicial review.[24]

Title III–Miscellaneous And Transitional Provisions

Sec. 301. Transitional Provisions

42 USC 5871.
Lapses of agencies and positions.

(a) Except as otherwise provided in this Act, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this Act, have been transferred from that agency, or other body, or any component thereof by this Act, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each

[23]Public Law 109-58 (119 Stat. 785), August 8, 2005, section 629(b), added new section (4).
[24]Public Law 109-58 (119 Stat. 784), August 8, 2005, section 627, added new section 212.

position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an officer or position at level II, III, IV, or V of the Executive Schedule (5 USC 5313–5316), shall lapse.

Savings clauses.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges–

(1) which have been issued, made, granted, or allowed to be come effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act, 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 revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(c) The provisions of this Act shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until ;modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been disconnected if this Act had not been enacted.

(d) Except as provided in subsection (f)–

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

(e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this Act had not been enacted, with the Administrator of Commission, or other official, as the case may be, substituted.

(g) Final orders and actions of any official or component in the performance of functions transferred by this Act shall be subject to judicial review to the same extent and in the same manner as if such

orders or actions had been make or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of the Act. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

(h) With respect to any function transferred by this Act and performed after the effective date of this Act, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this Act vests such functions.

(i) Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) Any reference in this Act to any provision if law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(k) Except as may be otherwise expressly provided in this Act, all functions expressly conferred by this Act shall be in addition to and not in substitution for functions existing immediately before the effective date of this Act and transferred by this Act.

Sec. 302. Transfer of Personnel and Other Matters

42 USC 5872. (a) Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this Act, are, subject to section 202 of the Budget and Accounting Procedures Act of 1950 (31 USC 581c), correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 USC 5313-5316) on the effective date of this Act shall be subject to the provisions of subsection (c) of this section and section 301 of this Act.

(b) Except as provided in subsection (c), transfer of nontemporary personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

(c) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 52 of title 5 of the United States Code, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

Sec. 303. Incidental Dispositions

42 USC 5873. The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds

held, used, arising from, available to or to be made available in connection with functions transferred by this Act, as he may deem necessary or appropriate to accomplish the intent and purpose of this Act.

Sec. 304. Definitions

42 USC 5874.

As used in this Act–

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

Sec. 305. Authorizations of Appropriations

42 USC 5875.

(a) Except as otherwise provided by law, appropriations made under this Act shall be subject to an annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.

Sec. 306. Comptroller General Audit

42 USC 5876.

42 USC 2206.

(a) Section 166. "Comptroller General Audit" of the Atomic Energy Act of 1954, as amended, shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under title I and to the activities under title II.

Report to Congress.

(b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of title II of this Act by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to–

(1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;

(2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended, are carried out;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of title II.

Sec. 307. Reports[25]

42 USC 5877.

Administration activities and progress.

Reports to the President and Congress.

(a) The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.

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[25]The requirements of this section are included in the reporting provisions under section 657 of the Department of Energy Reorganization Act. (Public Law 95-91) (42 USC 7267).

Feasibility of transferring military application functions.

(b) During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office, the Administrator shall make a report to the President, for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

Commission activities and findings.

(c) The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas–

(1) insuring the safe design of nuclear power plants and other licensed facilities;

(2) investigating abnormal occurrences and defects in nuclear power plants and other licensed facilities;

(3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;

(4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;

(5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;

(6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.

Sec. 308. Information to Committees

42 USC 5878.

The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

Sec. 309. Transfer of Funds

42 USC 5879.

The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

Sec. 310. Conforming Amendments to Certain Other Laws

Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title 5, United States Code, is amended as follows:

(1) Section 5313 is amended by striking out "(8) Chairman, Atomic Energy Commission," and inserting in lieu thereof "(8) Chairman, Nuclear Regulatory Commission," and by adding at the end thereof the following:

(22) Administrator of Energy Research and Development Administration.

(2) Section 5314 is amended by striking out "(42) Members, Atomic Energy Commission." and inserting in lieu thereof "(42) Members, Nuclear Regulatory Commission.", and by adding at the end thereof the following:

(60) Deputy Administrator, Energy Research and Development Administration.

(3) Section 5315 is amended by striking out paragraph (50), and

by adding at the end thereof the following:

(100) Assistant Administrator, Energy Research and Development Administration (6).

(101) Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

(102) Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

(103) Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

(104) Executive Director for Operations, Nuclear Regulatory Commission.

(4) Section 5316 is amended by striking out paragraphs (29), (62), (69), and (102), by striking out "(81), General Counsel of the Atomic Energy Commission," and inserting in lieu thereof "(81) General Counsel of the Nuclear Regulatory Commission.", and by adding at the end thereof the following:

(134) General Counsel, Energy Research and Development Administration.

(135) Additional officers, Energy Research and Development Administration (8).

(136) Additional officers, Nuclear Regulatory Commission (5).

Sec. 311. Separability

42 USC 5801 note.

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 312. Effective Date and Interim Appointments

42 USC 5801 note.

Publication in Federal Register.

(a) This Act shall take effect one hundred and twenty days after the date of its enactment, or on such earlier date the President may prescribe and publish in the Federal Register; except that any of the officers provided for in title I of this Act may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred to the Administrator and the Commission by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

Title IV – Sex Discrimination

Sec. 401. Sex Discrimination Prohibited

42 USC 5891.

42 USC 2000d.

No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any title of this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI

of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminate.

3: Reorganization Plan of 1980 and Other Documents Pertaining to NRC Jurisdiction

3. Reorganization Plan of 1980 and Other Documents Pertaining to NRC Jurisdiction

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A. REORGANIZATION PLAN NO. 1 OF 1980

5 USC App. I

Prepared by the President and submitted to the Senate and the House of Representatives in Congress assembled March 27, 1980,[1] pursuant to the provisions of chapter 9 of title 5 of the United States Code.[2]

Nuclear Regulatory Commission

Sec. 1. (a) Those functions of the Nuclear Regulatory Commission, hereinafter referred to as the "Commission", concerned with:

(1) policy formulation;

(2) rulemaking, as defined in section 553 of title 5 of the United States Code, except that those matters set forth in 553(a)(2) and (b) which do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;

(3) orders and adjudications, as defined in section 551 (6) and (7) of title 5 of the United States Code;

shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Nuclear Regulatory Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b)(1) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Executive Director for Operations,

(ii) General Counsel,

(iii) Secretary of the Commission,

(iv) Director of the Office of Policy Evaluation,

(v) Director of the Office of Inspector and Auditor,

(vi) Chairman, Vice Chairman, Executive Secretary, and Members of the Atomic Safety and Licensing Board Panel,

(vii) Chairman, Vice Chairman and Members of the Atomic Safety and Licensing Appeal Panel.

(2) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman, after consultation with the Executive Director for Operations, shall initiate the appointment, subject to the approval of the Commission, and the Chairman, or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Director of Nuclear Reactor Regulation,

(ii) Director of Nuclear Material Safety and Safeguards,

(iii) Director of Nuclear Regulatory Research,

(iv) Director of Inspection and Enforcement.

(v) Director of Standards Development.

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[1]As amended May 5, 1980.

[2]This Reorganization Plan was originally approved under special Congressional procedures; the Supreme Court decision in *Immigration & Naturalization Service vs. Chadha* (462 US 919 (1983)) called into question the legality of this plan. Congress responded by enacting this Reorganization Plan in Public Law 98-614.

(3) The Chairman or a member of the Commission shall initiate the appointment of the Members of the Advisory Committee on Reactor Safeguards, subject to the approval of the Commission. The provisions for appointment of the Chairman of the Advisory Committee on Reactor Safeguards and the term of the members shall not be affected by the provisions of this Reorganization Plan.

(4) The Commission shall delegate the function of appointing, removing and supervising the staff of the following offices or successor offices to the respective heads of such offices: General Counsel, Secretary of the Commission, Office of Public Evaluation, Office of Inspector and Auditor. The Commission shall delegate the functions of appointing, removing and supervising the staff of the following panels and committee to the respective Chairman thereof: Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel and Advisory Committee on Reactor Safeguards.

(c) Each member of the Commission shall continue to appoint, remove and supervise the personnel employed in his or her immediate office.

(d) The Commission shall act as provided by subsection 201(a)(1) of the Energy Reorganization Act of 1974, as amended (42 USC 5841 (a)(1), as amended) in the performance of its functions as described in subsections (a) and (b) of this section.

Sec. 2. (a) All other functions of the Commission, not specified by section 1 of this Reorganization Plan, are hereby transferred to the Chairman. The Chairman shall be the official spokesman for the Commission, and shall appoint, supervise, and remove, without further action by the Commission, the Directors and staff of the Office of Public Affairs and the Office of Congressional Relations. The Chairman may consult with the Commission as he deems appropriate in exercising this appointment function.

(b) The Chairman shall also be the principal executive officer of the Commission, and shall be responsible to the Commission for developing policy planning and guidance for consideration by the Commission; shall be responsible for the Commission for assuring that the Executive Director for Operations and the staff of the Commission (other than the officers and staff referred to in sections (1)(b)(4), (1)(c) and (2)(a) of this Reorganization Plan) are responsive to the requirements of the Commission in the performance of its functions; shall determine the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission; shall present to the Commission for its consideration the proposals and estimates set forth in subsection (3) of this paragraph; and shall be responsible for the following functions, which he shall delegate, subject to his direction and supervision, to the Executive Director for Operations unless otherwise provided by this Reorganization Plan:

(1) administrative functions of the Commission;

(2) distribution of business among such personnel and among administrative units and offices of the Commission;

(3) preparation of

(i) proposals for the reorganization of the major offices within the Commission;

(ii) the budget estimate for the Commission; and

(iii) the proposed distribution of appropriated funds according to major programs and purposes.

(4) appointing and removing without any further action by the Commission, all officers and employees under the Commission other

than those whose appointment and removal are specifically provided for by subsections 1 (b), (c) and 2(a) of this Reorganization Plan.

(c) The Chairman as principal executive officer and the Executive Director for Operations shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions and distribution of appropriated funds, as the Commission may by law, including this Plan, be authorized to make. The Chairman and the Executive Director for Operations, through the Chairman, shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions.

Sec. 3. (a) Notwithstanding sections 1 and 2 of this Reorganization Plan, there are hereby transferred to the Chairman all the functions vested in the Commission pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities, and the public, directing, and coordinating actions relative to such emergency incident.

(b) The Chairman may delegate the authority to perform such emergency functions, in whole or in part, to any of the other members of the Commission. Such authority may also be delegated or re-delegated, in whole or in part to the staff of the Commission.

(c) In acting under this section, the Chairman, or other member of the Commission delegated authority under subsection (b), shall conform to the policy guidelines of the Commission. To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency.

(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency.

Sec. 4. (a) The Chairman may make such delegations and provide for such reporting as the Chairman deems necessary, subject to provisions of law and this Reorganization Plan. Any officer or employee under the Commission may communicate directly to the Commission, or to any member of the Commission, whenever in the view of such officer or employee a critical problem or public health and safety or common defense and security is not being properly addressed.

(b) The Executive Director for Operations shall report for all matters to the Chairman.

(c) The function of the Director of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Nuclear Regulatory Research of reporting directly to the Commission is hereby transferred so that such officers report to the Executive Director for Operations. The function of receiving such reports is hereby transferred from the Commission to the Executive Director for Operations.

(d) The heads of the Commission level offices or successor offices, of General Counsel, Secretary to the Commission, Office of Policy Evaluation, Office of Inspector and Auditor, the Atomic Safety and Licensing Board Panel and Appeal Panel, and Advisory Committee on Reactor Safeguards shall continue to report directly to the Commission and the Commission shall continue to receive such reports.

Sec. 5. The provisions of this Reorganization Plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but no sooner than the earliest time allowable under section 906 of title 5 of the United States Code.[3]

[3] 45 FR 40561.

B. REORGANIZATION PLAN NO. 3 OF 1970

Title III – The President

5 USC App. I. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled July 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code.[1] [2]

Environmental Protection Agency

Sec. 1. Establishment of Agency

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay rates (5 USC 5313).

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 USC 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 USC 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

Sec. 2. Transfers to Environmental Protection Agency

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof.

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 USC 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by

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[1]Effective December 2, 1970, under the provisions of section 7 of the plan.

[2]This Reorganization Plan was originally approved under special Congressional procedures; the Supreme Court decision in *Immigration & Naturalization Service vs. Chadha* (462 US 919 (1983)) called into question the legality of this plan. Congress responded by enacting this Reorganization Plan in Public Law 98-614.

the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law to the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration,

(ii) The Environmental Control Administration

(A) Bureau of Solid Waste Management,

(B) Bureau of Water Hygiene,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act as amended, 21 USC 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended, and the Public Health Service Act, as amended.

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855), as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(7) All functions of the Federal Radiation Council (42 USC 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and the Rodenticide Act, as amended (7 USC 135-135k), (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408 (1) of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC 346a (1)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(b) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 USC 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 USC 466f), together with its functions, and (ii) the hearing boards provided for in section 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 USC 466g(c)(4): 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 USC 1857e), together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

Sec. 3. Performance of transferred functions

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer or by any organizational entity or employee, of the Agency.

Sec. 4. Incidental transfers

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 5. Interim officers

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant

Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

Sec. 6. Abolitions

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 USC 466-1).

(2) The Federal Radiation Council (73 Stat. 690; 42 USC 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

Sec. 7. Effective date

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 USC 906(a) in the absence of this section.

C. EXECUTIVE ORDER 11834—ACTIVATION OF THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AND THE NUCLEAR REGULATORY COMMISSION

THE WHITE HOUSE

Activation of the Energy Research and Development Administration and the Nuclear Regulatory Commission

By virtue of the authority vested in me by the Energy Reorganization Act of 1974 (Public Law 93-438; 88 Stat. 1233), section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered:

Sec. 1. Pursuant to section 312(a) of the Energy Reorganization Act of 1974, I hereby prescribe January 19, 1975, as the effective date of that Act. This action shall not impair in any way the activation of the Energy Resources Council by Executive Order No. 11814 of October 11, 1974.

Sec. 2. The Director of the Office of Management and Budget shall take all steps necessary or appropriate to ensure or effectuate the transfers provided for in the Energy Reorganization Act of 1974, the Solar Heating and Cooling Demonstration Act of 1974 (Public Law 93-409; 88 Stat. 1069), the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410; 88 Stat. 1079), the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-473; 88 Stat. 1431), to the extent required or permitted by law, including transfers of funds, personnel and positions, assets liabilities, contracts, property, records, and other items related to the transfer of functions, programs, or authorities.

Sec. 3. As required by the Energy Reorganization Act of 1974, this Order shall be published in the Federal Register.

GERALD R. FORD

THE WHITE HOUSE, *January 15, 1975.*

D. OMB MEMORANDUM REGARDING RESPONSIBILITY FOR SETTING RADIATION PROTECTION STANDARDS

Washington, D.C. 20503
December 7, 1973

MEMORANDUM FOR: ADMINISTRATOR TRAIN
CHAIRMAN RAY

SUBJECT: Responsibility for Setting Radiation Protection Standards

FROM: Roy L. Ash

Thank you for providing position papers which outline the background and the current difference of views between your two agencies as to which should have the responsibility for issuing standards to define permissible limits on radioactivity that may be emitted from facilities in the nuclear power industry.

It is clear, as your paper indicated, that a decision is needed on this matter so that the nuclear power industry and the general public will know where the responsibility lies for developing (including public participation in development), promulgating and enforcing radiation protection standards for various types of facilities in the nuclear power industry. We must, in the national interest, avoid confusion in this area, particularly since nuclear power is expected to supply a growing share of the Nation's energy requirements; and it must be clear that we are assuring continued full protection of the public health and the environment from radiation hazards.

It is also clear from the information which you provided that:

> the area of responsibility now in controversy is intimately related to the direct regulatory responsibilities and capabilities of the Atomic Energy Commission, responsibilities about which there is no dispute.
>
> EPA has construed too broadly its responsibilities, as set forth in Reorganization Plan No. 3 of 1970, to set "generally applicable environmental standards for the protection of the general environment from radioactive material."

On behalf of the President, this memorandum is to advise you that the decision is that AEC should proceed with its plans for issuing uranium fuel cycle standards, taking into account the comments received from all sources, including EPA; that EPA should discontinue its preparations for issuing, now or in the future, any standards for types of facilities; and that EPA should continue, under its current authority, to have responsibility for setting standards for the total amount of radiation in the general environment from all facilities combined in the uranium fuel cycle, i.e., an ambient standard which would have to reflect AEC's findings as to the practicability of emission controls.

EPA can continue to have a major impact upon standards for facilities set by AEC through EPA's review of proposed standards, during which EPA can bring to bear its knowledge and perspective derived from its responsibility for setting ambient radiation standards.

The President expects that AEC and EPA continue to work together to carry out the responsibilities as outlined above.

E. PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND (12/7/79)

Public Papers of the Presidents of the United States: Jimmy Carter, 1979

Remarks Announcing Actions in Response to the Commission's Report. December 7, 1979.

The purpose of this brief statement this afternoon is to outline to you and to the public, both in this country and in other nations of the world, my own assessment of the Kemeny report recommendations on the Three Mile Island accident. And I would like to add, of course, in the presentation some thoughts and actions of my own.

I have reviewed the report of the Commission, which I established to investigate the accident at the Three Mile Island nuclear power plant. The Commission, headed by Dr. John Kemeny, found very serious shortcomings in the way that both the Government and the utility industry regulate and manage nuclear power.

The steps that I am taking today will help to assure that nuclear power plants are operated safely. Safety, as it always has been and will remain, is my top priority.

As I've said before, in this country nuclear power is an energy source of last resort. By this I meant that as we reach our goals on conservation, on the direct use of coal, on development of solar power and synthetic fuels, and enhanced production of American oil and natural gas – as we reach those goals, then we can minimize our reliance on nuclear power.

Many of our foreign allies must place much greater reliance than we do on nuclear power, because they do not have the vast natural resources that give us so many alternatives. We must get on with the job of developing alternative energy resources, and we must also pass, in order to do this, the legislation that I have proposed to the Congress in making an effort, at every level of society, to conserve energy. To conserve energy and to develop energy resources in our country are the two basic answers for which we are seeking. But we cannot shut the door on nuclear power for the United States.

The recent events in Iran have shown us the clear, stark dangers that excessive dependence on imported oil holds for our Nation. We must make every effort to lead this country to energy security. Every domestic energy source, including nuclear power, is critical if we are to be free as a country from our present over-dependence on unstable and uncertain sources of high-priced foreign oil.

We do not have the luxury of abandoning nuclear power or imposing a lengthy moratorium on its further use. A nuclear power plant can displace 35,000 barrels of oil per day, or roughly 13 million barrels of oil per year. We must take every possible step to increase the safety of nuclear power production. I agree fully with the letter and the spirit and the intent of the Kemeny commission's recommendations, some of which are within my own power to implement, others of which rely on the Nuclear Regulatory Commission, or the NRC, or the utility industry itself.

To get the Government's own house in order, I will take several steps. First, I will send to the Congress a reorganization plan to strengthen the role of the Chairman of the NRC, to clarify assignment of authority and responsibility, and provide this person with the power to act on a daily basis as a chief executive officer with authority to put needed safety requirements in place and to implement better procedures. The Chairman

must be able to select key personnel and to act on behalf of the Commission during any emergency.

Second, I intend to appoint a new Chairman of the Nuclear Regulatory Commission, someone from outside that agency, in the spirit of the Kemeny commission's recommendation. In the meantime, I've asked Commissioner Ahearne, now on the NRC, to serve as the Chairman. Mr. Ahearne will stress safety and the prompt implementation of the needed reforms.

In addition, I will establish an independent advisory committee to help keep me and the public of the United States informed of the progress of the NRC and the industry in achieving and in making clear the recommendations that nuclear power will be safer.

Third, I'm transferring responsibility to the Federal Emergency Management Agency, the FEMA, to head up all off site emergency activities and to complete a thorough review of emergency plans in all the States of our country with operating nuclear reactors by June 1980.

Fourth, I have directed the Nuclear Regulatory Commission and the other agencies of the Government to accelerate our program to place a resident Federal inspector at every reactor site.

Fifth, I'm asking all relevant Government agencies to implement virtually all of the other recommendations of the Kemeny commission – I believe there were 44 in all. A detailed fact sheet is being issued to the public, and a more extended briefing will be given to the press this afternoon.

With clear leadership and improved organization, the executive branch of Government and the NRC will be better able to act quickly on the crucial issues of improved training and standards, safety procedures, and the other Kemeny commission recommendations. But responsibility to make nuclear power safer does not stop with the Federal Government. In fact, the primary, day-by-day responsibility for safety rests with utility company management and with suppliers of nuclear equipment. There is no substitute for technically qualified and committed people working on the construction, the operation, and the inspection of nuclear powerplants.

Personal responsibility must be stressed. Some one person must always be designated as in charge, both at the corporate level and also at the power plant site. The industry owes it to the American people to strengthen its commitment to safety.

I call on the utilities to implement the following changes. First, building on the steps already taken, the industry must organize itself to develop enhanced standards for safe design, operation, and construction of plants. Second, the nuclear industry must work together to develop and to maintain in operation a comprehensive training, examination, and evaluation program for operators and for supervisors. This training program must pass muster with the NRC through accreditation of the training programs to be established. Third, control rooms in nuclear power plants must be modernized, standardized, and simplified as much as possible to permit better informed decision–making among regular operating hours and, of course, during emergencies.

I challenge our utility companies to bend every effort to improve the safety of nuclear power.

Finally, I would like to discuss how we manage this transition period during which the Kemeny recommendations are being implemented. There are a number of new nuclear plants now awaiting operating licenses or construction permits. Under law, the Nuclear Regulatory Commission is an independent agency. Licensing decisions rest with the Nuclear Regulatory Commission, and, as the Kemeny commission noted, it has the authority to proceed with licensing these plants on a case-by-case basis,

which may be used as circumstances surrounding a plant or its application dictate.

The NRC has indicated, however, that it will pause in issuing any new licenses and construction permits in order to devote its full attention to putting its own house in order and tightening up safety requirements. I endorse this approach which the NRC has adopted, but I urge the NRC to complete its work as quickly as possible and in no event later than 6 months from today. Once we've instituted the necessary reforms to assure safety, we must resume the licensing process promptly so that the new plants we need to reduce our dependence on foreign oil can be built and operated.

The steps I'm announcing today will help to ensure that our safety has the safety of nuclear plants. Nuclear power does have a future in the United States. It's an option that we must keep open. I will join with the utilities and their suppliers, the Nuclear Regulatory Commission, the executive departments and agencies of the Federal Government, and also the State and local governments to assure that the future is a safe one.

And now Dr. Frank Press, Stu Eizenstat, and John Deutch will be glad to answer your questions about these decisions and about nuclear power and the future of it in our country. Frank?

NOTE: The President spoke at 2:45 p.m. in Room 450 of the Old Executive Office Building.

Following the President's remarks, Frank Press, Director of the Office of Science and Technology Policy, Stuart E. Eizenstat, Assistant to the President for Domestic Affairs and Policy, and Under Secretary of Energy John .M. Deutch held a news conference on the announcements.

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This document is a compilation of nuclear regulatory legislation and other relevant material through the 110th Congress, 2nd Session. This compilation has been prepared for use as a resource document, which the NRC intends to update at the end of every congress.

The contents of NUREG 0980 include the Atomic Energy Act of 1954, as amended; Energy Reorganization Act of 1974, as amended; Uranium Mill Tailings Radiation Control Act of 1978; Low-Level Radioactive Waste Policy Act; Nuclear Waste Policy Act of 1982; and NRC Authorization and Appropriation Acts. Other materials included are statutes and treaties on export licensing, nuclear non-proliferation, and environmental protection.

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