10: Chief Financial Officers Legislation

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Contents

A. CHIEF FINANCIAL OFFICERS ACT OF 1990, AS AMENDED

Public Law 101-576 **104 Stat. 2838**

Nov. 15, 1990

An Act

To amend Title 31, United States Code, to improve the general and financial management of the Federal Government.

Chief Financial Officers Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I–General Provisions

Sec. 101. Short Title.

31 USC 501 note.

This Act may be cited as the "Chief Financial Officers Act of 1990."

Sec. 102. Findings And Purposes.

31 USC 501 note.

(a) FINDINGS.–The Congress finds the following:

(1) General management functions of the Office of Management and Budget need to be significantly enhanced to improve the efficiency and effectiveness of the Federal Government.

(2) Financial management functions of the Office of Management and Budget need to be significantly enhanced to provide overall direction and leadership in the development of a modern Federal financial management structure and associated systems.

(3) Billions of dollars are lost each year through fraud, waste, abuse, and mismanagement among the hundreds of programs in the Federal Government.

(4) These losses could he significantly decreased by improved management, including improved central coordination of internal controls and financial accounting.

(5) The Federal Government is in great need of fundamental reform in financial management requirements and practices as financial management systems are obsolete and inefficient, and do not provide complete, consistent, reliable, and timely information.

(6) Current financial reporting practices of the Federal Government do not accurately disclose the current and probable future cost of operating and investment decisions, including the future need for cash or other resources, do not permit adequate comparison of actual costs among executive agencies, and do not provide the timely information required for efficient management of programs.

(b) PURPOSES.–The purposes of this Act are the following:

(1) Bring more effective general and financial management practices to the Federal Government through statutory provisions which would establish in the office of Management and Budget a Deputy Director for Management, establish an Office of Federal Financial Management headed by a Controller, and designate a Chief

Financial Officer in each executive department and in each major executive agency in the Federal Government.

(2) Provide for improvement, in each agency of the Federal Government, of systems of accounting, financial management, and internal controls to assure the issuance of reliable financial information and to deter fraud, waste, and abuse of Government resources.

(3) Provide for the production of complete, reliable, timely, and consistent financial information for use by the executive branch of the Government and the Congress in the financing, management, and evaluation of Federal programs.

Title II–Establishment Of Chief Financial Officers

Sec. 201. Deputy Director For Management.

Section 502 of Title 31, United States Code, as amended by this Act, is amended–

(1) by redesignating subsections (c), (d), and (e), as amended by this section, as subsections (d), (e), and (f); and

(2) by inserting after subsection (b) the following:

(c) The Office has a Deputy Director for Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director for Management shall be the chief official responsible for financial management in the United States Government.

Sec. 202. Functions Of Deputy Director For Management.

(a) CLERICAL AMENDMENTS.–Sections 503 and 504 of Title 31, United States Code, are redesignated in order as sections 505 and 506, respectively.

(b) FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.–Subchapter I of Chapter 5 of Title 31, United States Code, is amended by inserting after section 502 the following:

§503. Functions of Deputy Director for Management

(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish government-wide financial management policies for executive agencies and shall perform the following financial management functions:

(1) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to financial management.

(2) Provide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements, and by monitoring the establishment and operation of Federal Government financial management systems.

(3) Review agency budget requests for financial management systems and operations, and advise the Director on the resources required to develop and effectively operate and maintain Federal Government financial management systems and to correct major deficiencies in such systems.

(4) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they are in accordance with financial management plans of the Office of Management and Budget.

(5) Monitor the financial execution of the budget in relation to actual expenditures, including timely performance reports.

(6) Oversee, periodically review, and make recommendations to heads of agencies on the administrative structure of agencies with respect to their financial management activities.

(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, respectively.

(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers.

(9) Provide advice to agencies regarding the qualifications, recruitment, performance, and retention of other financial management personnel.

(10) Assess the overall adequacy of the professional qualifications and capabilities of financial management staffs throughout the Government and make recommendations on ways to correct problems which impair the capacity of those staffs.

(11) Settle differences that arise among agencies regarding the implementation of financial management policies.

(12) Chair the Chief Financial Officers Council established by section 302 of the Chief Financial Officers Act of 1990.

(13) Communicate with the financial officers of State and local governments, and foster the exchange with those officers of information concerning financial management standards, techniques, and processes.

(14) Issue such other policies and directives as may he necessary to carry out this section, and perform any other function prescribed by the Director.

(b) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish general management policies for executive agencies and perform the following general management functions:

(1) Coordinate and supervise the general management functions of the Office of Management and Budget.

(2) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to–

(A) managerial systems, including the systematic measurement of performance;

(B) procurement policy;

(C) grant, cooperative agreement, and assistance management;

(D) information and statistical policy;

(E) property management;

(F) human resources management;

(G) regulatory affairs; and

(H) other management functions, including organizational studies, long-range planning, program evaluation, productivity improvement, and experimentation and demonstration programs.

(3) Provide complete, reliable, and timely information to the President, the Congress, and the public regarding the management activities of the executive branch.

(4) Facilitate actions by the Congress and the executive branch to improve the management of Federal Government operations and to remove impediments to effective administration.

(5) Provide leadership in management innovation, through

(A) experimentation, testing, and demonstration programs; and

(B) the adoption of modern management concepts and technologies.

(6) Work with State and local governments to improve and strengthen intergovernmental relations, and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements.

(7) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they respond to program evaluations by, and are in accordance with general management plans of, the Office of Management and Budget.

(8) Provide advice to agencies on the qualification, recruitment, performance, and retention of managerial personnel.

(9) perform any other functions prescribed by the Director.

Sec. 203. Office Of Federal Financial Management.

(a) ESTABLISHMENT.–Subchapter I of Chapter 5 of Title 31, United States Code, as amended by this Act, is amended by inserting after section 503 (as added by section 202 of this Act) the following:

§504. Office of Federal Financial Management

(a) There is established in the Office of Management and Budget an office to be known as the "Office of Federal Financial Management." The Office of Federal Financial Management, under the direction and control of the Deputy Director for Management of the Office of Management and Budget, shall carry out the financial management functions listed in section 503(a) of this Title.

(b) There shall be at the head of the Office of Federal Financial Management a Controller, who shall be appointed by the President, by and with the advice and consent of the Senate. The Controller shall be appointed from among individuals who possess–

(1) demonstrated ability and practical experience in accounting, financial management, and financial systems; and

(2) extensive practical experience in financial management in large governmental or business entities.

(c) The Controller of the Office of Federal Financial Management shall be the deputy and principal advisor to the Deputy Director for Management in the performance by the Deputy Director for Management of functions described in section 503(a).

(b) STATEMENT OF APPROPRIATIONS IN BUDGET.–Section 1105(a) of Title 31, United States Code, is amended by adding at the end the following:

(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

(c) CLERICAL AMENDMENT.–The table of contents at the beginning of Chapter 5 of Title 31, United States Code, is amended by striking the items relating to sections 503 and 504 and inserting the following:

503. Functions of Deputy Director for Management.
504. Office of Federal Financial Management.
505. Office of Information and Regulatory Affairs.
506. Office of Federal Procurement Policy.

Sec. 204. Duties And Functions Of The Department Of The Treasury.

31 USC 501 note.

Nothing in this Act shall be construed to interfere with the exercise of the functions, duties, and responsibilities of the Department of the Treasury, as in effect immediately before the enactment of this Act.

Sec. 205. Agency Chief Financial Officers.

(a) IN GENERAL.–Subtitle I of Title 31, United States Code, is amended by adding at the end the following new chapter:

Chapter 9–Agency Chief Financial Officers

§901. Establishment of agency Chief Financial Officers

31 USC 901

(a) There shall be within each agency described in subsection (b) an agency Chief Financial Officer. Each agency Chief Financial Officer shall–

(1) for those agencies described in subsection (b)(1)–

(A) be appointed by the President, by and with the advice and consent of the Senate; or

(B) be designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed;

(2) for those agencies described in subsection (b)(2)–

(A) be appointed by the head of the agency;

(B) be in the competitive service or the senior executive service; and

(C) be career appointees; and

(3) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities.

(b)(1) The agencies referred to in subsection (a)(1) are the following:

(A) The Department of Agriculture.
(B) The Department of Commerce.
(C) The Department of Defense.
(D) The Department of Education.
(E) The Department of Energy.
(F) The Department of Health and Human Services.
(G) The Department of Housing and Urban Development.
(H) The Department of the Interior.
(I) The Department of Justice.
(J) The Department of Labor.
(K) The Department of State.
(L) The Department of Transportation.
(M) The Department of the Treasury.
(N) The Department of Veterans Affairs.
(O) The Environmental Protection Agency.
(P) The National Aeronautics and Space Administration.

(2) The agencies referred to in subsection (a)(2) are the following:

(A) The Agency for International Development.
(B) The Federal Emergency Management Agency.

(C) The General Services Administration.
(D) The National Science Foundation.
(E) The Nuclear Regulatory Commission.
(F) The Office of Personnel Management.(G) The Small Business Administration.
(H) The Social Security Administration.

(c)(1) There shall be within the Executive Office of the President a Chief Financial Officer, who shall be designated or appointed by the President from among individuals meeting the standards described in subsection (a)(3). The position of Chief Financial Officer established under this paragraph may be so established in any Office (including the Office of Administration) of the Executive Office of the President.

(2) The Chief Financial Officer designated or appointed under this subsection shall, to the extent that the President determines appropriate and in the interest of the United States, have the same authority and perform the same functions as apply in the case of a Chief Financial Officer of an agency described in subsection (b).

(3) The President shall submit to Congress notification with respect to any provision of section 902 that the President determines shall not apply to a Chief Financial Officer designated or appointed under this subsection.

(4) The President may designate an employee of the Executive Office of the President (other than the Chief Financial Officer), who shall be deemed "the head of the agency" for purposes of carrying out section 902, with respect to the Executive Office of the President.[1]

§902. Authority and functions of agency Chief Financial Officers

(a) An agency Chief Financial Officer shall–

(1) report directly to the head of the agency regarding financial management matters;

(2) oversee all financial management activities relating to the programs and operations of the agency;

(3) develop and maintain an integrated agency accounting and financial management system, including financial reporting and internal controls, which–

(A) complies with applicable accounting principles, standards, and requirements, and internal control standards;

(B) complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

(C) complies with any other requirements applicable to such systems; and

(D) provides for–

(i) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of agency management;

(ii) the development and reporting of cost information;

(iii) the integration of accounting and budgeting information; and

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[1]Amended Public Law 103-296, section 108(j)(1), (108 Stat. 1488), Aug 15, 1994; Public Law 106-58, Title VI, section 638(a), (113 Stat. 475), September 29, 1999.

(iv) the systematic measurement of performance;

(4) make recommendations to the head of the agency regarding the selection of the Deputy Chief Financial Officer of the agency;

(5) direct, manage, and provide policy guidance and oversight of agency financial management personnel, activities, and operations, including–

(A) the preparation and annual revision of an agency plan to–

(i) implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under section 3512(a)(3) of this Title; and

(ii) comply with the requirements established under section 3515 and subsections (e) and (f) of section 3521 of this Title;

(B) the development of agency financial management budgets;

(C) the recruitment, selection, and training of personnel to carry out agency financial management functions;

(D) the approval and management of agency financial management systems design or enhancement projects;

(E) the implementation of agency asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;

Reports.

(6) prepare and transmit, by not later than 60 days after the submission of the audit report required by section 3521(f) of this Title, an annual report to the agency head and the Director of the Office of Management and Budget, which shall include–

(A) a description and analysis of the status of financial management of the agency;

(B) the annual financial statements prepared under section 3515 of this Title;

(C) the audit report transmitted to the head of the agency under section 3521(f) of this Title;

(D) a summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

(E) other information the head of the agency considers appropriate to fully inform the President and the Congress concerning the financial management of the agency;

Reports.

(7) monitor the financial execution of the budget of the agency in relation to actual expenditures, and prepare and submit to the head of the agency timely performance reports; and

(8) review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.

(b)(1) In addition to the authority otherwise provided by this section, each agency Chief Financial Officer–

(A) subject to paragraph (2), shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which are the property of the agency or which are available to the agency, and which relate to programs and

operations with respect to which that agency Chief Financial Officer has responsibilities under this section;

(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal, State, or local governmental entity; and

(C) to the extent and in such amounts as may be provided in advance by appropriations Acts, may–

(i) enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services; and

(ii) make such payments as may be necessary to carry out the provisions of this section.

(2) Except as provided in paragraph (1)(B), this subsection does not provide to an agency Chief Financial Officer any access greater than permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of any Office of Inspector General established under the Inspector General Act of 1978 (5 USC App.).

§903. Establishment of agency Deputy Chief Financial Officers

(a) There shall be within each agency described in section 901(b) an agency Deputy Chief Financial Officer, who shall report directly to the agency Chief Financial Officer on financial management matters. The position of agency Deputy Chief Financial Officer shall be a career reserved position in the Senior Executive Service.

(b) Consistent with qualification standards developed by, and in consultation with, the agency Chief Financial Officer and the Director of the Office of Management and Budget, the head of each agency shall appoint as Deputy Chief Financial Officer an individual with demonstrated ability and experience in accounting, budget execution, financial and management analysis, and systems development, and not less than 6 years practical experience in financial management at large governmental entities.

(b) CLERICAL AMENDMENT.–The table of chapters at the beginning of subtitle I of Title 31, United States Code, is amended by adding at the end the following:

"9. Agency Chief Financial Officers.....901."

31 USC 901 note.

(c) CHIEF FINANCIAL OFFICERS OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(1) DESIGNATION.–The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development may each designate as the agency Chief Financial Officer of that department for purposes of section 901 of Title 31, United States Code, as amended by this section, the officer designated, respectively, under section 4(c) of the Department of Veterans Affairs Act (38 USC 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 USC 3533(e)), as in effect before the effective date of this Act.

(2) CONFORMING AMENDMENT.–Section 4(c) of the Department of Veterans Affairs Act (38 USC 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42

USC 3533(e)), as added by section 121 of Public Law 101-235, are repealed.

Sec. 206. Transfer Of Functions And Personnel Of Agency Chief Financial Officers.

31 USC 901 note.

(a) AGENCY REVIEWS OF FINANCIAL MANAGEMENT ACTIVITIES.–Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall require each agency listed in subsection (b) of section 901 of Title 31, United States Code, as amended by this Act, to conduct a review of its financial management activities for the purpose of consolidating its accounting, budgeting, and other financial management activities under the agency Chief Financial Officer appointed under subsection (a) of that section for the agency.

(b) REORGANIZATION PROPOSAL.–Not later than 120 days after the issuance of requirements under subsection (a) and subject to all laws vesting functions in particular officers and employees of the United States, the head of each agency shall submit to the Director of the Office of Management and Budget a proposal for reorganizing the agency for the purposes of this Act. Such proposal shall include–

(1) a description of all functions, powers, duties, personnel, property, or records which the agency Chief Financial Officer is proposed to have authority over, including those relating to functions that are not related to financial management activities; and

(2) a detailed outline of the administrative structure of the office of the agency Chief Financial Officer, including a description of the responsibility and authority of financial management personnel and resources in agencies or other subdivisions as appropriate to that agency.

(c) REVIEW AND APPROVAL OF PROPOSAL.–Not later than 60 days after receiving a proposal from the head of an agency under subsection (b), the Director of the Office of Management and Budget shall approve or disapprove the proposal and notify the head of the agency of that approval or disapproval. The Director shall approve each proposal which establishes an agency Chief Financial Officer in conformance with section 901 of Title 31, United States Code, as added by this Act, and which establishes a financial management structure reasonably tailored to the functions of the agency. Upon approving or disapproving a proposal of an agency under this section, the Director shall transmit to the head of the agency a written notice of that approval or disapproval.

(d) IMPLEMENTATION OF PROPOSAL.–Upon receiving written notice of approval of a proposal under this section from the Director of the Office of Management and Budget, the head of an agency shall implement that proposal.

Sec. 207. Compensation.

(a) COMPENSATION, LEVEL II.–Section 5313 of Title 5, United States Code, is amended by adding at the end the following:
"Deputy Director for Management, Office of Management and Budget."
(b) COMPENSATION, LEVEL III.–Section 5314 of Title 5, United States Code, is amended by adding at the end the following:
"Controller, Office of Federal Financial Management, Office of Management and Budget."
(c) COMPENSATION, LEVEL IV.–Section 5315 of Title 5, United States

Code, is amended by adding at the end the following:Chief Financial Officer, Department of Agriculture.
Chief Financial Officer, Department of Commerce.
Chief Financial Officer, Department of Defense.
Chief Financial Officer, Department of Education.
Chief Financial Officer, Department of Energy.
Chief Financial Officer, Department of Health and Human Services.
Chief Financial Officer, Department of Housing and Urban Development.
Chief Financial Officer, Department of the Interior.
Chief Financial Officer, Department of Justice.
Chief Financial Officer, Department of Labor.
Chief Financial Officer, Department of State.
Chief Financial Officer, Department of Transportation.
Chief Financial Officer, Department of the Treasury.
Chief Financial Officer, Department of Veterans Affairs.
Chief Financial Officer, Environmental Protection Agency.
Chief Financial Officer, National Aeronautics and Space Administration.

Title III–Enhancement Of Federal Financial Management Activities

Sec. 301. Financial Management Status Report; 5-Year Plan Of Director Of Office Of Management And Budget.

(a) IN GENERAL.–Section 3512 of Title 31, United States Code, is amended by striking the heading thereof, redesignating subsections (a) through (f) in order as subsections (b) through (g), and by inserting before such subsection (b), as so redesignated, the following:

§3512. Executive agency accounting and other financial management reports and plans

(a)(1) The Director of the Office of Management and Budget shall prepare and submit to the appropriate committees of the Congress a financial management status report and a government-wide 5-year financial management plan.

(2) A financial management status report under this subsection shall include–

(A) a description and analysis of the status of financial management in the executive branch;

(B) a summary of the most recently completed financial statements–

(i) of Federal agencies under section 3515 of this Title; and

(ii) of Government corporations;

(C) a summary of the most recently completed financial statement audits and reports

(i) of Federal agencies under section 3521 (e) and (f) of this Title; and

(ii) of Government corporations;

(D) a summary of reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

(E) any other information the Director considers appropriate to fully inform the Congress regarding the financial management of the Federal Government.

(3)(A) A government-wide 5-year financial management plan under this subsection shall describe the activities the Director, the Deputy Director for Management, the Controller of the Office of Federal Financial Management, and agency Chief Financial Officers shall conduct over the next 5 fiscal years to improve the financial management of the Federal Government.

(B) Each government-wide 5-year financial management plan prepared under this subsection shall–

(i) describe the existing financial management structure and any changes needed to establish an integrated financial management system;

(ii) be consistent with applicable accounting principles, standards, and requirements;

(iii) provide a strategy for developing and integrating individual agency accounting, financial information, and other financial management systems to ensure adequacy, consistency, and timeliness of financial information;

(iv) identify and make proposals to eliminate duplicative and unnecessary systems, including encouraging agencies to share systems which have sufficient capacity to perform the functions needed;

(v) identify projects to bring existing systems into compliance with the applicable standards and requirements;

(vi) contain milestones for equipment acquisitions and other actions necessary to implement the 5-year plan consistent with the requirements of this section;

(vii) identify financial management personnel needs and actions to ensure those needs are met;

(viii) include a plan for ensuring the annual audit of financial statements of executive agencies pursuant to section 3521(h) of this Title; and

(ix) estimate the costs of implementing the government-wide 5-year plan.

(4)(A) Not later than 15 months after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall submit the first financial management status report and government-wide 5-year financial management plan under this subsection to the appropriate committees of the Congress.

(B)(i) Not later than January 31 of each year thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of the Congress a financial management status report and a revised government-wide 5-year financial management plan to cover the succeeding 5 fiscal years, including a report on the accomplishments of the executive branch in implementing the plan during the preceding fiscal year

(ii) The Director shall include with each revised government-wide 5-year financial management plan a description of any substantive changes in the financial statement audit plan required by paragraph (3)(B)(viii),

progress made by executive agencies implementing the audit plan, and any improvements in Federal Government financial management related to preparation and audit of financial statements of executive agencies.

(5) Not later than 30 days after receiving each annual report under section 902(a)(6) of this Title, the Director shall transmit to the Chairman of the Committee on Government Operations of the House of Representatives and the Chairman of the Committee on Governmental Affairs of the Senate a final copy of that report and any comments on the report by the Director.

(b) CLERICAL AMENDMENT.–The table of contents at the beginning of Chapter 35 of Title 31, United States Code, is amended by striking the item relating to section 3512 and inserting the following:

3512. Executive agency accounting and other financial management reports and plans.

Sec. 302. Chief Financial Officers Council.

31 USC 901 note.

(a) ESTABLISHMENT.–There is established a Chief Financial Officers Council, consisting of–

(1) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the council;

(2) the Controller of the Office of Federal Financial Management of the Office of Management and Budget;

(3) the Fiscal Assistant Secretary of Treasury; and

(4) each of the agency Chief Financial Officers appointed under section 901 of Title 31, United States Code, as amended by this Act.

(b) FUNCTIONS.–The Chief Financial Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matter.

Sec. 303. Financial Statements Of Agencies.

(a) PREPARATION OF FINANCIAL STATEMENTS.–

(1) IN GENERAL–Subchapter II of Chapter 35 of Title 31, United States Code, is amended by adding at the end the following:

§3515. Financial statements of agencies

(a) Not later than March 1 of 1997 and each year thereafter, the head of each executive agency identified in section 901(b) of this Title shall prepare and submit to the Congress and the Director of the Office of Management and Budget an audited financial statement for the preceding fiscal year, covering all accounts and associated activities of each office, bureau, and activity of the agency.

(b) Each audited financial statement of an executive agency under this section shall reflect–

(1) the overall financial position of the offices, bureaus, and activities covered by the statement, including assets and liabilities thereof; and

(2) results of operations of those offices, bureaus, and activities.

(c) The Director of the Office of Management and Budget shall identify components of executive agencies that shall be required to have audited financial statements meeting the requirements of subsection (b).

(d) The Director of the Office of Management and Budget shall prescribe the form and content of the financial statements of executive agencies under this section, consistent with applicable accounting and financial reporting principles, standards, and requirements.[2]

§3516. Reports Consolidation

(a)(1) With the concurrence of the Director of the Office of Management and Budget, the head of an executive agency may adjust the frequency and due dates of, and consolidate into an annual report to the President, the Director of the Office of Management and Budget, and Congress any statutorily required reports described in paragraph (2). Such a consolidated report shall be submitted to the President, the Director of the Office of Management and Budget, and to appropriate committees and subcommittees of Congress not later than 150 days after the end of the agency's fiscal year.

(2) The following reports may be consolidated into the report referred to in paragraph (1):

(A) Any report by an agency to Congress, the Office of Management and Budget, or the President under section 1116 of this Chapter.

(B) The following agency-specific reports:

(i) The biennial financial management improvement plan by the Secretary of Defense under section 2222 of Title 10.

(ii) The annual report of the Attorney General under section 522 of Title 28.

(C) Any other statutorily required report pertaining to an agency's financial or performance management if the head of the agency–

(i) determines that inclusion of that report will enhance the usefulness of the reported information to decision makers; and

(ii) consults in advance of inclusion of that report with the committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and any other committee of Congress having jurisdiction with respect to the report proposed for inclusion.

(b) A report under subsection (a) that incorporates the agency's program performance report under section 1116 shall be referred to as a performance and accountability report.

(c) A report under subsection (a) that does not incorporate the agency's program performance report under section 1116 shall contain a summary of the most significant portions of the agency's program performance report, including the agency's success in achieving key performance goals for the applicable year.

(d) A report under subsection (a) shall include a statement prepared by the agency's inspector general that summarizes what the inspector general considers to be the most serious management and performance challenges facing the agency and briefly assesses the agency's progress in addressing those challenges. The inspector general shall provide such statement to the agency head at least 30 days before the due date of the report under

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[2]Public Law 101-576, Title III, section 303(a)(1), (104 Stat. 2849; November 15, 1990; Public Law 103-356, Title IV, section 405(a), (108 Stat. 3415), October 13, 1994; Public Law 106-531, section 4(a), (114 Stat. 2539), November 22, 2000.

subsection (a). The agency head may comment on the inspector general's statement, but may not modify the statement.

(e) A report under subsection (a) shall include a transmittal letter from the agency head containing, in addition to any other content, an assessment by the agency head of the completeness and reliability of the performance and financial data used in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the data, and the actions the agency can take and is taking to resolve such inadequacies.[3]

Sec. 304. Financial Audits Of Agencies.

Section 3521.

(a) Each account of an agency shall be audited administratively before being submitted to the Comptroller General and the Controller of the Office of Federal Financial Management. The head of each agency shall prescribe regulations for conducting the audit and designate a place at which the audit is to be conducted. However, a disbursing official of an executive agency may not administratively audit vouchers for which the official is responsible. With the consent of the Comptroller General, the head of the agency may waive any part of an audit.

(b) The head of an agency may prescribe a statistical sampling procedure to audit vouchers of the agency when the head of the agency decides economies will result from using the procedure. The Comptroller General–

(1) may prescribe the maximum amount of a voucher that may be audited under this subsection; and

(2) in reviewing the accounting system of the agency, shall evaluate the adequacy and effectiveness of the procedure.

(c) A disbursing or certifying official acting in good faith under subsection (b) of this section is not liable for a payment or certification of a voucher not audited specifically because of the procedure prescribed under subsection (b) if the official and the head of the agency carry out diligently collection action the Comptroller General prescribes.

(d) Subsections (b) and (c) of this section do not–

(1) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(2) relieve a disbursing or certifying official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

(e) Each financial statement prepared under section 3515 by an agency shall be audited in accordance with applicable generally accepted government auditing standards–

(1) in the case of an agency having an Inspector General appointed under the Inspector General Act of 1978 (5 USC App.), by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

(2) in any other case, by an independent external auditor, as determined by the head of the agency.

(f) For each audited financial statement required under subsection (a) of section 3515 of this Title, the person who audits the statement for

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[3]Added November 22, 2000, Public Law 106-531, section 3(a), 114 Stat. 2537.

purpose of subsection (e) of this section shall submit a report on the audit to the head of the agency. A report under this subsection shall be prepared in accordance with generally accepted government auditing standards.

(g) The Comptroller General of the United States–

(1) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

Reports.

(2) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the agency which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General considers appropriate; and

(3) may audit a financial statement prepared under section 3515 of this Title at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this subsection shall be in lieu of the audit otherwise required by subsection (e) of this section. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(h) Each financial statement prepared by an executive agency for a fiscal year after fiscal year 1991 shall be audited in accordance with this section and the plan required by section 3512(a)(3)(B)(viii) of this Title.[4]

Sec. 305. Financial Audits Of Government Corporations.

Section 9105 of Title 31, United States Code, is amended to read as follows:

§9105. Audits

(a)(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 USC App.) or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

Reports.

(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

(4) The Comptroller General of the United States–

(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

Reports.

(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

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[4]As amended, Public Law 101-576, Title III, section 304(a), November 15, 1990, 104 Stat. 2852; Public Law 103-356, Title IV, section 405(b), October 13, 1994, 108 Stat. 3416; Public Law 104-208, Div. A Title I, section 101(f) [Title VIII, section 805(a)], September 30, 1996, 110 Stat. 3009-392; Public Law 106-531, section 4(b), November 22, 2000, 114 Stat. 2539.

(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress. An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, work papers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.

Sec. 306. Management Reports Of Government Corporations.

(a) IN GENERAL.–Section 9106 of Title 31, United States Code, is amended to read as follows:

§9106. Management reports

(a)(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

(2) A management report under this subsection shall include–

(A) a statement of financial position;

(B) a statement of operations;

(C) a statement of cash flows;

(D) a reconciliation to the budget report of the Government corporation, if applicable;

(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);

(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this Title; and

(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.

(b) CLERICAL AMENDMENT.–The table of sections for Chapter 91 of Title 31, United States Code, is amended by striking the item relating to section 9106 and inserting the following:

9106. Management reports.

Sec. 307. Adoption Of Capital Accounting Standards.

31 USC 3511 note.

No capital accounting standard or principle, including any human capital standard or principle, shall be adopted for use in an executive department or agency until such standard has been reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

B. REPORTS CONSOLIDATION ACT OF 2000

Public Law 106-531 **114 Stat. 2537**

November 22, 2000

An Act

to amend Chapter 35 of Title 31, United States Code, to authorize the consolidation of certain financial and performance management reports required of Federal agencies, and for other purposes.

Sec. 1. Short Title.

31 USC 3501. note.

This Act may be cited as the "Reports Consolidation Act of 2000."

Sec. 2. Findings and Purposes.

31 USC 3516 note.

(a) FINDINGS.–Congress finds that–

(1) existing law imposes numerous financial and performance management reporting requirements on agencies;

(2) these separate requirements can cause duplication of effort on the part of agencies and result in uncoordinated reports containing information in a form that is not completely useful to Congress; and

(3) pilot projects conducted by agencies under the direction of the Office of Management and Budget demonstrate that single consolidated reports providing an analysis of verifiable financial and performance management information produce more useful reports with greater efficiency.

(b) PURPOSES.–The purposes of this Act are–

(1) to authorize and encourage the consolidation of financial and performance management reports;

(2) to provide financial and performance management information in a more meaningful and useful format for Congress, the President, and the public;

(3) to improve the quality of agency financial and performance management information; and

(4) to enhance coordination and efficiency on the part of agencies in reporting financial and performance management information.

Sec. 3. Consolidated Reports.

(a) IN GENERAL.–Chapter 35 of Title 31, United States Code, is amended by adding at the end of the following:

"section 3516. Reports Consolidation

Deadline.

"(a)(1) With the concurrence of the Director of the Office of Management and Budget, the head of an executive agency may adjust the frequency and due dates of, and consolidate into an annual report to the President, the Director of the Office of Management and Budget, and Congress any statutorily required reports described in paragraph (2). Such a consolidated report shall be submitted to the President, the Director of the Office of Management and Budget, and to appropriate committees and subcommittees of Congress not later than 150 days after the end of the agency's fiscal year.

"(2) The following reports may be consolidated into the report referred to in paragraph (1):

(A) Any report by an agency to Congress, the Office of Management and Budget, or the President under section 1116, this Chapter, and Chapters 9, 33, 37, 75, and 91.

(B) The following agency-specific reports:

"(i) The biennial financial management improvement plan by the Secretary of Defense under section 2222 of Title 10.

"(ii) The annual report of the Attorney General under section 522 of Title 28.

(C) Any other statutorily required report pertaining to an agency's financial or performance management if the head of the agency–

"(i) determines that inclusion of that report will enhance the usefulness of the reported information to decision makers; and

"(ii) consults in advance of inclusion of that report with the committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and any other committee of Congress having jurisdiction with respect to the report proposed for inclusion.

"(b) A report under subsection (a) that incorporates the agency's program performance report under section 1116 shall be referred to as a performance and accountability report.

"(c) A report under subsection (a) that does not incorporate the agency's program performance report under section 1116 shall contain a summary of the most significant portions of the agency's program performance report, including the agency's success in achieving key performance goals for the applicable year.

"(d) A report under subsection (a) shall include a statement prepared by the agency's inspector general that summarizes what the inspector general considers to be the most serious management and performance challenges facing the agency and briefly assesses the agency's progress in addressing those challenges

The inspector general shall provide such statement to the agency head at least 30 days before the due date of the report under subsection (a). The agency head may comment on the inspector general's statement, but may not modify the statement.

Deadline.

"(e) A report under subsection (a) shall include a transmittal letter from the agency head containing, in addition to any other content, an assessment by the agency head of the completeness and reliability of the performance and financial data used in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the data, and the actions the agency can take and is taking to resolve such inadequacies."."

Deadline.
31 USC 3516 note.

(b) SPECIAL RULE FOR FISCAL YEARS 2000 AND 2001.–Notwithstanding paragraph (1) of section 3516(a) of Title 31, United States Code (as added by subsection (a) of this section), the head of an executive agency may submit a consolidated report under such paragraph not later than 180 days after the end of that agency's fiscal year, with respect to fiscal years 2000 and 2001.

(c) TECHNICAL AND CONFORMING AMENDMENT.–The table of sections for Chapter 35 of Title 31, United States Code, is amended by inserting after the item relating to section 3515 the following:

"3516. Reports consolidation.".

Sec. 4. Amendments Relating to Audited Financial Statement.

(a) FINANCIAL STATEMENTS.–Section 3515 of Title 31, United States Code, is amended–

(1) in subsection (a); by inserting "Congress and the" before "Director"; and

(2) by striking subsections (e) through (h).

(b) ELIMINATION OF REPORT.–Section 3521(f) of Title 31, United States code is amended–

(1) in paragraph (1)–

(A) by striking "subsections (a) and (f)" and inserting "subsection (a)"; and

(B) by striking "(1)"; and

(2) by striking paragraph (2).

Sec. 5. Amendments Relating to Program Performance Reports.

(a) REPORT DUE DATE.–

(1) IN GENERAL.–Section 1116(a) of Title 31, United States Code, is amended by striking "No later than March 31, 2000, and no later than March 31 of each year thereafter," and inserting "Not later than 150 days after the end of an agency's fiscal year,".

31 USC 1116 note.

(2) SPECIAL RULE FOR FISCAL YEARS 2000 AND 2001.–Notwithstanding subsection (a) of section 1116 of Title 31, United States Code (as amended by paragraph (1) of this subsection), an agency head may submit a report under such subsection not later than 180 days after the end of that agency's fiscal year, with respect to fiscal years 2000 and 2001.

(b) INCLUSION OF INFORMATION IN FINANCIAL STATEMENT.–Section 1116(e) of Title 31, United States Code, is amended to read as follows:

"(e)(1) Except as provided in paragraph (2), each program performance report shall contain an assessment by the agency head of the completeness and reliability of the performance data included in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the performance data, and the actions the agency can take and is taking to resolve such inadequacies.

"(2) If a program performance report is incorporated into a report submitted under section 3516, the requirements of section 3516(e) shall apply in lieu of paragraph (1).".

11: Inspector General Legislation

11. Inspector General Legislation
Contents

A. INSPECTOR GENERAL ACT OF 1978, AS AMENDED

Public Law 95-452 **92 Stat. 1101**

October 1, 1978

5 USC Appendix

Sec. 1. Short Title

Sec. 2. Purpose And Establishment Of Offices Of Inspector General: Departments And Agencies Involved

In order to create independent and objective units–

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 12(2).[1]

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action; there is established–

(A) in each of such establishments an Office of Inspector General, subject to subparagraph (B); and

(B) in the establishment of the Department of the Treasury–

(i) an Office of Inspector General of the Department of the Treasury; and

(ii) an Office of Treasury Inspector General for Tax Administration.[2]

Sec. 3. Appointment Of Inspector General. Supervision: Removal: Political Activities: Appointment Of Assistant Inspector General For Auditing And Assistant Inspector General For Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such

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[1] Public Law 110-409 (122 STAT. 4302) (2008), section 7(d)(A) struck out 11(2) and inserted 12(2) in its place.
[2] As amended Public Law 105-206, Title I, section 1103(a), 112 Stat. 705, July 22, 1998.

head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

President. Deadline.

(b) An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.[3]

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service–

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(e) The annual rate of basic pay for an Inspector General (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.[4]

(f) An Inspector General (as defined under section 8G(a)(6) or 12(3)) may not receive any cash award or cash bonus, including any cash award under chapter 45 of title 5, United States Code.[5]

(g) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.[6]

Sec. 4. Duties And Responsibilities. Report Of Criminal Violations To Attorney General.

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established–

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[3] Public Law 110-409 (122 STAT. 4302) (2008), section 3(a) struck "The President shall communicate the reasons for any such removal to both Houses of Congress," and inserted second sentence.
[4] Public Law 110-409 (122 STAT. 4302) (2008), section 4(a)(1) inserted sub-section (e).
[5] Public Law 110-409 (122 STAT. 4302) (2008), section 5 inserted sub-section (f).
[6] Public Law 110-409 (122 STAT. 4302) (2008), section 6(a) inserted sub-section (g).

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulation on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernment entities with respect to (A) all matters relating to the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b)(1) in carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall–

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector

General of designated Federal entities defined under section 8E(a)(2), and any audit office established within a Federal entity defined under section 8E(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 12(2),[7] or the Office of Inspector General of each designed Federal entity defined under section 8E(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

Sec. 5. Semiannual Reports; Transmittal To Congress; Availability To Public; Immediate Report On Serious Or Flagrant Problems; Disclosure Of Information; Definitions.

(a)[8] Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to–

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

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[7] Public Law 110-409 (122 STAT. 4302) (2008), section 7(d) struck out 11(2) and inserted 12(2) in its place.
[8] Pub.L. 95-452, section 5, Oct. 12, 1978, 92 Stat. 1103; Pub.L. 97-252, Title XI, section 1117(c), Sept. 8, 1982, 96 Stat. 752; Pub.L. 100-504, Title I, sections 102(g), 106, Oct. 18, 1988, 102 Stat. 2521, 2525, Pub.L. 104-208, Div. A, Title I, section 101(f) [Title VIII, section 805(c)], Sept. 30, 1996, 110 Stat. 3009-393.

(6) a listing, subdivided according to subject matter, of each audit report, inspection reports, and evaluation reports[9] issued by the Office during the reporting period and for each report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports[10] and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for reports–

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including–

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports[11] and the dollar value of recommendations that funds be put to better use by management, for reports–

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including–

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit reports, inspection reports, and evaluation reports[12] issued before the commencement of the reporting period for which no management decision has been made by the end

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[9] Public Law 110-409 (122 STAT. 4302) (2008), section 12(1)(A) and 12(1)(B) inserted ", inspection reports, and evaluation reports" after first time "audit report" appears and struck "audit" second time "audit report."
[10] Public Law 110-409 (122 STAT. 4302) (2008), section 12(1)(A) and 12(1)(B) inserted ", inspection reports, and evaluation reports" after first time "audit report" appears and struck "audit" second time "audit report."
[11] Public Law 110-409 (122 STAT. 4302) (2008), section 12(1)(A) and 12(1)(B) inserted ", inspection reports, and evaluation reports" after first time "audit report" appears and struck "audit" second time "audit report."
[12] Public Law 110-409 (122 STAT. 4302) (2008), section 12(2) inserted ", inspection reports, and evaluation reports."

of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;

(12) information concerning any significant management decision with which the Inspector General is in disagreement; and

(13) the information described under section 05(b) of the Federal Financial Management Improvement Act of 1996.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing–

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports[13] and the dollar value of disallowed costs, for reports–

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including–

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports[14] and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision for reports–

(A) for which final action had not been taken by the commencement of the reporting period;

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[13] Public Law 110-409 (122 STAT. 4302) (2008), section 12(1)(A) and 12(1)(B) inserted ", inspection reports, and evaluation reports" after first time "audit report" appears and struck "audit" second time "audit report."

[14] Public Law 110-409 (122 STAT. 4302) (2008), section 12(1)(A) and 12(1)(B) inserted ", inspection reports, and evaluation reports" after first time "audit report" appears and struck "audit" second time "audit report."

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including–

(i) the dollar value of recommendations that were actually completed; and

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing–

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report, except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is–

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986 [26 USCA section 6103(f)], nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section–

(1) the term "questioned cost" means a cost that is questioned by the Office because of–

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including–

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in pre-award reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations

included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means–

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

Sec. 6. Authority Of Inspector General; Information And Assistance From Federal Agencies, Unreasonable Refusal, Office Space And Equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized–

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing)[15] and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the

[15] Public Law 110-409 (122 STAT. 4302) (2008), section 9 inserted phrase on electronically stored data.

same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of Chapter 51 and subchapter III of Chapter 53 of such Title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of Title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

Applicability.

(d)(1)(A) For purposes of applying the provisions of law identified in subparagraph (B)—

(i) each Office of Inspector General shall be considered to be a separate agency; and

(ii) the Inspector General who is the head of an office referred to in clause (i) shall, with respect to such office, have the functions, powers, and duties of an agency head or appointing authority under such provisions.

(B) This paragraph applies with respect to the following provisions of title 5, United States Code:

(i) Subchapter II of chapter 35.

(ii) Sections 8335(b), 8336, 8344, 8414, 8468, and 8425(b).

(iii) All provisions relating to the Senior Executive Service (as determined by the Office of Personnel Management), subject to paragraph (2).

(2) For purposes of applying section 4507(b) of title 5, United States Code, paragraph (1)(A)(ii) shall be applied by substituting 'the Council of the Inspectors General on Integrity and Efficiency (established by section 11 of the Inspector General Act) shall' for 'the Inspector General who is the head of an office referred to in clause (i) shall, with respect to such office,'.[16]

(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General,[17] any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

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[16] Public Law 110-409 (122 STAT. 4302) (2008), section 14 amended subsec (d).

[17] Public Law 110-409 (122 STAT. 4302) (2008), section 11(1) struck the phrase "appointed under section 3."

(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

Deadline.

(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results

of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.[18]

(9) In this subsection, the term 'Inspector General' means an Inspector General appointed under section 3 or an Inspector General appointed under section 8G.[19]

(f)(1) For each fiscal year, an Inspector General shall transmit a budget estimate and request to the head of the establishment or designated Federal entity to which the Inspector General reports. The budget request shall specify the aggregate amount of funds requested for such fiscal year for the operations of that Inspector General and shall specify the amount requested for all training needs, including a certification from the Inspector General that the amount requested satisfies all training requirements for the Inspector General's office for that fiscal year, and any resources necessary to support the Council of the Inspectors General on Integrity and Efficiency. Resources necessary to support the Council of the Inspectors General on Integrity and Efficiency shall be specifically identified and justified in the budget request. information or assistance.

(2) In transmitting a proposed budget to the President for approval, the head of each establishment or designated Federal entity shall include—

(A) an aggregate request for the Inspector General;

(B) amounts for Inspector General training;

(C) amounts for support of the Council of the Inspectors General on Integrity and Efficiency; and

(D) any comments of the affected Inspector General with respect to the proposal.

President.

(3) The President shall include in each budget of the United States Government submitted to Congress—

(A) a separate statement of the budget estimate prepared in accordance with paragraph (1);

(B) the amount requested by the President for each Inspector General;

(C) the amount requested by the President for training of Inspectors General;

(D) the amount requested by the President for support for the Council of the Inspectors General on Integrity and Efficiency; and

(E) any comments of the affected Inspector General with respect to the proposal if the Inspector General concludes that the

[18] Public 107-296 (116 STAT. 2135) (2002), section 812(a) inserted subsec. 6(e).
[19] Public Law 110-409 (122 STAT. 4302) (2008), section 11(2) inserted section 6(f).

budget submitted by the President would substantially inhibit the Inspector General from performing the duties of the office.[20]

Sec. 7. Complaints By Employees. Disclosure Of Identity; Reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not with respect to such authority, take or threaten to take any actions against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made for the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Sec. 8. Additional Provisions With Respect To The Inspector General Of The Department Of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning–

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is

[20] Public Law 110-409 (122 STAT. 4302) (2008), section 8 inserted section 6(f).

necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) and (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall–

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of Chapter 47 of Title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense, except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the Coast Guard shall be deemed to be an employee of such department or agency.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Governmental Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the congress under section 5(d) shall also be transmitted within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives.

(g) The provisions of section 1385 of Title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.[21]

Sec. 8A. Special Provisions Relating To The Agency For International Development

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the

[21]As amended, Public Law 106-65, Div. A, Title X, section 1067(17), (113 Stat. 775), Oct 5, 1999.

performance of security activities relating to programs and operations of the Agency for International Development.

(c) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(d) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the monitoring Overseas Direct Employment policy.

(e) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 USC 2384(a)].

(f) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering Part I of the Foreign Assistance Act of 1961, an employee of the Inter–American Foundation, and an employee of the African Development Foundation.[22]

(g), (h) Redesignated (e), (f).

Sec. 8B. Special Provisions Concerning The Nuclear Regulatory Commission

(a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, but shall not delegate such authority to any other officer or employee of the Commission.

(b) Notwithstanding sections 6(a)(7) and (8), the Inspector General of the Nuclear Regulatory Commission is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments and employment, and the obtaining of such services, within the Nuclear Regulatory Commission.

Sec. 8C. Special Provisions Concerning The Federal Deposit Insurance Corporation.

(a) DELEGATION.–The Chairperson of the Federal Deposit Insurance Corporation may delegate the authority specified in the second sentence of section 3(a) to the Vice Chairperson of the Board of Directors

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[22]As amended Public Law 105-277, Div. G, Title XIV, section 1422(b)(2), Oct 21, 1998, 112 Stat. 2681-792; Public Law 106-113, Div. B, section 1000(a)(7) [Div. A, Title II, section 205], Nov. 29, 1999, 113 Stat. 1536, 1501A-422.

of the Federal Deposit Insurance Corporation, but may not delegate such authority to any other officer or employee of the Corporation.

(b) PERSONNEL.–Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of the Federal Deposit Insurance Corporation may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the Federal Deposit Insurance Corporation.;

Sec. 8D. Special Provisions Concerning The Department Of The Treasury

(a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigation, or the issuance of subpoenas, which require access to sensitive information concerning–

(A) ongoing criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

(E) intelligence or counterintelligence matters; or

(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of Title 18, United States Code, section 202 of Title 3, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 USC 3056 note; Public Law 94-524),

(2) With respect to the information described under paragraph (1), the Secretary of the Treasury may prohibit the Inspector General of the Department of the Treasury from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent significant impairment to the national interests of the United States.

(3) If the Secretary of the Treasury exercise any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing stating

the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration.

(b)(1) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Tax and Trade Bureau,[23] the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General of the Department of Treasury the significant activities being carried out by such office.

(2) The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

(3) The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will–

(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations.

(c) Notwithstanding subsection (b), the Inspector General of the Department of the Treasury may initiate, conduct and supervise such audits and investigations in the Department of the Treasury (including the bureaus and services referred to in subsection (b) as the Inspector General of the Department of the Treasury considers appropriate.

(d) If the Inspector General initiates an audit or investigation under subsection (c) concerning a bureau or service referred to in subsection (b), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (b) with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues a notice under the preceding sentence, no other audit or investigation shall be initiated into the matter under audit or investigation

[23] Public 107-296 (116 STAT. 2135) (2002), section 1112(a)(1) struck "Bureau of Alcohol, Tobacco and Firearms" and inserted "Tax and Trade Bureau."

by the Inspector General and any other audit or investigation of such matter shall cease.

(e)(1) The Inspector General shall have access to returns and return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, only in accordance with the provisions of section 6103 of such Code and this Act.

(2) The Internal Revenue Service shall maintain the same system of standardized records or accountings of all requests from the Treasury Inspector General for Tax Administration for inspection or disclosure of returns and return information (including the reasons for and dates of such requests), and of returns and return information inspected or disclosed pursuant to such requests, as described under section 6103(p)(3)(A) of the Internal Revenue Code of 1986 [26 U.S.C.A. section 6103(p)(3)(A)]. Such system of standardized records or accounting shall also be available for examination in the same manner as provided under section 6103(p)(3) of the Internal Revenue Code of 1986 [26 U.S.C.A. section 6103(p)(3)].

(3) The Treasury Inspector General for Tax Administration shall be subject to the same safeguards and conditions for receiving returns and return information are as described under section 6103(p)(4) of the Internal Revenue Code of 1986 [26 U.S.C.A. section 6103(p)(4)].

(f) An audit or investigation conducted by the Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration shall not affect a final decision of the Secretary of the Treasury or his delegate under section 6406 of the Internal Revenue Code of 1986 [26 U.S.C.A. section 6406].

(g)(1) Any report required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives.

(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue.

(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service–

(1) during the 2-year period preceding the date of appointment to such position; or

(2) during the 5-year period following the date such individual ends service in such position.

(k)(1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration–

(A) shall have the duty to enforce criminal provisions under section 7608(b)(2) of the Internal Revenue Code of 1986 [26 U.S.C.A. section 7608(b)];

(B) in addition to the functions authorized under section 7608(b)(2) of such Code [26 USCA. section 7608(b)(2)], may carry firearms;

(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of background checks and the providing of protection to the Commissioner of Internal Revenue[24]; and

(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at

[24] Public Law 110-409 (122 STAT. 4302) (2008), section 14(b) struck "physical security" and inserted "protection to the Commissioner of Internal Revenue."

an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to–

(i) the performance of a law enforcement function under paragraph (1); and

(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provisions specified in paragraph (1).

(l)(1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

(2)(A) Any final report of an audit conducted by the Treasury Inspector General for Tax Administration shall be timely submitted by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

(B) The Treasury Inspector general for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).[25]

Sec. 8E. Special Provisions Concerning The Department Of Justice

(a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning–

(A) ongoing civil or criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) intelligence or counterintelligence matters; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from

[25]As amended Public Law 105–206, Title I, section 1103(b), (e)(1), (2), (112 Stat. 705, 709), July 22, 1998.

carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Justice–

(1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General considers appropriate;

(2) shall give particular regard to the activities of the Counsel, Office of Professional Responsibility of the Department and the audit, internal investigative, and inspection units outside the Office of Inspector General with a view toward avoiding duplication and insuring effective coordination and cooperation; and

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department for investigation, information or allegations relating to the conduct of an officer or employee of the Department of Justice employed in an attorney, criminal investigation of law, regulation, or order of the Department or any other applicable standard of conduct, except that no such referral shall be made if the officer or employee is employed in the Office of Professional Responsibility of the Department.

(c) Any report required to be transmitted by the Attorney General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

Sec. 8F. Special Provisions Concerning The Corporation For National And Community Service

(a) Notwithstanding the provisions of paragraphs (7) and (8) of section 6(a), it is within the exclusive jurisdiction of the Inspector General of the Corporation for National and Community Service to–

(1) appoint and determine the compensation of such officers and employees in accordance with section 195(b) of the National and Community Service Trust Act of 1993; and

(2) procure the temporary and intermittent services of and compensate such experts and consultants, in accordance with section 3109(b) of Title 5, United States Code, as may be necessary to carry out the functions, powers, and duties of the Inspector General.

(b) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits any report to the Congress under subsection (a) or (b) of section 5, the Chief Executive Officer shall transmit such report to the Board of Directors of such Corporation.

(c) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits a report described under section 5(b) to the Board of Directors as provided under subsection (b) of this section, the Chief Executive Officer shall also transmit any audit report which is described in the statement required under section 5(b)(4) to the Board of Directors. All such audit reports shall be placed on the agenda for review at the next scheduled meeting of the Board of Directors following such transmittal. The Chief Executive Officer of the Corporation shall be present at such meeting to provide any information relating to such audit reports.

(d) No later than the date on which the Inspector General of the Corporation for National and Community Service reports a problem, abuse, or deficiency under section 5(d) to the Chief Executive Officer of the Corporation, the Chief Executive Officer shall report such problem, abuse, or deficiency to the Board of Directors.

Sec. 8G. Requirements For Federal Entities And Designated Federal Entities

(a) Notwithstanding section 12[26] of this Act, as used in this section–

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of Title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such Title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include–

5 USC app. 8G.

(A) an establishment (as defined under section 12(2)[27] of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

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[26] Public Law 110-409 (122 STAT. 4302) (2008), section 7(d)(B) struck out "section 11" and inserted "section 12."

[27] Public Law 110-409 (122 STAT. 4302) (2008), section 7(d)(A) struck out 11(2) and inserted 12(2) in its place.

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service.

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that–

(A) with respect to the National Science Foundation, such term means the National Science Board; and

(B) with respect to the United States Postal Services, such term means the Governors (within the meaning of section 102(3) of Title 39, United States Code);

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section [Oct. 18, 1988], there shall be established and maintained in each

designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.[28]

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(e) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.[29]

Deadline.

(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of Title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the "Inspector General") shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors

[28] Public Law 110-409 (122 STAT. 4302) (2008), section 2 added last sentence to section.
[29] Public Law 110-409 (122 STAT. 4302) (2008), section 3(b) struck out "shall promptly communicate in writing the reasons for any such removal or transfer to both Houses of the Congress" and inserted provision that Congress be notified within 30 days of removal.

with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning–

(I) ongoing civil or criminal investigations or proceedings;

(II) undercover operations;

(III) the identity of confidential sources, including protected witnesses;

(IV) intelligence or counterintelligence matters; or

(V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) with respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General–

(i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and

(ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(3) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either

employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under Chapter 12 of Title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(4) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of Title 39, United States Code.

(g)(1) Sections 4,5,6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting–

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment."

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

Appointments.

(4) Each Inspector General shall—

(A) appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.[30]

[30] Public Law 110-409 (122 STAT. 4302) (2008), section 6(b) inserted subsection (4).

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which–

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standard for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

Sec. 8H. Additional Provisions With Respect To Inspectors General Of The Intelligence Community

(a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of Title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a

complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949 [50 USCA section 403a et seq.].

(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

(b) Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the head of the establishment.

(c) Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committee, together with any comments the head of the establishment considers appropriate.

(d)(1) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(2) The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee:

(A) before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

(B) obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(3) A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

(e) The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(f) An action taken by the head of an establishment or an Inspector General under this section shall not be subject to judicial review.

(g) In this section:

(1) The term "urgent concern" means any of the following:

(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(B) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(C) An action, including a personnel action described in section 2302(a)(2)(A) of Title 5, constituting reprisal or threat of reprisal prohibited under section 7(c) in response to an employee's reporting an urgent concern in accordance with this action.

(2) The term "intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.[1]

Sec. 8I. Rule Of Construction Of Special Provisions

The special provisions under section 8, 8A, 8B, 8C, 8D, 8E, 8F, or 8H of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8G(a).[2] [3]

Sec. 8J. Special Provisions Concerning The Department Of Homeland Security

Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.[4]

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[1]Public Law 105-272, Title VII, section 702(b)(1), (112 Stat. 2415), Oct. 20, 1998.

[2]Public Law 105-272 (112 Stat. 2415); Oct. 20, 1998; redesignated section 8H o section 8I.

[3]Public Law 95-452, section 8I, formerly section 8F, as added Public Law 100-504, Title I, section 105, Oct. 18, 1988, 102 Stat. 2525; renumbered section 8G and amended Public Law 103-82, Title II, section 202(g)(1), (5)(B), Sept. 21, 1993, 107 Stat. 889, 890; renumbered section 8H, Public Law 104-208, Div. A, Title I, section 101(f) [Title VI, section 662(b)(3)], Sept. 30, 1996, 110 Stat. 3009-379; renumbered section 8H and amended Public Law 105-206, Title I, section 1103(e)(3), July 22, 1998, 112 Stat. 709; renumbered 8I and amended Public Law 105-272, Title VII, section 702(b), Oct. 20, 1998, 112 Stat. 2414.

[4] Public 107-296 (116 STAT. 2135) (2002), section 811(e) inserted section 8J.

Sec. 8K. Authority To Establish Inspector General Of The Office Of The Director Of National Intelligence

If the Director of National Intelligence determines that an Office of Inspector General would be beneficial to improving the operations and effectiveness of the Office of the Director of National Intelligence, the Director of National Intelligence is authorized to establish, with any of the duties, responsibilities, and authorities set forth in this Act, an Office of Inspector General.[5]

Sec. 8L. Information On Websites Of Offices Of Inspectors General.

(a) DIRECT LINKS TO INSPECTORS GENERAL OFFICES.—

(1) IN GENERAL.—Each agency shall establish and maintain on the homepage of the website of that agency, a direct link to the website of the Office of the Inspector General of that agency.

(2) ACCESSIBILITY.—The direct link under paragraph (1) shall be obvious and facilitate accessibility to the website of the Office of the Inspector General.

(b) REQUIREMENTS FOR INSPECTORS GENERAL WEBSITES.—

(1) POSTING OF REPORTS AND AUDITS.—The Inspector General of each agency shall—

(A) not later than 3 days after any report or audit (or portion of any report or audit) is made publicly available, post that report or audit (or portion of that report or audit) on the website of the Office of Inspector General; and

(B) ensure that any posted report or audit (or portion of that report or audit) described under subparagraph (A)—

(i) is easily accessible from a direct link on the homepage of the website of the Office of the Inspector General;

(ii) includes a summary of the findings of the Inspector General; and

(iii) is in a format that—

(I) is searchable and downloadable; and

(II) facilitates printing by individuals of the public accessing the website.

(2) REPORTING OF FRAUD, WASTE, AND ABUSE.—

(A) IN GENERAL.—The Inspector General of each agency shall establish and maintain a direct link on the homepage of the website of the Office of the Inspector General for individuals to report fraud, waste, and abuse. Individuals reporting fraud, waste, or abuse using the direct link established under this paragraph shall not be required to provide personally identifying information relating to that individual.

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[5] Public Law 108-458 (118 STAT. 3636) (2004), section 1078 inserted this subsection.

(B) ANONYMITY.—The Inspector General of each agency shall not disclose the identity of any individual making a report under this paragraph without the consent of the individual unless the Inspector General determines that such a disclosure is unavoidable during the course of the investigation.[6]

Sec. 9. Transfer Of Functions

(a) There shall be transferred–

(1) to the Office of Inspector General–

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act [20 USCA section 3441];

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by Title II of Public Law 94-505);

(G) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(H) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(I) of the Department of Justice, the offices of that Department referred to as (i) the "Audit Staff, Justice Management Division", (ii) the "Policy and Procedures Branch, Office of the Comptroller, Immigration and Naturalization Service", the "Office of

[6] Public Law 110-409 (122 STAT. 4302) (2008), section 13(a) inserted section 8L.

Professional Responsibility, Immigration and Naturalization Service", and the "Office of Program Inspections, Immigration and Naturalization Service", (iii) the "Office of Internal Inspection, United States Marshals Service", (iv) the "Financial Audit Section, Office of Financial Management, Bureau of Prisons" and the "Office of Inspections, Bureau of Prisons", and (v) from the Drug Enforcement Administration, that portion of the "Office of Inspections" which is engaged in internal audit activities, and that portion of the "Office of Planning and Evaluation" which is engaged in program review activities;

(J) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations;

(K) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(L)(i) of the Department of the Treasury, the office of that department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Tax and Trade Bureau",[7] the "Office of Internal Affairs, United States Customs Service", and the "Office of Inspections, United States Secret Service" which is engaged in internal audit activities; and

(ii) of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Office of Chief Inspector of the Internal Revenue Service;[8]

(M) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(N) of the Federal Emergency Management Agency, the office of that agency referred to as the "Office of Inspector General";

(O) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

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[7] Public 107-296 (116 STAT. 2135) (2002), section 1112(a)(2) struck "Bureau of Alcohol, Tobacco and Firearms" and inserted "Tax and Trade Bureau."

[8] As amended, Public Law 105-206, Title I, section 1103(c)(1), (112 Stat. 708), July 22, 1998.

(P) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(Q) of the Nuclear Regulatory Commission, the office of that commission referred to as the "Office of Inspector and Auditor";

(R) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(S) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

(T) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations";

(U) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(V) of the Corporation for National and Community Service, the Office of Inspector General of ACTION; and

(W) of the Social Security Administration, the functions of the Inspector General of the Department of Health and Human Services which are transferred to the Social Security Administration by the Social Security Independence and Program Improvements Act of 1994 (other than functions performed pursuant to section 105(a)(2) of such Act), except that such transfers shall be made in accordance with the provisions of such Act and shall not be subject to subsections (b) through (d) of this section; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or

agency shall lapse. Any person who, on the effective date of this Act [Oct. 1, 1978], held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

Sec. 10. Conforming And Technical Amendments

[Section amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare, which amendments have been executed to text.]

5 USC app. 11.

Sec. 11. Establishment Of The Council Of The Inspectors General On Integrity And Efficiency

(a) ESTABLISHMENT AND MISSION.—

(1) ESTABLISHMENT.—There is established as an independent entity within the executive branch the Council of the Inspectors General on Integrity and Efficiency (in this section referred to as the 'Council').

(2) MISSION.—The mission of the Council shall be to—

(A) address integrity, economy, and effectiveness issues that transcend individual Government agencies; and

(B) increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the following members:

(A) All Inspectors General whose offices are established under—

(i) section 2; or

(ii) section 8G.

(B) The Inspectors General of the Office of the Director of National Intelligence and the Central Intelligence Agency.

(C) The Controller of the Office of Federal Financial Management.

(D) A senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation.

(E) The Director of the Office of Government Ethics.

(F) The Special Counsel of the Office of Special Counsel.

(G) The Deputy Director of the Office of Personnel Management.

(H) The Deputy Director for Management of the Office of Management and Budget.

(I) The Inspectors General of the Library of Congress, Capitol Police, Government Printing Office, Government Accountability Office, and the Architect of the Capitol.

(2) CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON.—The Deputy Director for Management of the Office of Management and Budget shall be the Executive Chairperson of the Council.

(B) CHAIRPERSON.—The Council shall elect 1 of the Inspectors General referred to in paragraph (1)(A) or (B) to act as Chairperson of the Council. The term of office of the Chairperson shall be 2 years.

(3) FUNCTIONS OF CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON.—The Executive Chairperson shall—

(i) preside over meetings of the Council;

Reports.

(ii) provide to the heads of agencies and entities represented on the Council summary reports of the activities of the Council; and

(iii) provide to the Council such information relating to the agencies and entities represented on the Council as assists the Council in performing its functions.

(B) CHAIRPERSON.—The Chairperson shall—

(i) convene meetings of the Council—

(I) at least 6 times each year;

(II) monthly to the extent possible; and

(III) more frequently at the discretion of the Chairperson;

(ii) carry out the functions and duties of the Council under subsection (c);

Appointments.

(iii) appoint a Vice Chairperson to assist in carrying out the functions of the Council and act in the absence of the Chairperson, from a category of Inspectors General described in subparagraph (A)(i), (A)(ii), or (B) of paragraph (1), other than the category from which the Chairperson was elected;

(iv) make such payments from funds otherwise available to the Council as may be necessary to carry out the functions of the Council;

(v) select, appoint, and employ personnel as needed to carry out the functions of the Council subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates;

Contracts.

(vi) to the extent and in such amounts as may be provided in advance by appropriations Acts, made available from the revolving fund established under subsection (c)(3)(B), or as

otherwise provided by law, enter into contracts and other arrangements with public agencies and private persons to carry out the functions and duties of the Council;

(vii) establish, in consultation with the members of the Council, such committees as determined by the Chairperson to be necessary and appropriate for the efficient conduct of Council functions; and

Reports.
Deadlines.

(viii) prepare and transmit a report annually on behalf of the Council to the President on the activities of the Council.

(c) FUNCTIONS AND DUTIES OF COUNCIL.—

(1) IN GENERAL.—The Council shall—

(A) continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse;

Plans.

(B) develop plans for coordinated, Government wide activities that address these problems and promote economy and efficiency in Federal programs and operations, including interagency and interentity audit, investigation, inspection, and evaluation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency or entity;

(C) develop policies that will aid in the maintenance of a corps of well-trained and highly skilled Office of Inspector General personnel;

Web site.

(D) maintain an Internet website and other electronic systems for the benefit of all Inspectors General, as the Council determines are necessary or desirable;

(E) maintain 1 or more academies as the Council considers desirable for the professional training of auditors, investigators, inspectors, evaluators, and other personnel of the various offices of Inspector General;

Recommendations.

(F) submit recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A) or (B);

Reports.

(G) make such reports to Congress as the Chairperson determines are necessary or appropriate; and

(H) perform other duties within the authority and jurisdiction of the Council, as appropriate.

(2) ADHERENCE AND PARTICIPATION BY MEMBERS.—To the extent permitted under law, and to the extent not inconsistent with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions, each member of the Council, as appropriate, shall—

(A) adhere to professional standards developed by the Council; and

(B) participate in the plans, programs, and projects of the Council, except that in the case of a member described under subsection (b)(1)(I) , the member shall participate only to the extent requested by the member and approved by the Executive Chairperson and Chairperson.

(3) ADDITIONAL ADMINISTRATIVE AUTHORITIES.—

(A) INTERAGENCY FUNDING.—Notwithstanding section 1532 of title 31, United States Code, or any other provision of law prohibiting the interagency funding of activities described under subclause (I), (II), or (III) of clause (i), in the performance of the responsibilities, authorities, and duties of the Council—

(i) the Executive Chairperson may authorize the use of interagency funding or—

(I) Governmentwide training of employees of the Offices of the Inspectors General;

(II) the functions of the Integrity Committee of the Council; and

(III) any other authorized purpose determined by the Council; and

(ii) upon the authorization of the Executive Chairperson, any department, agency, or entity of the executive branch which has a member on the Council shall fund or participate in the funding of such activities.

(B) REVOLVING FUND.—

(i) IN GENERAL.—The Council may—

(I) establish in the Treasury of the United States a revolving fund to be called the Inspectors General Council Fund; or

(II) enter into an arrangement with a department or agency to use an existing revolving fund.

(ii) AMOUNTS IN REVOLVING FUND.—

(I) IN GENERAL.—Amounts transferred to the Council under this subsection shall be deposited in the revolving fund described under clause (i)(I) or (II).

(II) TRAINING.—Any remaining unexpended balances appropriated for or otherwise available to the Inspectors General Criminal Investigator Academy and the Inspectors General Auditor Training Institute shall be transferred to the revolving fund described under clause (i)(I) or (II).

(iii) USE OF REVOLVING FUND.—

(I) IN GENERAL.—Except as provided under subclause (II), amounts in the revolving fund described under clause (i)(I) or (II) may be used to carry out the functions and duties of the Council under this subsection.

(II) TRAINING.—Amounts transferred into the revolving fund described under clause (i)(I) or (II) may be used for

the purpose of maintaining any training academy as determined by the Council.

(iv) AVAILABILITY OF FUNDS.—Amounts in the revolving fund described under clause (i)(I) or (II) shall remain available to the Council without fiscal year limitation.

(C) SUPERSEDING PROVISIONS.—No provision of law enacted after the date of enactment of this subsection shall be construed to limit or supersede any authority under subparagraph (A) or (B), unless such provision makes specific reference to the authority in that paragraph.

(4) EXISTING AUTHORITIES AND RESPONSIBILITIES.—The establishment and operation of the Council shall not affect—

(A) the role of the Department of Justice in law enforcement and litigation;

(B) the authority or responsibilities of any Government agency or entity; and

(C) the authority or responsibilities of individual members of the Council.

(d) INTEGRITY COMMITTEE.—

(1) ESTABLISHMENT.—The Council shall have an Integrity Committee, which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various Offices of Inspector General described under paragraph (4)(C).

(2) MEMBERSHIP.—The Integrity Committee shall consist of the following members:

(A) The official of the Federal Bureau of Investigation serving on the Council, who shall serve as Chairperson of the Integrity Committee, and maintain the records of the Committee.

(B) Four Inspectors General described in subparagraph (A) or (B) of subsection (b)(1) appointed by the Chairperson of the Council, representing both establishments and designated Federal entities (as that term is defined in section 8G(a)).

(C) The Special Counsel of the Office of Special Counsel.

(D) The Director of the Office of Government Ethics.

(3) LEGAL ADVISOR.—The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall serve as a legal advisor to the Integrity Committee.

(4) REFERRAL OF ALLEGATIONS.—

(A) REQUIREMENT.—An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the office of that Inspector General, if—

(i) review of the substance of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and

(ii) the Inspector General determines that—

(I) an objective internal investigation of the allegation is not feasible; or

(II) an internal investigation of the allegation may appear not to be objective.

(B) DEFINITION.—In this paragraph the term 'staff member' means any employee of an Office of Inspector General who—

(i) reports directly to an Inspector General; or

(ii) is designated by an Inspector General under subparagraph (C).

Deadline.

(C) DESIGNATION OF STAFF MEMBERS.—Each Inspector General shall annually submit to the Chairperson of the Integrity Committee a designation of positions whose holders are staff members for purposes of subparagraph (B).

(5) REVIEW OF ALLEGATIONS.—The Integrity Committee shall—

(A) review all allegations of wrongdoing the Integrity Committee receives against an Inspector General, or against a staff member of an Office of Inspector General described under paragraph (4)(C);

(B) refer any allegation of wrongdoing to the agency of the executive branch with appropriate jurisdiction over the matter; and

(C) refer to the Chairperson of the Integrity Committee any allegation of wrongdoing determined by the Integrity Committee under subparagraph (A) to be potentially meritorious that cannot be referred to an agency under subparagraph (B).

(6) AUTHORITY TO INVESTIGATE ALLEGATIONS.—

(A) REQUIREMENT.—The Chairperson of the Integrity Committee shall cause a thorough and timely investigation of each allegation referred under paragraph (5)(C) to be conducted in accordance with this paragraph.

(B) RESOURCES.—At the request of the Chairperson of the Integrity Committee, the head of each agency or entity represented on the Council—

(i) may provide resources necessary to the Integrity Committee; and

(ii) may detail employees from that agency or entity to the Integrity Committee, subject to the control and direction of the Chairperson, to conduct an investigation under this subsection.

(7) PROCEDURES FOR INVESTIGATIONS.—

(A) STANDARDS APPLICABLE.—Investigations initiated under this subsection shall be conducted in accordance with the most current Quality Standards for Investigations issued by the Council or by its predecessors (the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency).

(B) ADDITIONAL POLICIES AND PROCEDURES.—

(i) ESTABLISHMENT.—The Integrity Committee, in conjunction with the Chairperson of the Council, shall establish

additional policies and procedures necessary to ensure fairness and consistency in—

(I) determining whether to initiate an investigation;

(II) conducting investigations;

(III) reporting the results of an investigation; and

(IV) providing the person who is the subject of an investigation with an opportunity to respond to any Integrity Committee report.

(ii) SUBMISSION TO CONGRESS.—The Council shall submit a copy of the policies and procedures established under clause (i) to the congressional committees of jurisdiction.

(C) REPORTS.—

(i) POTENTIALLY MERITORIOUS ALLEGATIONS.—For allegations described under paragraph (5)(C), the Chairperson of the Integrity Committee shall make a report containing the results of the investigation of the Chairperson and shall provide such report to members of the Integrity Committee.

(ii) ALLEGATIONS OF WRONGDOING.—For allegations referred to an agency under paragraph (5)(B), the head of that agency shall make a report containing the results of the investigation and shall provide such report to members of the Integrity Committee.

(8) ASSESSMENT AND FINAL DISPOSITION.—

(A) IN GENERAL.—With respect to any report received under paragraph (7)(C), the Integrity Committee shall—

(i) assess the report;

Deadline.

(ii) forward the report, with the recommendations of the Integrity Committee, including those on disciplinary action, within 30 days (to the maximum extent practicable) after the completion of the investigation, to the Executive Chairperson of the Council and to the President (in the case of a report relating to an Inspector General of an establishment or any employee of that Inspector General) or the head of a designated Federal entity (in the case of a report relating to an Inspector General of such an entity or any employee of that Inspector General) for resolution; and

Executive summary. Deadline.

(iii) submit to the Committee on Government Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and other congressional committees of jurisdiction an executive summary of such report and recommendations within 30 days after the submission of such report to the Executive Chairperson under clause (ii).

Reports.

(B) DISPOSITION.—The Executive Chairperson of the Council shall report to the Integrity Committee the final disposition of the

matter, including what action was taken by the President or agency head.

(9) ANNUAL REPORT.—The Council shall submit to Congress and the President by December 31 of each year a report on the activities of the Integrity Committee during the preceding fiscal year, which shall include the following:

(A) The number of allegations received.

(B) The number of allegations referred to other agencies, including the number of allegations referred for criminal investigation.

(C) The number of allegations referred to the Chairperson of the Integrity Committee for investigation.

(D) The number of allegations closed without referral.

(E) The date each allegation was received and the date each allegation was finally disposed of.

(F) In the case of allegations referred to the Chairperson of the Integrity Committee, a summary of the status of the investigation of the allegations and, in the case of investigations completed during the preceding fiscal year, a summary of the findings of the investigations.

(G) Other matters that the Council considers appropriate.

(10) REQUESTS FOR MORE INFORMATION.—With respect to paragraphs (8) and (9), the Council shall provide more detailed information about specific allegations upon request from any of the following:

(A) The chairperson or ranking member of the Committee on Homeland Security and Governmental Affairs of the Senate.

(B) The chairperson or ranking member of the Committee on Oversight and Government Reform of the House of Representatives.

(C) The chairperson or ranking member of the congressional committees of jurisdiction.

(11) NO RIGHT OR BENEFIT.—This subsection is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies, its officers, or any person.[9]

Sec. 12. Definitions

As used in this Act[10]–

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior,

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[9] Public Law 110-409 (122 STAT. 4302) (2008), section 7(a) amended section by inserting section 11 and redesignating prior sections 11 and 12 as 12 and 13.

[10](Pub..L. 104-106, Div. D, Title XLIII, section 4322(b)(1),(3), Feb. 10, 1996, 110 Stat. 677.)

Labor, State, Transportation, Homeland Security,[11] or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive officer of the Resolution Trust Corporation; the chairperson of the Federal Deposit Insurance Corporation; or the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority; as the case may be;[12]

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the United States Information Agency, the Corporation for National and Community Service, or the Veterans' Administration, or the Social Security Administration; or the Tennessee Valley Authority, as the case may be;[13]

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

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[11] Public 107-296 (116 STAT. 2135) (2002), section 1701(1) struck inserted "Homeland Security," after "Transportation" everywhere it appears in this section.

[12] As amended, Public Law 105-277, Div. G, Title XIII, section 1314(b), (112 Stat. 2681-776), Oct. 21, 1998; Public Law 106-422, section 1(b)(2), (114 Stat. 1872), Nov. 1, 2000.

[13] As amended, Public Law 105-277, Div. G, Title XIII, section 1314(b), (112 Stat. 2681-776), Oct. 21, 1998; Public Law 106-422, section 1(b)(2), (114 Stat. 1872), Nov. 1, 2000.

Sec. 13. Effective Date

The [original] provisions of this Act and the amendments [to other laws] made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

Pertinent Portions Of Inspector General Act Amendment Of 1988

(which did not amend Inspector General Act of 1978)

Uniform Salaries For Inspectors General.

(a) UNIFORM SALARIES.–Section 5315 of Title 5, United States Code, is amended by adding at the end thereof the following new paragraphs

Inspector General, Department of Commerce.
Inspector General, Department of the Interior.
Inspector General, Department of Justice.
Inspector General, Department of the Treasury.
Inspector General, Agency for International Development.
Inspector General, Environmental Protection Agency.
Inspector General, Federal Emergency Management Agency.
Inspector General, General Services Administrator.
Inspector General, National Aeronautics and Space Administration.
Inspector General, Nuclear Regulatory Commission.Inspector General, Office of Personnel Management.
Inspector General, Railroad Retirement Board.
Inspector General, Small Business Administration.

Appropriation Accounts.

Section 1105(a)(25) of Title 31, United States code, is amended to read as follows:

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

Payment Authority Subject To Appropriations.

Any authority to make payments under this Title (Inspector General Act Amendments) shall be effective only to such extent as provided in appropriations Acts.

Effective Date.

This Title and the amendments made by this Title shall take effect 180 days after the date of the enactment of this Title, except that section 5(a)(6) through (12) of the Inspector General Act of 1978 (as amended by section 106(a) of this Title) and section (5)(b)(1) through (4) of the Inspector General Act of 1978 (as amended by section 106(b) of this Title) shall take effect 1 year after the date of the enactment of this Title.

12: Information Management Legislation

12. Information Management Legislation
Contents

A. INFORMATION TECHNOLOGY MANAGEMENT REFORM ACT OF 1996

Public Law 107–217 **116 Stat. 1235**

[Selected Portions]

Subtitle III – Information Technology Management[1]

Sec. 11101. Definitions.

In this subtitle, the following definitions apply:

(1) COMMERCIAL ITEM.–The term "commercial item" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) EXECUTIVE AGENCY.–The term "executive agency" has the meaning given that term in section 4 of the Act (41 U.S.C. 403).

(3) INFORMATION RESOURCES.–The term "information resources" has the meaning given that term in section 3502 of title 44.

(4) INFORMATION RESOURCES MANAGEMENT.–The term "information resources management" has the meaning given that term in section 3502 of title 44.

(5) INFORMATION SYSTEM.–The term "information system" has the meaning given that term in section 3502 of title 44.

(6) INFORMATION TECHNOLOGY.– The term "information technology"–

(A) with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use–

(i) of that equipment; or

(ii) of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(B) includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources; but

(C) does not include any equipment acquired by a federal contractor incidental to a federal contract.

Sec. 11102. Sense of Congress.

It is the sense of Congress that, during the five-year period beginning with 1996, executive agencies should achieve each year through improvements in information resources management by the agency–

(1) at least a five percent decrease in the cost (in constant fiscal year 1996 dollars) incurred by the agency in operating and maintaining information technology; and

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[1]Public Law 107–217 (116 Stat. 1235) recodified provisions of Public Law 104–106 (110 Stat. 679), Information Technology Management Reform Act of 1996 (Clinger–Cohen; formerly codified at 40 USC 1401, *et. seq.*)

(2) a five percent increase in the efficiency of the agency operations.

Sec. 11103. Applicability to national security systems.

(a) DEFINITION.–

(1) NATIONAL SECURITY SYSTEM.–In this section, the term "national security system" means a telecommunications or information system operated by the Federal Government, the function, operation, or use of which–

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves command and control of military forces;

(D) involves equipment that is an integral part of a weapon or weapons system; or

(E) subject to paragraph (2), is critical to the direct fulfillment of military or intelligence missions.

(2) LIMITATION.– Paragraph (1)(E) does not include a system to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(b) IN GENERAL.–Except as provided in subsection (c), chapter 113 of this title does not apply to national security systems.

(c) EXCEPTIONS.–

(1) IN GENERAL.–Sections 11313, 11315, and 11316 of this title apply to national security systems.

(2) CAPITAL PLANNING AND INVESTMENT CONTROL.– The heads of executive agencies shall apply sections 11302 and 11312 of this title to national security systems to the extent practicable.

(3) APPLICABILITY OF PERFORMANCE-BASED AND RESULTS-BASED MANAGEMENT TO NATIONAL SECURITY SYSTEMS.–

(A) IN GENERAL.–Subject to subparagraph (B), the heads of executive agencies shall apply section 11303 of this title to national security systems to the extent practicable.

(B) EXCEPTION.–National security systems are subject to section 11303(b)(5) of this title, except for subparagraph (B)(iv).

Chapter 113–Responsibility For Acquisitions Of Information Technology

Subchapter I – Director Of Office Of Management And Budget

Subchapter II--Executive Agencies

Subchapter I--Director Of Office Of Management And Budget

Sec. 11301. Responsibility of Director.

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, the Director of the Office of Management and Budget shall comply with this chapter with respect to the specific matters covered by this chapter.

Sec. 11302. Capital planning and investment control

(a) FEDERAL INFORMATION TECHNOLOGY.–The Director of the Office of Management and Budget shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.–The Director shall promote and improve the acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.–

(1) ANALYZING, TRACKING, AND EVALUATING CAPITAL INVESTMENTS.– As part of the budget process, the Director shall develop a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments.

(2) REPORT TO CONGRESS.–At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies for information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) INFORMATION TECHNOLOGY STANDARDS.–The Director shall oversee the development and implementation of standards and guidelines pertaining to federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 11331 of this title and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3).

(e) DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.–The Director shall designate the head of one or more executive agencies, as the Director considers appropriate, as executive agent for Government-wide acquisitions of information technology.

(f) USE OF BEST PRACTICES IN ACQUISITIONS.–The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION TECHNOLOGY.– On a continuing basis, the Director shall assess the experiences of executive agencies, state and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.–The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) MONITORING TRAINING.–The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.–The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of the agency missions through the use of the best practices in information resources management.

(k) COORDINATION OF POLICY DEVELOPMENT AND REVIEW.–The Director shall coordinate with the Office of Federal Procurement Policy the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with federal acquisition of information technology.

Sec. 11303. Performance-based and results-based management.

(a) IN GENERAL.–The Director of the Office of Management and Budget shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h) of title 44.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.–

(1) REQUIREMENT.–The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) DIRECTION FOR EXECUTIVE AGENCY ACTION.–The Director shall issue to the head of each executive agency clear and concise direction that the head of each agency shall–

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system–

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be

performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) GUIDANCE FOR MULTIAGENCY INVESTMENTS.–The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Federal Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) PERIODIC REVIEWS.–The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) ENFORCEMENT OF ACCOUNTABILITY.–

(A) IN GENERAL.–The Director may take any action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) SPECIFIC ACTIONS.–Actions taken by the Director may include–

(i) recommending a reduction or an increase in the amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other administrative controls over appropriations to restrict the availability of amounts for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

Subchapter II--Executive Agencies

Sec. 11311. Responsibilities

In fulfilling the responsibilities assigned under chapter 35 of title 44, the head of each executive agency shall comply with this subchapter with respect to the specific matters covered by this subchapter.

Sec. 11312. Capital planning and investment control

(a) DESIGN OF PROCESS.–In fulfilling the responsibilities assigned under section 3506(h) of title 44, the head of each executive agency shall

design and implement in the executive agency a process for maximizing the value, and assessing and managing the risks, of the information technology acquisitions of the executive agency.

(b) CONTENT OF PROCESS.–The process of an executive agency shall–

(1) provide for the selection of information technology investments to be made by the executive agency, the management of those investments, and the evaluation of the results of those investments;

(2) be integrated with the processes for making budget, financial, and program management decisions in the executive agency;

(3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(4) identify information systems investments that would result in shared benefits or costs for other federal agencies or state or local governments;

(5) identify quantifiable measurements for determining the net benefits and risks of a proposed investment; and

(6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

Sec. 11313. Performance and results-based management

In fulfilling the responsibilities under section 3506(h) of title 44, the head of an executive agency shall–

(1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

(2) prepare an annual report, to be included in the executive agency's budget submission to Congress, on the progress in achieving the goals;

(3) ensure that performance measurements–

(A) are prescribed for information technology used by, or to be acquired for, the executive agency; and

(B) measure how well the information technology supports programs of the executive agency;

(4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against those processes in terms of cost, speed, productivity, and quality of outputs and outcomes;

(5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes as appropriate before making significant investments in information technology to be used in support of the performance of those missions; and

(6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

Sec. 11314. Authority to acquire and manage information technology

(a) IN GENERAL.–The authority of the head of an executive agency to acquire information technology includes–

(1) acquiring information technology as authorized by law;

(2) making a contract that provides for multiagency acquisitions of information technology in accordance with guidance issued by the Director of the Office of Management and Budget; and

(3) if the Director finds that it would be advantageous for the Federal Government to do so, making a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring those items, to procure the items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 PROGRAM.–The Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow-on to that program, for and with the advice of the heads of executive agencies.

Sec. 11315. Agency Chief Information Officer

(a) DEFINITION.–In this section, the term ``information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(b) GENERAL RESPONSIBILITIES.–The Chief Information Officer of an executive agency is responsible for–

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this subtitle, consistent with chapter 35 of title 44 and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) DUTIES AND QUALIFICATIONS.–The Chief Information Officer of an agency listed in section 901(b) of title 31–

(1) has information resources management duties as that official's primary duty;

(2) monitors the performance of information technology programs of the agency, evaluates the performance of those programs on the basis of the applicable performance measurements, and advises the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31) under section 306 of title 5 and sections 1105(a)(28), 1115–1117, and 9703

(as added by section 5(a) of the Government Performance and Results Act of 1993 (Public Law 103-62, 107 Stat. 289)) of title 31–

(A) assesses the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for information resources management;

(B) assesses the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) develops strategies and specific plans for hiring, training, and professional development to rectify any deficiency in meeting those requirements; and

(D) reports to the head of the agency on the progress made in improving information resources management capability.

Sec. 11316. Accountability

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a chief financial officer, any comparable official), shall establish policies and procedures to ensure that–

(1) the accounting, financial, asset management, and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) financial statements support–

(A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and

(B) measurement of the performance of investments made by the agency in information systems.

Sec. 11317. Significant deviations

The head of each executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44 any major information technology acquisition program, or any phase or increment of that program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

Sec. 11318. Interagency support

The head of an executive agency may use amounts available to the agency for oversight, acquisition, and procurement of information technology to support jointly with other executive agencies the activities of interagency groups that are established to advise the Director of the Office of Management and Budget in carrying out the Director's responsibilities under this chapter. The use of those amounts for that purpose is subject to requirements and limitations on uses and amounts that the Director may prescribe. The Director shall prescribe the requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of title 31.

Subchapter III--Other Responsibilities

Sec. 11331. Responsibilities regarding efficiency, security, and privacy of federal computer systems

(a) DEFINITIONS.–In this section, the terms "federal computer system" and "operator of a federal computer system" have the meanings given those terms in section 20(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(d)).

(b) STANDARDS AND GUIDELINES.–

(1) AUTHORITY TO PRESCRIBE AND DISAPPROVE OR MODIFY.–

(A) AUTHORITY TO PRESCRIBE.–On the basis of standards and guidelines developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the Act (15 U.S.C. 278g-3(a)(2), (3)), the Secretary of Commerce shall prescribe standards and guidelines pertaining to federal computer systems. The Secretary shall make those standards compulsory and binding to the extent the Secretary determines necessary to improve the efficiency of operation or security and privacy of federal computer systems.

(B) AUTHORITY TO DISAPPROVE OR MODIFY.–The President may disapprove or modify those standards and guidelines if the President determines that action to be in the public interest. The President's authority to disapprove or modify those standards and guidelines may not be delegated. Notice of disapproval or modification shall be published promptly in the Federal Register. On receiving notice of disapproval or modification, the Secretary shall immediately rescind or modify those standards or guidelines as directed by the President.

(2) EXERCISE OF AUTHORITY.–To ensure fiscal and policy consistency, the Secretary shall exercise the authority conferred by this section subject to direction by the President and in coordination with the Director of the Office of Management and Budget.

(c) APPLICATION OF MORE STRINGENT STANDARDS.–The head of a federal agency may employ standards for the cost-effective security and privacy of sensitive information in a federal computer system in or under the supervision of that agency that are more stringent than the standards the Secretary prescribes under this section if the more stringent standards contain at least the applicable standards the Secretary makes compulsory and binding.

(d) WAIVER OF STANDARDS.–

(1) AUTHORITY OF THE SECRETARY.–The Secretary may waive in writing compulsory and binding standards under subsection (b) if the Secretary determines that compliance would–

(A) adversely affect the accomplishment of the mission of an operator of a federal computer system; or

(B) cause a major adverse financial impact on the operator that is not offset by Federal Government-wide savings.

(2) DELEGATION OF WAIVER AUTHORITY.–The Secretary may delegate to the head of one or more federal agencies authority to waive those standards to the extent the Secretary determines that

action to be necessary and desirable to allow for timely and effective implementation of federal computer system standards. The head of the agency may redelegate that authority only to a chief information officer designated pursuant to section 3506 of title 44.

(3) NOTICE.–Notice of each waiver and delegation shall be transmitted promptly to Congress and published promptly in the Federal Register.

Sec. 11332. Federal computer system security training and plan

(a) DEFINITIONS.–In this section, the terms "computer system", "federal agency", "federal computer system", "operator of a federal computer system", and "sensitive information" have the meanings given those terms in section 20(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(d)).

(b) TRAINING–

(1) IN GENERAL.–Each federal agency shall provide for mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use, or operation of each federal computer system within or under the supervision of the agency. The training shall be–

(A) provided in accordance with the guidelines developed pursuant to section 20(a)(5) of the Act (15 U.S.C. 278g-3(a)(5)) and the regulations prescribed under paragraph (3) for federal civilian employees; or

(B) provided by an alternative training program that the head of the agency approves after determining that the alternative training program is at least as effective in accomplishing the objectives of the guidelines and regulations.

(2) TRAINING OBJECTIVES.–Training under this subsection shall be designed–

(A) to enhance employees' awareness of the threats to, and vulnerability of, computer systems; and

(B) to encourage the use of improved computer security practices.

(3) REGULATIONS.–The Director of the Office of Personnel Management shall maintain regulations that establish the procedures and scope of the training to be provided federal civilian employees under this subsection and the manner in which the training is to be carried out.

(c) PLAN.–

(1) IN GENERAL.–Consistent with standards, guidelines, policies, and regulations prescribed pursuant to section 11331 of this title, each federal agency shall maintain a plan for the security and privacy of each federal computer system the agency identifies as being within or under its supervision and as containing sensitive information. The plan must be commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to, or modification of, the information contained in the system.

(2) REVISION AND REVIEW.–The plan shall be revised annually as necessary and is subject to disapproval by the Director of the Office of Management and Budget.

(d) HANDLING OF INFORMATION NOT AFFECTED.–This section does not–

(1) constitute authority to withhold information sought pursuant to section 552 of title 5; or

(2) authorize a federal agency to limit, restrict, regulate, or control the collection, maintenance, disclosure, use, transfer, or sale of any information (regardless of the medium in which the information may be maintained) that is–

(A) privately owned information;

(B) disclosable under section 552 of title 5 or another law requiring or authorizing the public disclosure of information; or

(C) public domain information.

Chapter 113–Responsibility For Acquisitions Of Information Technology

Subchapter 1. Director Of The Office Of Management And Budget

Sec. 11301. Responsibility of Director.

40 USC 11301. In fulfilling the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the Director shall comply with this Title with respect to the specific matters covered by this Title.

Sec. 5112. Capital Planning and Investment Control.

40 USC 1412. (a) FEDERAL INFORMATION TECHNOLOGY.–The Director shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of Title 44, United States Code.

Public information. (b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.–The Director shall promote and be responsible for improving the acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.–The Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments. At the

Reports. same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of Title 31, United States Code, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies in information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) INFORMATION TECHNOLOGY STANDARDS.–The Director shall oversee the development and implementation of standards and guidelines pertaining to Federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology

under section 5131 and section 20 of the National Institute of Standards and Technology Act (15 USC 278g-3).

(e) DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.–The Director shall designate (as the Director considers appropriate) one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.

(f) USE OF BEST PRACTICES IN ACQUISITIONS.–The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION TECHNOLOGY.–The Director shall assess, on a continuing basis, the experiences of executive agencies, State and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.–The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) TRAINING.–The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.–The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of agency missions through the use of the best practices in information resources management.

(k) PROCUREMENT POLICY AND ACQUISITIONS OF INFORMATION TECHNOLOGY.–The Director shall coordinate the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with Federal acquisition of information technology with the Office of Federal Procurement Policy.

Sec. 5113. Performance-Based and Results-Based Management.

40 USC 1413.

(a) IN GENERAL.–The Director shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h), of Title 44, United States Code.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.–

(1) Requirement.–The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) Direction for executive agency action.–The Director shall issue to the head of each executive agency clear and concise direction that the head of such agency shall–

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system–

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether

any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) Guidance for multiagency investments.–The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) Periodic reviews.–The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies in order to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) Enforcement of accountability.–

(A) In general.–The Director may take any authorized action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) Specific actions.–Actions taken by the Director in the case of an executive agency may include–

(i) recommending a reduction or an increase in any amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of Title 31, United States Code;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

Subchapter II. Executive Agencies

Sec. 11311. Responsibilities.

40 USC 1421. In fulfilling the responsibilities assigned under Chapter 35 of Title 44, United States Code, the head of each executive agency shall comply with this subtitle with respect to the specific matters covered by this subtitle.

Sec. 5122. Capital Planning and Investment Control.

40 USC 1422. (a) DESIGN OF PROCESS.–In fulfilling the responsibilities assigned under section 3506(h) of Title 44, United States Code, the head of each executive agency shall design and implement in the executive agency a process for maximizing the value and assessing and managing the risks of the information technology acquisitions of the executive agency.

(b) CONTENT OF PROCESS.–The process of an executive agency shall–

(1) provide for the selection of information technology investments to be made by the executive agency, the management of such investments, and the evaluation of the results of such investments;

(2) be integrated with the processes for making budget, financial, and program management decisions within the executive agency;

(3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(4) provide for identifying information systems investments that would result in shared benefits or costs for other Federal agencies or State or local governments;

(5) provide for identifying for a proposed investment quantifiable measurements for determining the net benefits and risks of the investment; and

(6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

Sec. 5123. Performance and Results-Based Management.

40 USC 1423. In fulfilling the responsibilities under section 3506(h) of Title 44, United States Code, the head of an executive agency shall–

(1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

Reports. (2) prepare an annual report, to be included in the executive agency's budget submission to Congress, on the progress in achieving the goals;

(3) ensure that performance measurements are prescribed for information technology used by or to be acquired for, the executive agency and that the performance measurements measure how well the information technology supports programs of the executive agency;

(4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against such processes in terms of cost, speed, productivity, and quality of outputs and outcomes;

(5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes as appropriate before making significant investments in information technology that is to be used in support of the performance of those missions; and

(6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

Sec. 5124. Acquisitions of Information Technology.

40 USC 1424. (a) IN GENERAL.–The authority of the head of an executive agency to conduct an acquisition of information technology includes the following authorities:

(1) To acquire information technology as authorized by law.

(2) To enter into a contract that provides for multiagency acquisitions of information technology in accordance with guidance issued by the Director.

(3) If the Director finds that it would be advantageous for the Federal Government to do so, to enter into a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring such items, either to procure the items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 PROGRAM.–Notwithstanding any other provision of this or any other law, the Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow-on to that program, on behalf of and with the advice of the heads of executive agencies.

Sec. 5125. Agency Chief Information Officer.

40 USC 1425. (a) DESIGNATION OF CHIEF INFORMATION OFFICERS.–Section 3506 of Title 44, United States Code, is amended–

(1) in subsection (a)–

(A) in paragraph (2)(A), by striking out "senior official" and inserting in lieu thereof "Chief Information Officer";

(B) in paragraph (2)(B)–

(i) by striking out "senior officials" in the first sentence and inserting in lieu thereof "Chief Information Officers";

(ii) by striking out "official" in the second sentence and inserting in lieu thereof "Chief Information Officer"; and

(iii) by striking out "officials" in the second sentence and inserting in lieu thereof "Chief Information Officers"; and

(C) in paragraphs (3) and (4), by striking out "senior official" each place it appears and inserting in lieu thereof "Chief Information Officer"; and

(2) in subsection (c)(1), by striking out "official" in the matter preceding subparagraph (A) and inserting in lieu thereof "Chief Information Officer.

(b) GENERAL RESPONSIBILITIES.–The Chief Information Officer of an executive agency shall be responsible for–

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this division, consistent with Chapter 35 of Title 44, United States Code, and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) DUTIES AND QUALIFICATIONS.–The Chief Information Officer of an agency that is listed in section 901(b) of Title 31, United States Code, shall–

(1) have information resources management duties as that official's primary duty;

(2) monitor the performance of information technology programs of the agency, evaluate the performance of those programs on the basis of the applicable performance measurements, and advise the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of Title 31, United States Code) under section 306 of Title 5, United States Code, and sections 1105(a)(29), 1115, 1116, 1117, and 9703 of Title 31, United States Code–

(A) assess the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for information resources management;

(B) assess the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) in order to rectify any deficiency in meeting those requirements, develop strategies and specific plans for hiring, training, and professional development; and

Reports.

(D) report to the head of the agency on the progress made in improving information resources management capability.

(d) INFORMATION TECHNOLOGY ARCHITECTURE DEFINED.–In this section, the term "information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(e) EXECUTIVE LEVEL IV.–Section 5315 of Title 5, United States Code, is amended by adding at the end the following:

Chief Information Officer, Department of Agriculture.

Chief Information Officer, Department of Commerce.
Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this Title).
Chief Information Officer, Department of Education.
Chief Information Officer, Department of Energy.
Chief Information Officer, Department of Health and Human Services.
Chief Information Officer, Department of Housing and Urban Development.
Chief Information Officer, Department of Interior.
Chief Information Officer, Department of Justice.
Chief Information Officer, Department of Labor.
Chief Information Officer, Department of State.
Chief Information Officer, Department of Transportation.
Chief Information Officer, Department of Treasury.
Chief Information Officer, Department of Veterans Affairs.
Chief Information Officer, Environmental Protection Agency.
Chief Information Officer, National Aeronautics and Space Administration.
Chief Information Officer, Agency for International Development.
Chief Information Officer, Federal Emergency Management Agency.
Chief Information Officer, General Services Administration.
Chief Information Officer, National Science Foundation.
Chief Information Officer, Nuclear Regulatory Agency.
Chief Information Officer, Office of Personnel Management.
Chief Information Officer, Small Business Administration.

Sec. 5126. Accountability.

40 USC 1426.

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a Chief Financial Officer, any comparable official), shall establish policies and procedures that–

(1) ensure that the accounting, financial, and asset management systems and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) ensure that financial statements support–

(A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and

(B) performance measurement of the performance in the case of investments made by the agency in information systems.

Sec. 5127. Significant Deviations.

40 USC 1427.

The head of an executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of Title 44, United States Code, any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

Sec. 5128. Interagency Support.

40 USC 1428.

Funds available for an executive agency for oversight, acquisition, and procurement of information technology may be used by the head of the executive agency to support jointly with other executive agencies the activities of interagency groups that are established to advise the Director in carrying out the Director's responsibilities under this Title. The use of such funds for that purpose shall be subject to such requirements and limitations on uses and amounts as the Director may prescribe. The Director shall prescribe any such requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of Title 31, United States Code.

B. PAPERWORK REDUCTION ACT OF 1995, AS AMENDED

Public Law 104-13 **109 Stat. 163**

May 22, 1995
An Act

To further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title.

44 USC 101 note.

This Act may be cited as the "Paperwork Reduction Act of 1995."

Sec. 2. Coordination of Federal Information Policy.

Chapter 35 of Title 44, United States Code, is amended to read as follows:

Chapter 35–Coordination Of Federal Information Policy

Sec.

Sec. 3501. Purposes

The purposes of this subchapter[1] are to–

(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

(4) improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society;

(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to–

(A) privacy and confidentiality, including section 552a of Title 5;

(B) security of information, including section 11332 of title 40[2]; and

(C) access to information, including section 552 of Title 5;

(9) ensure the integrity, quality, and utility of the Federal statistical system;

(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this Chapter.

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[1]Public Law 106–398, section 1, (114 Stat. 1654), Oct. 30 2000 substituted "subchapter" for "chapter" wherever occurring.

[2]Public Law 107–217, section 3(1)(4), August 21, 2002 (116 Stat. 1301).

Sec. 3502. Definitions

As used in this subchapter–

(1) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include–

(A) the General Accounting Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term "burden" means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for–

(A) reviewing instructions;

(B) acquiring, installing, and utilizing technology and systems;

(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(D) searching data sources;

(E) completing and reviewing the collection of information; and

(F) transmitting, or otherwise disclosing the information;

(3) the term "collection of information"–

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either–

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term "Director" means the Director of the Office of Management and Budget;

(5) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal

Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term "information resources" means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term "information resources management" means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

(8) the term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term "information technology" has the meaning given that term in section 1101 of title 40 but does not include national security systems as defined in section 11103 of title 40[3];

(10) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term "practical utility" means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term "public information" means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term "recordkeeping requirement" means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to–

(A) retain such records;

(B) notify third parties, the Federal Government, or the public of the existence of such records;

(C) disclose such records to third parties, the Federal Government, or the public; or

(D) report to third parties, the Federal Government, or the public regarding such records; and

(14) the term "penalty" includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.[4]

Sec. 3503. Office of Information and Regulatory Affairs

Establishment.

(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the

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[3]Public Law 107–217; section 3(1)(4), August 21, 2002 (116 stat. 1301).

[4]May 22, 1995, Public Law 104–13, section 2, (109 Stat. 164); February 10, 1996, Public Law 104–106, Div E, Title LVI, section 5605(a), (110 Stat. 700); November 18, 1997, Public Law 105-85, Div. A, Title X, Subtitle G, section 1073(h)(5)(A), (111 Stat. 1907).

Senate. The Director shall delegate to the Administrator the authority to administer all functions under this Chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

Sec. 3504. Authority and Functions of Director

(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall–

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee–

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology.

(2) The authority of the Director under this subchapter shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall–

(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

(2) foster greater sharing, dissemination, and access to public information, including through–

(A) the use of the Government Information Locator Service; and

(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

(4) oversee the development and implementation of best practices in information resources management, including training; and

(5) oversee agency integration of program and management functions with information resources management functions.

(c) With respect to the collection of information and the control of paperwork, the Director shall–

(1) review and approve proposed agency collections of information;

(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of

Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;

(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to–

(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

(2) promote public access to public information and fulfill the purposes of this Chapter, including through the effective use of information technology.

"(e) With respect to statistical policy and coordination, the Director shall–

(1) coordinate the activities of the Federal statistical system to ensure–

(A) the efficiency and effectiveness of the system; and

(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

(3) develop and oversee the implementation of Government-wide policies, principles, standards, and guidelines concerning–

(A) statistical collection procedures and methods;

(B) statistical data classification;

(C) statistical information presentation and dissemination;

(D) timely release of statistical data; and

(E) such statistical data sources as may be required for the administration of Federal programs;

(4) evaluate statistical program performance and agency compliance with Government-wide policies, principles, standards and guidelines;

(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

Establishment.

(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall–

(A) be headed by the chief statistician; and

(B) consist of–

(i) the heads of the major statistical programs; and

(ii) representatives of other statistical agencies under rotating membership; and

(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which–

(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

(B) all costs of the training shall be paid by the agency requesting training.

Records.

(f) With respect to records management, the Director shall–

(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of Chapters 29, 31, and 33 of this Title with the information resources management policies, principles, standards, and guidelines established under this Chapter;

(2) review compliance by agencies with–

(A) the requirements of Chapters 29, 31, and 33 of this Title;

Regulations.

and

(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

(g) With respect to privacy and security, the Director shall–

(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies; and

(2) oversee and coordinate compliance with sections 552 and 552a of Title 5, sections 20 and 21 of the National Institute of Standards and Technology Act (15 USC 278g–3 and 278g–4), section 11331 and 1132(b) and (c) of title 40 and subchapter II of this chapter,[5] and related information management laws.

(h) With respect to Federal information technology, the Director shall–

(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services–

(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

(B) oversee the development and implementation of standards under section 5131 of the Clinger-Cohen Act of 1996 (40 USC 1441);

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[5]Public Law 107–347, title 3, section 305(c)(1), Dec. 17, 2002 (116 Stat. 2960).

(2) monitor the effectiveness of, and compliance with, directives issued under subtitle III of title 40,[6] and directives issued under section 110 of the Federal Property and Administrative Services Act of 1949 (40 USC 757);

(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

(4) ensure, through the review of agency budget proposals, information resources management plans and other means–

(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.[7]

Sec. 3505. Assignment of Tasks and Deadlines

(a) In carrying out the functions under this subchapter, the Director shall–

(1) in consultation with agency heads, set an annual Government-wide goal for the reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001, and set annual agency goals to–

(A) reduce information collection burdens imposed on the public that–

(i) represent the maximum practicable opportunity in each agency; and

(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this Chapter, particularly with regard to minimizing the Federal information collection burden; and

(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Government-wide

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[6]Public Law 107–217, section ℓ(5)(c), (116 Stat. 1301), August 21, 2002.

[7]May 22, 1995, Public Law 104–13, section 2, (109 Stat. 167), February 10, 1996, November 18, 1997, Public Law 104–106, Div. E, Title LI, Subtitle D, section 513(e)(1), Title LVI, section 5605(b), (c), (110 Stat. 688, 700), Public Law 105–85, Div. A, Title X, Subtitle G, section 1073(h)(5)(B), (C), (111 Stat., 1907).

strategic plan for information resources management, that shall include–

(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

(B) plans for–

(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this Chapter; and

(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may, after consultation with the agency head, waive the application of any administrative directive issued by an agency with which the project is conducted, including any directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

Sec. 3506. Federal Agency Responsibilities

(a)(1) The head of each agency shall be responsible for–

(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

(B) complying with the requirements of this Chapter and related policies established by the Director.

Reports.

(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter.

Reports.

(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate Chief Information Officers who shall report directly to such Secretary to carry out the responsibilities of the department under this Chapter. If more than one Chief Information Officer is designated, the respective duties of the Chief Information Officers shall be clearly delineated.

(3) The Chief Information Officer designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this Chapter, including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter.

(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the

programs under such official. In consultation with the Chief Information Officer designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

(b) With respect to general information resources management, each agency shall–

(1) manage information resources to–

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

(3) develop and maintain an ongoing process to–

(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this subchapter; and

(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

(c) With respect to the collection of information and the control of paperwork, each agency shall–

(1) establish a process within the office headed by the Chief Information Officer designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter, to–

(A) review each collection of information before submission to the Director for review under this Chapter, including–

(i) an evaluation of the need for the collection of information;

(ii) a functional description of the information to be collected;

(iii) a plan for the collection of the information;

(iv) a specific, objectively supported estimate of burden;

(v) a test of the collection of information through a pilot program, if appropriate; and

(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

(B) ensure that each information collection–

(i) is inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

(iii) informs the person receiving the collection of information of–

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

(C) assess the information collection burden of proposed legislation affecting the agency;

Federal Register, publication.

(2)(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to–

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

Regulations.

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A)(i) through (iv); and

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each

collection of information submitted to the Director for review under section 3507–

(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of Title 5, the use of such techniques as–

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;

(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(G) contains the statement required under paragraph (1)(B)(iii);

(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

Public information.

(d) With respect to information dissemination, each agency shall–

(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through–

(A) encouraging a diversity of public and private sources for information based on government public information;

(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) agency dissemination of public information in an efficient, effective, and economical manner;

(2) regularly solicit and consider public input on the agency's information dissemination activities;

(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

(4) not, except where specifically authorized by statute–

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

(B) restrict or regulate the use, resale, or redissemination of public information by the public;

(C) charge fees or royalties for resale or redissemination of public information; or

(D) establish user fees for public information that exceed the cost of dissemination.

(e) With respect to statistical policy and coordination, each agency shall–

(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

(6) make data available to statistical agencies and readily accessible to the public.

Records.

(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

Privacy.
Computer technology.

(g) With respect to privacy and security, each agency shall–

(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, section 11332 of title 40[8], and related information management laws; and

(3) consistent with section 11332 of title 40[9], identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

Science and technology.

(h) With respect to Federal information technology, each agency shall–

(1) implement and enforce applicable Government-wide and agency information technology management policies, principles, standards, and guidelines;

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[8]Public Law 107–217, section 3(1)(7), Aug. 21, 2002 (116 stat. 1302), redesignated section of title 40 (formerly 40 USC 759 note).

[9]Public Law 107–217, section 3(1)(7), Aug. 21, 2002 (116 stat. 1302), redesignated section of title 40 (formerly 40 USC 759 note).

(2) assume responsibility and accountability for information technology investments;

(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is–

(A) integrated with budget, financial, and program management decisions; and

(B) used to select, control, and evaluate the results of major information systems initiatives.

Sec. 3507. Public Information Collection Activities; Submission to Director; Approval and Delegation

(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information–

(1) the agency has–

(A) conducted the review established under section 3506(c)(1);

(B) evaluated the public comments received under section 3506(c)(2);

(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

Federal Register, publication.

(D) published a notice in the Federal Register–"(i) stating that the agency has made such submission; and

(ii) setting forth–

(I) a title for the collection of information;

(II) a summary of the collection of information;

(III) a brief description of the need for the information and the proposed use of the information;

(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

(V) an estimate of the burden that shall result from the collection of information; and

(VI) notice that comments may be submitted to the agency and Director;

(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)–

(A) the approval may be inferred;

(B) a control number shall be assigned without further delay; and

(C) the agency may collect the information for not more than 1 year.

Proposed rule.

(d)(1) For any proposed collection of information contained in a proposed rule–

(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

Federal Register, publication.

(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

Federal Register, publication. Regulations.

(2) When a final rule is published in the Federal Register, the agency shall explain–

(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

(B) the reasons such comments were rejected.

(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion–

(A) from disapproving any collection of information which was not specifically required by an agency rule;

(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

(D) from disapproving any collection of information contained in a final rule, if–

(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

(3) This subsection shall not require the disclosure of–

(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

(B) any communication relating to a collection of information which is not approved under this Chapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void–

(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

(g) The Director may not approve a collection of information for a period in excess of 3 years.

(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall–

(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently

approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall–

Federal Register, publication.

(A) publish an explanation thereof in the Federal Register; and

(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this subchapter.

(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this subchapter.

(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of Chapter 5 of Title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(j)(1) The agency head may request the Director to authorize a collection of information, if an agency head determines that–

(A) a collection of information–

(i) is needed prior to the expiration of time periods established under this Chapter; and

(ii) is essential to the mission of the agency; and

(B) the agency cannot reasonably comply with the provisions of this Chapter because–

(i) public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) an unanticipated event has occurred; or

(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this subchapter for a maximum of 180 days after the date on which the Director received the request to authorize such collection.[10]

Sec. 3508. Determination of Necessity for Information; Hearing

Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

Sec. 3509. Designation of Central Collection Agency

The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this subchapter.

Sec. 3510. Cooperation of Agencies in Making Information Available

(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties) that relate to the unlawful disclosure of information apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

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[10]May 22, 1995, Public Law 104–13, section 2, (109 Stat. 171); February 10, 1996, Public Law 104–106, Div. E, Title LVI, section 5605(d), (110 Stat. 700).

Sec. 3511. Establishment and Operation of Government Information Locator Service

(a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall–

(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the "Service"), which shall identify the major information systems, holdings, and dissemination products of each agency;

(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

Establishment.

(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

(4) consider public access and other user needs in the establishment and operation of the Service;

(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 USC 431 et seq.).

Sec. 3512. Public Protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this Chapter if–

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this Chapter; or

(2) the agency fails to inform the person who is to respond to required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

Sec. 3513. Director Review of Agency Activities; Reporting; Agency Response

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to–

(1) be taken to address information resources management problems identified in the report; and

(2) improve agency performance and the accomplishment of agency missions.

Sec. 3514. Responsiveness to Congress

(a)(1) The Director shall–

(A) keep the Congress and congressional committees fully and currently informed of the major activities under this Chapter; and

Reports.

(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

(2) The Director shall include in any such report a description of the extent to which agencies have–

(A) reduced information collection burdens on the public, including–

(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

(ii) a list of all violations of this Chapter and of any rules, guidelines, policies, and procedures issued pursuant to this Chapter;

(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

(iv) a list of agencies that in the preceding year did not reduce information collection burdens in accordance with section 3505(a)(1), a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

(B) improved the quality and utility of statistical information;

(C) improved public access to Government information; and

(D) improved program performance and the accomplishment of agency missions through information resources management.

(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

Sec. 3515. Administrative Powers

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this Chapter.

Sec. 3516. Rules and Regulations

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter.

Sec. 3517. Consultation with Other Agencies and the Public

(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this Chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information–

(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

(2) take appropriate remedial action, if necessary.

Sec. 3518. Effect on Existing Laws and Regulations

(a) Except as otherwise provided in this subchapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this Chapter.

(b) Nothing in this Chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c)(1) Except as provided in paragraph (2), this Chapter shall not apply to the collection of information–

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of–

(i) a civil action to which the United States or any official or agency thereof is a party; or

(ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This subchapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by section 11331 and 11332 of title 40[11], the Secretary of Commerce, or the Director of the Office of Management and Budget.

(e) Nothing in this subchapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and

[11]Public Law 107–217, section 3(1)(7), Aug. 21, 2002 (116 stat. 1302).

Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

Sec. 3519. Access to Information

Under the conditions and procedures prescribed in section 716 of Title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

Sec. 3520. Establishment of Task Force on Information Collection and Dissemination[12]

"a) There is established a task force to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information (in this section referred to as the `task force').

"(b)(1) The Director shall determine–

"(A) subject to the minimum requirements under paragraph (2), the number of representatives to be designated under each subparagraph of that paragraph; and

"(B) the agencies to be represented under paragraph (2)(K).

"(2) After all determinations are made under paragraph (1), the members of the task force shall be designated by the head of each applicable department or agency, and include–

"(A) 1 representative of the Director, who shall convene and chair the task force;

"(B) not less than 2 representatives of the Department of Labor, including 1 representative of the Bureau of Labor Statistics and 1 representative of the Occupational Safety and Health Administration;

"(C) not less than 1 representative of the Environmental Protection Agency;

"(D) not less than 1 representative of the Department of Transportation;

"(E) not less than 1 representative of the Office of Advocacy of the Small Business Administration;

"(F) not less than 1 representative of the Internal Revenue Service;

"(G) not less than 2 representatives of the Department of Health and Human Services, including 1 representative of the Centers for Medicare and Medicaid Services;

"(H) not less than 1 representative of the Department of Agriculture;

"(I) not less than 1 representative of the Department of the Interior;

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[12]Section 3520 added by Public Law 107–198, section 3, June 28, 2002 (116 stat. 730).

"(J) not less than 1 representative of the General Services Administration; and

"(K) not less than 1 representative of each of 2 agencies not represented by representatives described under subparagraphs (A) through (J).

"(c) The task force shall–

"(1) identify ways to integrate the collection of information across Federal agencies and programs and examine the feasibility and desirability of requiring each agency to consolidate requirements regarding collections of information with respect to small business concerns within and across agencies, without negatively impacting the effectiveness of underlying laws and regulations regarding such collections of information, in order that each small business concern may submit all information required by the agency–

"(A) to 1 point of contact in the agency;

"(B) in a single format, such as a single electronic reporting system, with respect to the agency; and

"(C) with synchronized reporting for information submissions having the same frequency, such as synchronized quarterly, semiannual, and annual reporting dates;

"(2) examine the feasibility and benefits to small businesses of publishing a list by the Director of the collections of information applicable to small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), organized–

"(A) by North American Industry Classification System code;

"(B) by industrial sector description; or

"(C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply;

"(3) examine the savings, including cost savings, and develop recommendations for implementing–

"(A) systems for electronic submissions of information to the Federal Government; and

"(B) interactive reporting systems, including components that provide immediate feedback to assure that data being submitted–

"(i) meet requirements of format; and

"(ii) are within the range of acceptable options for each data field;

"(4) make recommendations to improve the electronic dissemination of information collected under Federal requirements;

"(5) recommend a plan for the development of an interactive Government wide system, available through the Internet, to allow each small business to–

"(A) better understand which Federal requirements regarding collection of information (and, when possible, which other Federal regulatory requirements) apply to that particular business; and

"(B) more easily comply with those Federal requirements; and

"(6) in carrying out this section, consider opportunities for the coordination–

"(A) of Federal and State reporting requirements; and

"(B) among the points of contact described under section 3506(i), such as to enable agencies to provide small business concerns with contacts for information collection requirements for other agencies.

Federal Register, publication. Notice.

"(d) The task force shall–

"(1) by publication in the Federal Register, provide notice and an opportunity for public comment on each report in draft form; and

"(2) make provision in each report for the inclusion of–

"(A) any additional or dissenting views of task force members; and

"(B) a summary of significant public comments.

Deadline. Reports.

"(e) Not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (1), (2), and (3) to–

"(1) the Director;

"(2) the chairpersons and ranking minority members of–

"(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

"(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

"(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

Deadline. Reports.

"(f) Not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (1), (2), and (3) to–

"(1) the Director;

"(2) the chairpersons and ranking minority members of–

"(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

"(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

"(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

Termination date.

"(g) The task force shall terminate after completion of its work.

"(h) In this section, the term `small business concern' has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632).".

(b) TECHNICAL AND CONFORMING AMENDMENT.–The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3520 and inserting the following:

"3520. Establishment of task force on information collection and dissemination.

"3521. Authorization of appropriations.".

* * * *

Sec. 3521. Authorization of Appropriations[13]

There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this Chapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.

Subchapter II.
Information Security

Sec. 3531. Purposes

The purposes of this subchapter are the following:

(1) To provide a comprehensive framework for establishing and ensuring the effectiveness of controls over information resources that support Federal operations and assets.

(2)(A) To recognize the highly networked nature of the Federal computing environment including the need for Federal Government interoperability and, in the implementation of improved security management measures, assure that opportunities for interoperability are not adversely affected.

(B) To provide effective Government–wide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities.

(3) To provide for development and maintenance of minimum controls required to protect Federal information and information systems.

(4) To provide a mechanism for improved oversight of Federal agency information security programs.[14]

Sec. 3532. Definitions.

(a) Except as provided under subsection (b), the definitions under section 3502 shall apply tot his subchapter.

(b) In this subchapter:

(1) The term "information technology" has the meaning given that therm in section 5002 of the Clinger–Cohen Act of 1996 (40 USC 1401).

(2) The term "mission critical system" means any telecommunications or information system used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, that–

(A) is defined as a national security system under section 5142 of the Clinger-Cohen Act of 1996 (40 USC 1452);

(B) is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be classified in the interest of national defense or foreign policy; or

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[13]Section 3521 formerly section 3520, redesignated by Public Law 107–198, section 3, June 28, 2002 (116 stat. 730).

[14]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.

(C) processes any information, the loss, misuse, disclosure, or unauthorized access to or modification of, would have a debilitating impact on the mission of an agency.[15]

Sec. 3533. Authority and Functions of the Director

(a)(1) The Director shall establish Government–wide policies for the management of programs that–

(A) support the cost–effective security of Federal information systems by promoting security as an integral component of each agency's business operations; and

(B) include information technology architectures as defined under section 5125 of the Clinger–Cohen Act of 1996 (40 USC 1425).

(2) Policies under this subsection shall–

(A) be founded on a continuing risk management cycle that recognizes the need to–

(i) identify, assess, and understand risk; and

(ii) determine security needs commensurate with the level of risk;

(B) implement controls that adequately address the risk;

(C) promote continuing awareness of information security risk; and

(D) continually monitor and evaluate policy and control effectiveness of information security practices.

(b) The authority under subsection (a) includes the authority to–

(1) oversee and develop policies, principles, standards, and guidelines for the handling of Federal information and information resources to improve the efficiency and effectiveness of government operations, including principles, policies, and guidelines for the implementation of agency responsibilities under applicable law for ensuring the privacy, confidentiality, and security of Federal information;

(2) consistent with the standards and guidelines promulgated under section 5131 of the Clinger–Cohen Act of 1996 (40 USC 1441) and sections 5 and 6 of the Computer Security Act of 1987 (40 USC 1441 note; Public Law 100–235; 101 Stat. 1729), require Federal agencies to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency;

(3) direct the heads of agencies to–

(A) identify, use, and share best security practices;

(B) develop an agency–wide information security plan;

(C) incorporate information security principles and practices throughout the life cycles of the agency's information systems; and

(D) ensure that the agency's information security plan is practiced throughout all life cycles of the agency's information systems;

(4) oversee the development and implementation of standards and guidelines relating to security controls for Federal computer systems by the Secretary of Commerce through the National Institute of

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[15]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.

Standards and Technology under section 5131 of the Clinger–Cohen Act of 1996 (40 USC 1441) and section 20 of the National Institute of Standards and Technology Act (15 USC 278g–3);

(5) oversee and coordinate compliance with this section in a manner consistent with–

(A) sections 552 and 552a of Title 5;

(B) sections 20 and 21 of the National Institute of Standards and Technology Act (15 USC 278g–3 and 278g–4);

(C) section 5131 of the Clinger–Cohen Act of 1996 (40 USC 1441);

(D) sections 5 and 6 of the Computer Security Act of 1987 (40 USC 1441 note; Public Law 100–235; 101 Stat. 1729); and

(E) related information management laws; and

(6) take any authorized action under section 5113(b)(5) of the Clinger–Cohen Act of 1996 (40 USC 1413(b)(5)) that the Director considers appropriate, including any action involving the budgetary process or appropriations management process, to enforce accountability of the head of an agency for information resources, including the requirements of this subchapter and for the investments made by the agency in information technology, including–

(A) recommending a reduction or an increase in any amount for information resources that the head of the agency proposes for the budget submitted to Congress under section 1105(a) of Title 31;

(B) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources; and

(C) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources.

(c) The authorities of the Director under this section (other than the authority described in subsection (b)(6))–

(1) shall be delegated to the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President in the case of systems described under subparagraphs (A) and (B) of section 3532(b)(2);

(2) shall be delegated to the Secretary of Defense in the case of systems described under subparagraph (C) of section 3532(b)(2) that are operated by the Department of Defense, a contractor of the Department of Defense, or another entity on behalf of the Department of Defense; and

(3) in the case of all other Federal information systems, may be delegated only to the deputy Director for Management of the Office of Management and Budget.[16]

Sec. 3534. Federal Agency Responsibilities

(a) The head of each agency shall–

(1) be responsible for–

(A) adequately ensuring the integrity, confidentiality, authenticity, availability, and nonrepudiation of information and information systems supporting agency operations and assets;

(B) developing and implementing information security policies, procedures, and control techniques sufficient to afford security

[16]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.

protections commensurate with the risk and magnitude of the harm resulting from unauthorized disclosure, disruption, modification, or destruction of information collected or maintained by or for the agency; and

(C) ensuring that the agency's information security plan is practiced throughout the life cycle of each agency system;

(2) ensure that appropriate senior agency officials are responsible for–

(A) assessing the information security risks associated with the operations and assets for programs and systems over which such officials have control;

(B) determining the levels of information security appropriate to protect such operations and assets; and

(C) periodically testing and evaluating information security controls and techniques;

(3) delegate to the agency Chief Information Officer established under section 3506, or a comparable official in an agency not covered by such section, the authority to administer all functions under this subchapter including–

(A) designating a senior agency information security official who shall report to the Chief Information Officer or a comparable official;

(B) developing and maintaining an agencywide information security program as required under subsection (b);

(C) ensuring that the agency effectively implements and maintains information security policies, procedures, and control techniques;

(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

(E) assisting senior agency officials concerning responsibilities under paragraph (2);

(4) ensure that the agency has training personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

(5) ensure that the agency Chief Information Officer, in coordination with senior agency officials, periodically–

(A)(i) evaluates the effectiveness of the agency information security program, including testing control techniques; and

(ii) implements appropriate remedial actions based on that evaluation; and

(B) reports to the agency head on–

(i) the results of such tests and evaluations; and

(ii) the progress of remedial actions.

(b)(1) Each agency shall develop and implement an agencywide information security program to provide information security for the operations and assets of the agency, including operations and assets provided or managed by another agency.

(2) Each program under this subsection shall include–

(A) periodic risk assessments that consider internal and external threats to–

(i) the integrity, confidentiality, and availability of systems; and

(ii) data supporting critical operations and assets;

(B) policies and procedures that–

(i) are based on the risk assessments required under subparagraph (A) that cost–effectively reduce information security risks to an acceptable level; and

(ii) ensure compliance with–

(I) the requirements of this subchapter;

(II) policies and procedures as may be prescribed by the Director; and

(III) any other applicable requirements;

(C) security awareness training to inform personnel of–

(i) information security risks associated with the activities of personnel; and

(ii) responsibilities of personnel in complying with agency policies and procedures designed to reduce such risks;

(D) periodic management testing and evaluation of the effectiveness of information security policies and procedures;

(E) a process for ensuring remedial action to address any significant deficiencies; and

(F) procedures for detecting, reporting, and responding to security incidents, including–

(i) mitigating risks associated with such incidents before substantial damage occurs;

(ii) notifying and consulting with law enforcement officials and other offices and authorities;

(iii) notifying and consulting with an office designated by the Administrator of General Services within the General Services Administration; and

(iv) notifying and consulting with an office designated by the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President for incidents involving systems described under subparagraphs (A) and (B) of section 3532(b)(2).

(3) Each program under this subsection is subject to the approval of the Director and is required to be reviewed at least annually by agency program officials in consultation with the Chief Information Officer. In the case of systems described under subparagraphs (A) and (B) of section 3532(b)(2), the Director shall delegate approval authority under this paragraph to the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President.

(c)(1) Each agency shall examine the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to–

(A) annual agency budgets;

(B) information resources management under subchapter I of this Chapter;

(C) performance and results based management under the Clinger–Cohen Act of 1996 (40 USC 1401 *et seq.*);

(D) program performance under sections 1105 and 1115 through 1119 of Title 31, and sections 2801 through 2805 of Title 39; and

(E) financial management under–

(i) Chapter 9 of Title 31, United States Code, and the Chief Financial Officers Act of 1990 (31 USC 501 note; Public Law 101–576) (and the amendments made by that Act);

(ii) the Federal Financial Management Improvement Act of 1996 (31 USC 3512 note) (and the amendments made by that Act); and

(iii) the internal controls conducted under section 3512 of Title 31.

(2) Any significant deficiency in a policy, procedure, or practice identified under paragraph (1) shall be reported as a material weakness in reporting required under the applicable provision of law under paragraph (1).

(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Chief Information Officer, shall include as part of the performance plan required under section 1115 of Title 31 a description of–

(A) the time periods, and

(B) the resources, including budget, staffing, and training, which are necessary to implement the program required under subsection (b)(1).

(2) The description under paragraph (1) shall be based on the risk assessment required under subsection (b)(2)(A).[17]

Sec. 3535. Annual Independent Evaluation.

(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency.

(2) Each evaluation by an agency under this section shall include–

(A) testing of the effectiveness of information security control techniques for an appropriate subset of the agency's information systems; and

(B) an assessment (made on the basis of the results of the testing) of the compliance with–

(i) the requirements of this subchapter; and

(ii) related information security policies, procedures, standards, and guidelines.

(3) The Inspector General or the independent evaluator performing an evaluation under this section may use an audit, evaluation, or report relating to programs or practices of the applicable agency.

(b)(1)(A) Subject to subparagraph (B), for agencies with Inspectors General appointed under the Inspector General Act of 1978 (5 USC App.) or any other law, the annual evaluation required under this section or, in the case of systems described under subparagraphs (A) and (B) of section 3532(b)(2), an audit of the annual evaluation required under this section, shall be performed by the Inspector General or by an independent evaluator, as determined by the Inspector General of the agency.

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[17]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.

(B) For systems described under subparagraphs (A) and (B) of section 3532(b)(2), the evaluation required under this section shall be performed only by an entity designated by the Secretary of Defense, the Director of Central Intelligence, or another agency head as designated by the President.

(2) For any agency to which paragraph (1) does not apply, the head of the agency shall contract with an independent evaluator to perform the evaluation.

(c) Each year, not later than the anniversary of the date of the enactment of this subchapter [enacted Oct. 30, 2000], the applicable agency head shall submit to the Director–

(1) the results of each evaluation required under this section, other than an evaluation of a system described under subparagraph (A) or (B) of section 3532(b)(2); and

(2) the results of each audit of an evaluation required under this section of a system described under subparagraph (A) or (B) of section 3532(b)(2).

(d)(1) The Director shall submit to congress each year a report summarizing the materials received from agencies pursuant to subsection (c) in that year.

(2) Evaluations and audits of evaluations of systems under the authority and control of the Director of Central Intelligence and evaluations and audits of evaluation of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available only to the appropriate oversight committees of Congress, in accordance with applicable laws.

(e) Agencies and evaluators shall take appropriate actions to ensure the protection of information, the disclosure of which may adversely affect information security. Such protections sh all be commensurate with the risk and comply with all applicable laws.[18]

Sec. 3536. Expiration.

This subchapter shall not be in effect after the date that is two years after the date on which this subchapter takes effect.[19]

[18]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.
[19]Public Law 106–398, section 1 (114 Stat. 1654); October 30, 2000.

C. GOVERNMENT PAPERWORK ELIMINATION ACT

Public Law 105-277 **112 Stat. 2681 - 749**

DIVISION C-TITLE XVII
October 21, 1998

Sec. 1701. Short Title.

Government Paperwork Elimination Act. 44 USC 3504 note.

Government Paperwork Elimination Act, 44 USC 3504 note. This Title may be cited as the "Government Paperwork Elimination Act of 1996."

Sec. 1702. Authority of OMB to Provide for Acquisition and Use of Alternative Information Technologies by Executive Agencies.

Section 3504(a)(1)(B)(vi) of Title 44, United States Code, is amended to read as follows:

"(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.".

Sec. 1703. Procedures for Use and Acceptance of Electronic Signatures by Executive Agencies.

(a) IN GENERAL.–In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.–

(1) The procedures developed under subsection (a)–

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

Sec. 1704. Deadline for Implementation by Executive Agencies of Procedures for Use and Acceptance of Electronic Signatures.

In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide–

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

Sec. 1705. Electronic Storage and Filing of Employment Forms.

In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

Sec. 1706. Study on Use of Electronic Signatures.

(a) ONGOING STUDY REQUIRED.–In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this Title on–

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.–The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

Sec. 1707. Enforceability and Legal Effect of Electronic Records.

Electronic records submitted or maintained in accordance with procedures developed under this Title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

Sec. 1708. Disclosure of Information.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this Title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications,

or with the prior affirmative consent of the person about whom the information pertains.

Sec. 1709. Application with Internal Revenue Laws.

No provision of this Title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision–

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

Sec. 1710. Definitions.

For purposes of this Title:

(1) ELECTRONIC SIGNATURE.–The term "electronic signature" means a method of signing an electronic message that–

(A) identifies and authenticates a particular person as the source of the electronic message.

(2) EXECUTIVE AGENCY.–The term "Executive agency" has the meaning given that term in section 105 of Title 5, United States Code.

D. CONSOLIDATED APPROPRIATIONS ACT, 2001 (DATA QUALITY)

Public Law 106-554 **114 Stat. 2763A–153**

December 21, 2000

Appendix C
(Treasury and General Government Appropriations Act, 2001)

Sec. 515.

(a) IN GENERAL.–The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of Title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of Chapter 35 of Title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) CONTENT OF GUIDELINES.–The guidelines under subsection (a) shall–

(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

(2) require that each Federal agency to which the guidelines apply–

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director–

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.

E. ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

Public Law 106-229 **114 Stat. 464**

June 30, 2000

An Act

to facilitate the use of electronic records and signatures in interstate or foreign commerce

Sec. 1. Short Title

This Act may be cited as the "Electronic Signatures in Global and National Commerce Act".

Title I
Electronic Records And Signatures In Commerce

Sec. 101. General Rule of Validity

15 USC 7001. (a) IN GENERAL.–Notwithstanding any statute, regulation, or other rule of law (other than this Title and Title II), with respect to any transaction in or affecting interstate or foreign commerce–

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) PRESERVATION OF RIGHTS AND OBLIGATIONS.–This Title does not–

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) CONSUMER DISCLOSURES.–

(1) CONSENT TO ELECTRONIC RECORDS.–Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if–

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement–

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer

to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer–

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record–

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and (ii) again complies with subparagraph (C).

(2) OTHER RIGHTS.–

(A) PRESERVATION OF CONSUMER PROTECTIONS.– Nothing in this Title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) VERIFICATION OR ACKNOWLEDGMENT.–If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) EFFECT OF FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF CONSENT.–The legal effectiveness, validity,

or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) PROSPECTIVE EFFECT.–Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) PRIOR CONSENT.–This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this Title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) ORAL COMMUNICATIONS.–An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) RETENTION OF CONTRACTS AND RECORDS.–

(1) ACCURACY AND ACCESSIBILITY.–If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that–

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) EXCEPTION.–A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) ORIGINALS.–If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.–If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) ACCURACY AND ABILITY TO RETAIN CONTRACTS AND OTHER RECORDS.–Notwithstanding subsection (a), if a statute, regulation,

or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) PROXIMITY.–Nothing in this Title affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) NOTARIZATION AND ACKNOWLEDGMENT.–If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) ELECTRONIC AGENTS.–A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

Applicability.

(i) INSURANCE.–It is the specific intent of the Congress that this Title and Title II apply to the business of insurance.

(j) INSURANCE AGENTS AND BROKERS.–An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if–

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortuous conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

15 USC 7002.

Sec. 102. Exemption to Preemption.

(a) IN GENERAL.–A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law–

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this Title or Title II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if–

(i) such alternative procedures or requirements are consistent with this Title and Title II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) EXCEPTIONS FOR ACTIONS BY STATES AS MARKET PARTICIPANTS.–Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) PREVENTION OF CIRCUMVENTION.–Subsection (a) does not permit a State to circumvent this Title or Title II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

15 USC 7003.

Sec. 103. Specific Exceptions.

(a) EXCEPTED REQUIREMENTS.–The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by–

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

(b) ADDITIONAL EXCEPTIONS.–The provisions of section 101 shall not apply to–

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of–

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) REVIEW OF EXCEPTIONS.–

(1) EVALUATION REQUIRED.–The Secretary of Commerce acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers.

Deadline.
Reports.

Secretary shall submit a report to the Congress on the results of such evaluation.

(2) DETERMINATIONS.–If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 101 to the exceptions identified in such finding.

Sec. 104. Applicability to Federal and State.

15 USC 7004.

(a) FILING AND ACCESS REQUIREMENTS.–Subject to subsection (c)(2), nothing in this Title limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) PRESERVATION OF EXISTING RULEMAKING AUTHORITY.–

(1) Use of authority to interpret.–Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 with respect to such statute through–

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) Limitations on interpretation authority.–Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 101 from adopting any regulation, order, or guidance described in paragraph (1), unless–

(A) such regulation, order, or guidance is consistent with section 101;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that–

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose–

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating,

storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) PERFORMANCE STANDARDS.–

(A) ACCURACY, RECORD INTEGRITY, ACCESSIBILITY.–Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 101(d).

(B) PAPER OR PRINTED FORM.–Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to require retention of a record in a tangible printed or paper form if–

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and (ii) imposing such requirement is essential to attaining such interest.

(4) Exceptions for actions by government as market participant.–Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) ADDITIONAL LIMITATIONS.–

(1) REIMPOSING PAPER PROHIBITED.–Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) CONTINUING OBLIGATION UNDER GOVERNMENT PAPERWORK ELIMINATION ACT.–Nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (Title XVII of Public Law 105-277).

(d) AUTHORITY TO EXEMPT FROM CONSENT PROVISION.–

(1) IN GENERAL.–A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Deadline.
Regulations.

2) PROSPECTUSES.–Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 101(c) any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company

that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933.

(e) ELECTRONIC LETTERS OF AGENCY.–The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

Sec. 105. Studies.

Deadlines. 15 USC 7005. Mail.

(a) DELIVERY.–Within 12 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

Reports.

Reports.

b) STUDY OF ELECTRONIC CONSENT.–Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

Public information.

Sec. 106. Definitions.

15 USC 7006.

For purposes of this Title:

(1) CONSUMER.–The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) ELECTRONIC.–The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) ELECTRONIC AGENT.–The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) ELECTRONIC RECORD.–The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) ELECTRONIC SIGNATURE.–The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) FEDERAL REGULATORY AGENCY.–The term "Federal regulatory agency" means an agency, as that term is defined in section 552(f) of Title 5, United States Code.

(7) INFORMATION.–The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) PERSON.–The term "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) RECORD.–The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) REQUIREMENT.–The term "requirement" includes a prohibition.

(11) SELF-REGULATORY ORGANIZATION.–The term "self-regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) STATE.–The term "State" includes the District of Columbia and the territories and possessions of the United States.

(13) TRANSACTION.–The term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct–

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

15 USC 7001 note.

Sec. 107. Effective Date.

(a) IN GENERAL.–Except as provided in subsection (b), this Title shall be effective on October 1, 2000.

(b) EXCEPTIONS.–

(1) RECORD RETENTION.–

(A) IN GENERAL.–Subject to subparagraph (B), this Title shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by–

(i) a Federal statute, regulation, or other rule of law, or

(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.–If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) with respect to a requirement described in subparagraph (A), this Title shall be effective on June 1, 2001, with respect to such requirement.

(2) CERTAIN GUARANTEED AND INSURED LOANS.–With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this Title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act.

(3) Student loans.--With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to Title IV of the Higher Education Act of 1965, section 101(c) of this Act shall not apply until the earlier of–

(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965; or

(B) one year after the date of enactment of this Act.

Title II–Transferable Records

Sec. 201. Transferable Records.

15 USC 7021. (a) DEFINITIONS.–For purposes of this section:

(1) TRANSFERABLE RECORD.–The term "transferable record" means an electronic record that–

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) OTHER DEFINITIONS.–The terms "electronic record", "electronic signature", and "person" have the same meanings provided in section 106 of this Act.

(b) CONTROL.–A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) CONDITIONS.–A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that–

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as–

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Status as Holder.–Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under sections 3-302(a), 9-308, or revised sections 9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Obligor Rights.–Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) Proof of Control.–If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC References.–For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

Sec. 202. Effective Date.

15 USC 7021 note.

This Title shall be effective 90 days after the date of enactment of this Act.

Title III–Promotion Of International Electronic Commerce

Sec. 301. Principles Governing the Use of Electronic Signatures in International Transactions.

(a) PROMOTION OF ELECTRONIC SIGNATURES.–

(1) REQUIRED ACTIONS.–The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.–The principles specified in this paragraph are the following:

(A) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) CONSULTATION.–In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) DEFINITIONS.–As used in this section, the terms ``electronic record'' and ``electronic signature'' have the same meanings provided in section 106 of this Act.

Title IV–Commission On Online Child Protection

Sec. 401. Authority to Accept Gifts.

Section 1405 of the Child Online Protection Act (47 USC 231 note) is amended by inserting after subsection (g) the following new subsection:

"(h) GIFTS, BEQUESTS, AND DEVISES.–The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real (including the use of office space) and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts or grants not used at the termination of the Commission shall be returned to the donor or grantee.".

13: Environmental Legislation

13. Environmental Legislation
Contents

A. PERTINENT SECTIONS OF THE CLEAN AIR ACT OF 1977, AS AMENDED

(Including amendments made by)

Public Law 101-549 **104 Stat. 2399**

November, 14, 1990

Sec. 302. Definitions

When used in this Chapter

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term "interstate air pollution control agency" means–

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Chapter.

(l) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution (characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this Chapter, the term "applicable implementation plan" means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this Title, or promulgated under section 7410(c) of this Title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this Title and which implements the relevant requirements of this Chapter.

(r) INDIAN TRIBE

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and

services provided by the United States to Indians because of their status as Indians.

(s) VOC

The term "VOC" means volatile organic compound, as defined by the Administrator.

(t) PM-10

The term "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG

The term "NAAQS" means national ambient air quality standard. The term "CTG" means a Control Technique Guideline published by the Administrator under section 7408 of this Title.

(v) NO_X

The term "NO_X" means oxides of nitrogen.

(w) CO

The term "CO" means carbon monoxide.

(x) SMALL SOURCE

The term "small source" means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN

The term "Federal implementation plan" means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE

The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this Title[1].

Title III

Sec. 301. Hazardous Air Pollutants

42 USC 7412. Section 112 of the Clean Air Act is amended to read as follows:

Sec. 112. Hazardous Air Pollutants

(a) DEFINITIONS.–For purposes of this section, except subsection (R)–

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[1]July 14, 1955, c. 360, Title III, 302, formerly 9, as added Dec. 17, 1963, Public Law 88-206, 1, 77 Stat. 400, renumbered Oct. 20, 1965, Public Law 89-272, Title I, 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Public Law 90-48, 2, 81 Stat. 504; Dec. 31, 1970, Public Law 91-604, 15(a)(1), (c)(1), 84 Stat. 1710, 1713; Aug. 7, 1977, Public Law 95-95, Title II, 218(c), Title III, 301, 91 Stat. 761, 769; Nov. 16, 1977, Public Law 95-190, 14(a)(76), 91 Stat. 1404, Public Law 101-549. Title I, 101(d)(4), 107(a), (b), 108(i), 109(b), Title III, 302(e), Title VII, 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.

(1) Major Source.–The term "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source.–The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or non-road vehicles subject to regulation under Title II.

(3) Stationary Source.–The term "stationary source" shall have the same meaning as such term has under section 111(a).

(4) New Source.–The term "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification.–The term "modification" means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous Air Pollutant.–The term "hazardous air pollutant" means any air pollutant listed pursuant to subsection (b).

(7) Adverse Environmental Effect.–The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric Utility Steam Generating Unit.–The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or Operator.–The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing Source.–The term "existing source" means any stationary source other than a new source.

(11) Carcinogenic Effect.–Unless revised, the term "carcinogenic effect" shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) LIST OF POLLUTANTS.–

(1) Initial List.–The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

* * * *

0 Radionuclides (including radon)[2]

* * * *

(2) Revision Of The List.–The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection r. as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under Title VI of this act shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions To Modify The List.–

(A) Beginning at any time after 6 months after the date of enactment of the Clean Air Act Amendments of 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

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[2]A type of atom which spontaneously undergoes radioactive decay.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of the date of enactment of the Clean Air Act Amendments of 1990.

(4) Further Information.–If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test Methods.–The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention Of Significant Deterioration.–The provisions of Part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead.–The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) LIST OF SOURCE CATEGORIES.–

(1) In General.–Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and Part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for Emissions Standards.–For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

Regulations.

(3) Area Sources.–The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after such date of enactment.

(4) Previously Regulated Categories.–The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(5) Additional Categories.–In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after the date of enactment of the Clean Air Act Amendments of 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

* * * *

(9) Deletions From This List.–

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from this list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse

environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) EMISSION STANDARDS.–

(1) In General.–The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

(2) Standards And Methods.–Emissions standard promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which–

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) are a combination of the above,

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 114(c), in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New And Existing Sources.–The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated

under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than–

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health Threshold.–With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative Standard For Area Sources.–With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review And Revision.–The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other Requirements Preserved.–No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, Part C or D, or other authority of this Act or a standard issued under State authority.

* * * *

(9) Sources Licensed By The Nuclear Regulatory Commission.–No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public

health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 or this section.

(10) Effective Date.–Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

* * * *

(q) SAVINGS PROVISION.–

(1) Standard Previously Promulgated.–Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special Rule.–Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other Categories.–Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical Facilities.–Notwithstanding paragraph (1), no standard promulgated under this section prior to the date of enactment of the Clean Air Act Amendments of 1990 with respect to medical research or treatment facilities shall take effect for two years following the date of enactment of the Clean Air Act Amendments of 1990, unless the

Administrator makes a determination pursuant to a rulemaking under section 112(d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of section 112 shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in section 112(d)(9).

r) PREVENTION OF ACCIDENTAL RELEASES.–

(1) Purpose And General Duty.–It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 304 shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions.–

(A) The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(3) List Of Substances.–The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen

cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this Chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

Regulations.

(4) Factors To Be Considered.–In listing substances under paragraph (3), the Administrator shall consider each of the following criteria–

(A) the severity of any acute adverse health effects associated with accidental releases of the substance.

(B) the likelihood of accidental releases of the substance; and

(C) the potential magnitude of human exposure to accidental releases of the substance.

(5) Threshold Quantity.–At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

* * * *

(11) State Authority.–Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

* * * *

(7) Accident Prevention.–

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the

size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

Regulations.

(B)(i) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c). The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or

requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of section 113, 114, 116, 120, 304, and 307 and other enforcement provisions of this Act, be treated as a standard in effect under subsection (d).

(F) Notwithstanding the provisions of Title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such Title solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of Title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.[3]

Sec. 116. Retention of State Authority

Except as otherwise provided in sections 1857c-10(e), (e), and (ff) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this Title (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or 7412, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.[4]

Sec. 122. Listing of Certain Unregulated Pollutants

(a) Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such

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[3]July 14, 1955, Chapter 360, Title I, 112, as added Dec. 31, 1970, Public Law 91-604, 4(a), 84 Stat. 1685, and amended Aug. 7, 1977; Public Law 95-95, Title I, 109(d)(2), 110, Title 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Public Law 95-623, 13(b), 92 Stat. 3458; Nov. 15, 1990, Public Law 101-549, Title III, 301, 104 Stat. 2531.

[4]July 14, 1955, Chapter 360, Title I, section116, formerly section109, as added Nov. 21, 1967, Public Law 90-148, section 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Public Law 91-604, section4(a),(c), 84 Stat. 1678, 1689; June 22, 1974, Public Law 93-319, section6(b), 88 Stat. 259, Nov. 16, 1978, Public Law 95-190, section14(a)(24), 91 Stat. 1400.

substance in significant amounts in the list published under section 7411(b)(1)(A), or take any combination of such actions.

(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

(c)(1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this Act, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this Act respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this Act or by any State (or the Administrator) under any applicable implementation plan under this Act, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.[5]

Title IV

Sec. 501. Permits.

Add the following new Title after Title IV:

Title V

[5]July 14, 1955, Chapter 360, Title I, section122, as added Aug. 7, 1977, Public Law 95-95, Title I, section120(a), 91 Stat. 720.

Sec. 501. Definitions.

42 USC 7661. As used in this Title–

(1) Affected source.–The term "affected source" shall have the meaning given such term in Title IV.

(2) Major source.–The term "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 112.

(B) A major stationary source as defined in section 302 or Part D of Title I.

(3) Schedule of compliance.–The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority.–The term "permitting authority" means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this Title.

Sec. 502. Permit Programs.

42 USC 7661a. (a) VIOLATIONS.–After the effective date of any permit program approved or promulgated under this Title, it shall be unlawful for any person to violate any requirement of a permit issued under this Title, or to operate an affected source (as provided in Title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under Parts C or D of Title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this Title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements in impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) REGULATIONS.–The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this Title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and

indirect) costs required to develop and administer the permit program requirements of this Title, including section 507, including the reasonable costs of–

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause–

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this Title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury or licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this Title with each applicable standard, regulation or requirement under this Act;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this Title.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious

review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, Title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this Title regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d) without requiring a permit revision, if the changes are not modifications under any provision of Title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) SINGLE PERMIT.–A single permit may be issued for a facility with multiple sources.

(d) SUBMISSION AND APPROVAL.–(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this Title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to

carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in Part D of Title I).

(3) If a program meeting the requirements of this Title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this Title for that State.

(e) SUSPENSION.–The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this Title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) PROHIBITION.–No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this Title and each of the following:

(1) All requirements established under Title IV applicable to affected sources.

(2) All requirements established under section 112 applicable to major sources, area sources, and new sources.

(3) All requirements of Title I (other than section 112) applicable to sources required to have a permit under this Title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

(g) INTERIM APPROVAL.–If a program (including a partial permit program) submitted under this Title substantially meets the requirements of this Title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than two years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this Title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) EFFECTIVE DATE.–The effective date of a permit program, or partial or interim program, approved under this Title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) ADMINISTRATION AND ENFORCEMENT.–(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this Title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this Title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this Title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this Title or the authority of any permitting authority acting under such program until such time as

such program is promulgated by the Administrator under this paragraph.

Sec. 503. Permit Applications.

42 USC 7661b.

(a) APPLICABLE DATE.–Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates–

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 502(a).

(b) COMPLIANCE PLAN.–(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

Reports.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) DEADLINE.–Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this Title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application consistent with the procedures established under this Title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

(d) TIMELY AND COMPLETE APPLICATIONS.–Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this Title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this Title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

Public information.

(e) COPIES; AVAILABILITY.–A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this Title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

Sec. 504. Permit Requirements and Conditions.

42 USC 7661c.

(a) CONDITIONS.–Each permit issued under this Title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

(b) MONITORING AND ANALYSIS.–The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of Title IV, or where required elsewhere in this Act.

(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.–Each permit issued under this Title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this Title shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) GENERAL PERMITS.–The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this Title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

(e) TEMPORARY SOURCES.–The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under Part C of Title I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) PERMIT SHIELD.–Compliance with a permit issued in accordance with this Title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also

provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if–

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

Sec. 505. Notification to Administrator and Contiguous States.

42 USC 7661d.

(a) TRANSMISSION AND NOTICE.–(1) Each permitting authority–

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States–

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) OBJECTION BY EPA.–(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the

permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 307. The Administrator shall include in regulations under this Title provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

(c) ISSUANCE OR DENIAL.–If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this Title. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) WAIVER OF NOTIFICATION REQUIREMENTS.–(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this Title for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoke or modified by the Administrator by rule.

(e) REFUSAL OF PERMITTING AUTHORITY TO TERMINATE, MODIFY, OR REVOKE AND REISSUE.–If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this Title, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The

Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

Sec. 506. Other Authorities.

42 USC 7661e.

(a) IN GENERAL.–Nothing in this Title shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this Act.

(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.–The provisions of this Title, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of Title IV except as modified by that Title.

Sec. 507. Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

42 USC 7661f.

(Text not reprinted.)[6] [7]

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[6]See P.L. 101-549.

[7]July 14, 1955, ch. 360, Title V, 507, as added Nov. 15, 1990, Pub. L 101-549, 501, 105 Stat. 2645.

B. SECTION 511 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972

Sec. 511. Other Affected Authority

(a) This act shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this Act; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or (3) affecting or impairing the provisions of any treaty of the United States.

33 USC 1371.

(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 USC 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 USC 441-451b) shall be regulated pursuant to this Act, and not subject to such Act of 1910 and Act of 1888 except to effect on navigation and anchorage.

(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act, and the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852); and

42 USC 4321 note.

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to–

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act.

(d) Not withstanding this Act or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in Title II of this Act), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking.[1]

[1]Public Law 93-243 (87 Stat. 1069)(1974) section 3, added subsec. (d).

C. ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

Public Law 91-190 83 Stat.852

January 1, 1970

An Act

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National Environmental Policy Act of 1969.

Sec. 1. Short Title

That this Act may be cited as the "National Environmental Policy Act of 1969"

Policies and goals.

Sec. 2. Purpose

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Title I

Sec. 101. Declaration of National Environmental Policy

(a) The Congress, recognizing the profound impact of man's activity in the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. (Interpretation and Administration)

Administration.

The Congress authorizes and directs that, to the fullest extent possible (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by Title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment; a detailed statement by the responsible official on–

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Copies of statements, etc.; availability.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any Environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental

standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or officials, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any alternative, thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by Title II of this Act.

Sec. 103. (Review)

Review.

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with

[1]Public Law 94-83 (89 Stat. 424) (1975) amended section 102 (2) by redesignating subparagraphs (D), (E) (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and added a new subparagraph (D).

the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. (Statutory Obligations)

Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. (Policy and Goals)

The polices and goals set forth in this Act are supplementary to those set forth in existing authorization of Federal agencies.

Title II

Sec. 201. Council on Environmental Quality (Report to Congress)

Report to Congress.

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and non-governmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. (Council on Environmental Quality)

Council on Environmental Quality. Report to Congress.

There is created in the Executive Office of the President a council on Environmental Quality (hereinafter referred to as the "Council"). The council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. (Employment/Compensation)

(a)[2] The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of Title 5, United States Code (but without regard to the last sentence thereof).

Voluntary and uncompensated services.

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.[3]

Sec. 204. (Duties and Functions)

It shall be the duty and function of the Council–

Duties and functions.

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in Title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. (Power)

In exercising its powers, functions, and duties under this Act, the council shall–

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science,

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[2]Public Law 94-52 (89 Stat. 258) (1975), section 2 added (a) immediately after section 203.
[3]Public Law 94-52 (89 Stat. 258) (1975), section 2 added a new subsec. (b).

industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. (Tenure and Compensation)

Tenure and compensation.

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 USC 5313). The other members of the council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 USC 5315).

Sec. 207. Acceptance of Travel Reimbursement

42 USC 4346a.

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.[4] [5]

Sec. 208. Expenditures or International Travel

42 USC 4346b.

The Council may make expenditures in support of its international activities, including expenditures for; (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209. (Appropriations)

Appropriations.

There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.[6]

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[4]Public Law 94-52 (89 Stat. 258) (1975), section 3 redesignated section 207 as section 209.
[5]Public Law 94-52 (89 Stat. 258) (1975), section 3 added new sub section 207 and 208.
[6]Public Law 94-52 (89 Stat. 258) (1975), section 3 redesignated section 207 as section 209.

D. WEST VALLEY DEMONSTRATION PROJECT ACT

Public Law 96-368 **94 Stat. 1347**

October 1, 1980
An Act

To authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Title

42 USC 2021a note. West Valley Demonstration Project Act.

This Act may be cited as the "West Valley Demonstration Project Act."

Sec. 2. Purpose

42 USC 2021a note. Activities.

(a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

(2) The Secretary shall develop containers suitable for the permanent disposal for the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission–

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

Hearings.

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(3) The Secretary shall–

(A) undertake detailed engineering and cost estimates for the project.

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques.

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

41 USC 501 note.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

State costs, percentage.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

Licensing amendment application.

(D) Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

(c) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project: *Provided,* That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law. The agreement shall provide for the following:

42 USC 2011 note.
42 USC 5801 note.

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan; the Secretary shall publish a notice in

Publications in Federal Register.

the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

Reports and other information to Commission.

(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

Consultation with EPA and others.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

Sec. 3. Appropriation/Authorization

42 USC 2021a note. Appropriation authorization.

(a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

Sec. 4. Report

42 USC 2021a note. Report to Speaker of the House and President pro tempore of the Senate.

Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

Sec. 5. Rights and Obligations

42 USC 2021a note.

42 USC 2011 note.

42 USC 5801 note.

(a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

Sec. 6. Definitions

42 USC 2021a note. Definitions.

For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for the purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

42 USC 2014.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

* * * *

Other Provisions: Reduction In Funding For West Valley Demonstration Project.

Act November 12, 2001, Public Law 107–66, Title III, 115 Stat. 503, provides:

Funding for the West Valley Demonstration Project shall be reduced in subsequent fiscal years to the minimum necessary to maintain the project in a safe and stable condition, unless not later than September 30, 2002, the Secretary:

(1) provides written notification to the Committees on Appropriations of the House of Representatives and the Senate that agreement has been reached with the State of New York on the final scope of Federal activities at the West Valley site and on the respective Federal and State cost shares for those activities;

(2) submits a written copy of that agreement to the Committees on Appropriations of the House of Representatives and the Senate; and

(3) provides a written certification that the Federal actions proposed in the agreement will be in full compliance with all relevant Federal statutes and are in the best interest of the Federal Government.

14: Miscellaneous Domestic Legislation and Executive Orders

14. Miscellaneous Domestic Legislation and Executive Orders

Contents

A. UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001

Public Law 107-56 **115 Stat. 379**

October 26, 2001
An Act

To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

* * * *

Sec. 808. Definition of Federal Crime of Terrorism.

22 USC 7211. Section 2332b of title 18, United States Code, is amended–

(1) in subsection (f), by inserting "and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title," before "and the Secretary"; and

(2) in subsection (g)(5)(B), by striking clauses (i) through (iii) and inserting the following:

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnapping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence

against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 USC 2284); or

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.

B. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002 (HOMELAND SECURITY)

Public Law 107-107 **115 Stat. 1271**

December 28, 2001

An Act

To authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

* * * *

Subtitle B--Policy Matters Relating To Combating Terrorism

Sec. 1511. Study And Report on The Role of The Department of Defense With Respect to Homeland Security.

(a) STUDY REQUIRED.–The Secretary of Defense shall conduct a study on the appropriate role of the Department of Defense with respect to homeland security. The study shall identify and describe the policies, plans, and procedures of the Department of Defense for combating terrorism, including for the provision of support for the consequence management activities of other Federal, State, and local agencies. The study shall specifically identify the following:

(1) The strategy, roles, and responsibilities of the Department of Defense for combating terrorism.

(2) How the Department of Defense will interact with the Office of Homeland Security and how intelligence sharing efforts of the Department of Defense will be organized relative to other Federal agencies and departments and State and local governments.

(3) The ability of the Department of Defense to protect the United States from airborne threats, including threats originating from within the borders of the United States.

(4) Improvements that could be made to enhance the security of the people of the United States against terrorist threats and recommended actions (including legislative action) and programs to address and overcome existing vulnerabilities.

(5) The policies, plans, and procedures relating to how the civilian official in the Department of Defense responsible for combating terrorism and the Joint Task Force Civil Support of the Joint Forces Command will coordinate the performance of functions for combating terrorism with–

(A) teams in the Department of Defense that have responsibilities for responding to acts or threats of terrorism, including–

(i) weapons of mass destruction civil support teams when operating as the National Guard under the command of the Governor of a State, the Governor of Puerto Rico, or the Commanding General of the District of Columbia National Guard;

(ii) weapons of mass destruction civil support teams when operating as the Army National Guard of the United States or the Air National Guard of the United States under the command of the President;

(iii) teams in the departments and agencies of the Federal Government other than the Department of Defense that have responsibilities for responding to acts or threats of terrorism;

(iv) organizations outside the Federal Government, including any State, local and private entities, that function as first responders to acts or threats of terrorism; and

(v) units and organizations of the Reserve Components of the Armed Forces that have missions relating to combating terrorism;

(B) the Director of Military Support of the Department of the Army;

(C) any preparedness plans to combat terrorism that are developed for installations of the Department of Defense by the commanders of the installations and the integration of those plans with the plans of the teams and organizations described in subparagraph (A);

(D) the policies, plans and procedures for using and coordinating the integrated vulnerability assessment teams of the Joint Staff inside and outside the United States; and

(E) the missions of Fort Leonard Wood and other installations for training units, weapons of mass destruction civil support teams and other teams, and individuals in combating terrorism.

(6) The appropriate number and missions of the teams referred to in paragraph (5)(A)(i).

(7) How the Department of Defense Weapons of Mass Destruction Civil Support Teams should interact with the Federal Bureau of Investigation and the Federal Emergency Management Agency during crisis response and consequence management situations.

Deadline. (b) REPORT.–Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report including the findings of the study conducted under subsection (a).

* * * *

Sec. 3154. Annual Assessment And Report on Vulnerability of Department of Energy Facilities to Terrorist Attack.

(a) IN GENERAL.–Part C of title VI of the Department of Energy Organization Act (42 U.S.C. 7251 et seq.) is amended by adding at the end the following new section:

Sec. 663.

42 USC 7270c. (a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

Deadline. (b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.–The table of sections at the beginning of that Act is amended by inserting after the item relating to section 662 the following new item:

Sec. 663. Annual assessment and report on vulnerability of facilities to terrorist attack.

* * * *

C. PERTINENT SECTIONS OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Public Law 108-458 **118 Stat. 3755**

December 17, 2004

Subtitle E–Criminal History Background Checks

Sec. 6401. Protect Act.

Public Law 108-21 is amended–

42 USC 5119a note.

(1) in section 108(a)(2)(A) by striking "an 18 month" and inserting "a 30-month"; and

(2) in section 108(a)(3)(A) by striking "an 18-month" and inserting "a 30-month".

Sec. 6402. Reviews of Criminal Records of Applicants for Private Security Officer Employment.

Security Officer Employment Authorization Act of 2004".

Private Security Officer Employment Authorization Act of 2004. 28 USC 534 note.

(a) SHORT TITLE.–This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

(b) FINDINGS.–Congress finds that–

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(c) DEFINITIONS.–In this section:

(1) EMPLOYEE.–The term "employee" includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.–The term "authorized employer" means any person that–

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.–The term "private security officer"–

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include–

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.–The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.–The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.–

(1) IN GENERAL.–

(A) SUBMISSION OF FINGERPRINTS.–An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(B) EMPLOYEE RIGHTS.–

(i) PERMISSION.–An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this Act.

(ii) ACCESS.–An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.–Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall–

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.–

(i) IN GENERAL.–Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS–In the case of–

Notification.

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been–

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.–An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.–Not later than 180 days after the date of

Deadline.

enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including–

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.–Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.–

(A) IN GENERAL.–The Director of the Federal Bureau of Investigation may–

(i) collect fees to process background checks provided for by this Act; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.–Any fee collected under this subsection–

(i) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.–Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(5) STATE OPT OUT.–A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

Sec. 6403. Criminal History Background Checks.

Deadline
Reports.

(a) IN GENERAL. –Not later than 180 days after the date of enactment of this Act, the Attorney General shall report to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives regarding all statutory requirements for criminal history record checks that are required to be conducted by the Department of Justice or any of its components.

(b) DEFINITIONS.–As used in this section–

(1) the terms "criminal history information" and "criminal history records" include–

(A) an identifying description of the individual to whom the information or records pertain;

(B) notations of arrests, detentions, indictments, or other formal criminal charges pertaining to such individual; and

(C) any disposition to a notation described in subparagraph (B), including acquittal, sentencing, correctional supervision, or release; and

(2) the term "IAFIS" means the Integrated Automated Fingerprint Identification System of the Federal Bureau of Allocation, which

serves as the national depository for fingerprint, biometric, and criminal history information, through which fingerprints are processed electronically.

(c) IDENTIFICATION OF INFORMATION.–The Attorney General shall identify–

(1) the number of criminal history record checks requested, including the type of information requested;

(2) the usage of different terms and definitions regarding criminal history information; and

(3) the variation in fees charged for such information and who pays such fees.

(d) RECOMMENDATIONS. –The Attorney General shall make recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorization, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes. In making these recommendations to Congress, the Attorney General shall consider–

Procedures.

(1) the effectiveness and efficiency of utilizing commercially available databases as a supplement to IAFIS criminal history information checks;

(2) any security concerns created by the existence of these commercially available databases concerning their ability to provide sensitive information that is not readily available about law enforcement or intelligence officials, including their identity, residence, and financial status;

(3) the effectiveness of utilizing State databases;

(4) any feasibility studies by the Department of Justice of the resources and structure of the Federal Bureau of Investigation to establish a system to provide criminal history information;

(5) privacy rights and other employee protections, including–

(A) employee consent;

(B) access to the records used if employment was denied;

(C) the disposition of the fingerprint submissions after the records are searched;

(D) an appeal mechanism; and

(E) penalties for misuse of the information;

(6) the scope and means of processing background checks for private employers utilizing data maintained by the Federal Bureau of Investigation that the Attorney General should be allowed to authorize in cases where the authority for such checks is not available at the State level;

(7) any restrictions that should be placed on the ability of an employer to charge an employee or prospective employee for the cost associated with the background check;

(8) which requirements should apply to the handling of incomplete records;

(9) the circumstances under which the criminal history information should be disseminated to the employer;

(10) the type of restrictions that should be prescribed for the handling of criminal history information by an employer;

(11) the range of Federal and State fees that might apply to such background check requests;

(12) any requirements that should be imposed concerning the time for responding to such background check requests;

(13) any infrastructure that may need to be developed to support the processing of such checks, including–

(A) the means by which information is collected and submitted in support of the checks; and

(B) the system capacity needed to process such checks at the Federal and State level;

(14) the role that States should play; and

(15) any other factors that the Attorney General determines to be relevant to the subject of the report.

(e) CONSULTATION.–In developing the report under this section, the Attorney General shall consult with representatives of State criminal history record repositories, the National Crime Prevention and Privacy Compact Council, appropriate representatives of private industry, and representatives of labor, as determined appropriate by the Attorney General.

Subtitle F–Grand Jury Information Sharing

Sec. 6501. Grand Jury Information Sharing.

(a) RULE AMENDEMENTS.–Rule 6(e) of the Federal Rules of
18 USC app. Criminal Procedure is amended–

(1) in paragraph (3)–

(A) in subparagraph (A)(ii), by striking "or state subdivision or of an Indian tribe" and inserting ", state subdivision, Indian tribe, or foreign government";

(B) in subparagraph (D)–

(i) by inserting after the first sentence the following: "An attorney for the government may also disclose any grand jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate Federal, State, State subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities."; and

(ii) in clause (i)–

(I) by striking "federal"; and

(II) by adding at the end the following: "Any State, State subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the Director of National Intelligence shall jointly issue."; and

(C) in subparagraph (E)–

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

"(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;"; and

(iii) in clause (iv), as redesignated–

(I) by striking "state or Indian tribal" and inserting "State, Indian tribal, or foreign"; and

(II) by striking "or Indian tribal official" and inserting "Indian tribal, or foreign government official"; and

(2) in paragraph (7), by inserting", or of guidelines jointly issued by the Attorney General and the Director of National Intelligence pursuant to Rule 6," after "Rule 6".

(b) CONFORMING AMENDMENT.–Section 203(c) of Public Law 107-56 (18 U.S.C. 2517 note) is amended by striking "Rule 6(e)(3)(C)(i)(V) and (VI)" and inserting "Rule 6(e)(3)(D)".

* * * * 18

Sec. 6702. Hoaxes and Recovery Costs.

18 USC 1 note. (a) PROHIBITION ON HOAXES.– Chapter 47 of title 18, United States Code, is amended b inserting after section 1037 the following:

"§1038. False Information and Hoaxes

(a) CRIMINAL VIOLATION.–

(1) IN GENERAL.–Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall–

"(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(2) ARMED FORCES.–Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged–

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.

(b) CIVIL ACTION.–Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information

indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) REIMBURSEMENT.–

(1) IN GENERAL.–The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(2) LIABILITY.–A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

(3) CIVIL JUDGMENT.–An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

(d) ACTIVITIES OF LAW ENFORCEMENT.–This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

(b) CLERICAL AMENDMENT.–The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

"1038. False information and hoaxes.".

Sec. 6703. Obstruction of Justice and False Statements in Terrorism Cases.

(a) ENHANCED PENALTY.–Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking ``be fined under this title or imprisoned not more than 5 years, or both" and inserting ``be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both".

(b) SENTENCING GUIDELINE. –Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title.

Deadline.
28 USC 994 note.

Sec. 6704. Clarification of Definition.

Section 1958 of title 18, United States Code, is amended–

(1) in subsection (a), by striking "facility in" and inserting "facility of"; and

(2) in subsection (b)(2), by inserting "or foreign" after "interstate".

* * * *

Sec. 6803. Participation in Nuclear and Weapons of Mass Destruction Threats to the United States.

(2) by inserting after section 831 the following:

"Sec. 832. Participation in Nuclear and Weapons of Mass Destruction Threats to the United States

"(a) Whoever , within the United States or subject to the jurisdiction of the United States, willfully participates in or knowingly provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

"(b) There is extraterritorial Federal jurisdiction over an offense under this section.

"(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such national is outside of the United States or against any property that is owned, leased, funded, or used by the United States, whether that property is within or outside of the United States, shall be imprisoned for any term of years or for life.

"(d) As used in this section–

"(1) 'nuclear weapons program' means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

"(2) 'weapons of mass destruction program' means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

"(3) 'foreign terrorist power' means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

"(4) 'nuclear weapon' means any weapon that contains or uses nuclear material as defined in section 831(f)(1)."; and

"(3) in section 2332b(g)(5)(B)(i), by inserting after "nuclear materials)," the following: ``832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)".

* * * *

Sec. 6905. Radiological Dispersal Devices.

Chapter 113B of title 18, United States Code, is amended by adding after section 2332g the following:

Sec. 2332h. Radiological dispersal devices

(a) UNLAWFUL CONDUCT.–

"(1) IN GENERAL.–Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use–

"(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

"(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

"(2) EXCEPTION.–This subsection does not apply with respect to–

"(A) conduct by or under the authority of the United States or any department or agency thereof; or

"(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

"(b) JURISDICTION.–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;

"(2) the offense occurs outside of the United States and is committed by a national of the United States;

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

"(4) 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

"(5) 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.

"(c) CRIMINAL PENALTIES.–

"(1) IN GENERAL.--Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

"(2) OTHER CIRCUMSTANCES.–Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

"(3) SPECIAL CIRCUMSTANCES.–If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.".

* * * *

D. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000 (TRITIUM PRODUCTION)[1]

FISCAL YEAR 2000

Public Law 106-65 **113 Stat. 927**

October 5, 1999

* * * *

Sec. 3134. Procedures for Meeting Tritium Production Requirements.

(a) PRODUCTION OF NEW TRITIUM–The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

(b) SUPPORT–To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.

(c) DESIGN AND ENGINEERING DEVELOPMENT–The Secretary shall–

(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.

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[1]This section, which was enacted as section 3134 of Public Law 106–65, was redesignated section 4235 of Act, Public Law 107–314, by section 3141(e)(20) of Public Law 108–136 (117 Stat. 1762).

E. STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999 (LICENSING MOX FUEL FACILITIES)

Public Law 105-261 **112 Stat. 2247**

October 17, 1998

* * * *

Sec. 3134. Licensing of Certain Mixed Oxide Fuel Fabrication and Irradiation Facilities

(a) LICENSE REQUIREMENT–Section 202 of the Energy Reorganization Act of 1974 (42 USC 5842) is amended by adding at the end the following new paragraph:

"(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 t hat is utilized for research, development, demonstration, testing, or analysis purposes.".

42 USC 5842 note.

(b) AVAILABILITY OF FUNDS FOR LICENSING BY NRC–Section 210 of the Department of Energy Authorization Act of 1981 (42 USC 7272) shall not apply to any licensing activities required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 USC 5842), as added by subsection (a).

42 USC 5842 note.

(c) APPLICABILITY OF OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS TO ACTIVITIES UNDER LICENSE–Any activities carried out under a license required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 USC 5842), as added by subsection (a), shall be subject to regulation under the Occupational Safety and Health Act of 1970 (29 USC 651 *et seq.*).

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F. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002 (MOX FUEL)

* * * *

Sec. 3155. Disposition of Surplus Defense Plutonium at Savannah River Site, Aiken, South Carolina.

(a) CONSULTATION REQUIRED.–The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) NOTICE REQUIRED.–For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) PLAN FOR DISPOSITION.–The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

(1) A review of each option considered for such disposal.

(2) An identification of the preferred option for such disposal.

(3) With respect to the facilities for such disposal that are required by the Department of Energy's Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997–

(A) a statement of the cost of construction and operation of such facilities;

(B) a schedule for the expeditious construction of such facilities, including milestones; and

(C) a firm schedule for funding the cost of such facilities.

(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) PLAN FOR ALTERNATIVE DISPOSITION.–If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

Deadline.

(e) SUBMISSION OF PLANS.–Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) LIMITATION ON PLUTONIUM SHIPMENTS.–If the Secretary does not submit to Congress the plan required by subsection (c) (and the

plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) RULE OF CONSTRUCTION.–Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) ANNUAL REPORT ON FUNDING FOR FISSILE MATERIALS DISPOSITION ACTIVITIES.–The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition

G. MISCELLANEOUS NUCLEAR DOE PROVISIONS, ENACTED BY PUBLIC LAW 109-58, THE ENERGY POLICY ACT OF 2005

August 8, 2005
* * * *

Sec. 628. Decommissioning Pilot Program. [1]

(a) PILOT PROGRAM.–The Secretary shall establish a decommissioning pilot program under which the Secretary shall decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas, in accordance with the decommissioning activities contained in the report of the Department relating to the reactor, dated August 31, 1998.

(b) AUTHORIZATION OF APPROPRIATIONS.–There is authorized to be appropriated to the Secretary to carry out this section $16,000,000.

Sec. 634. Demonstration Hydrogen Production at Existing Nuclear Power Plants. [2]

42 USC 16011. (a) DEMONSTRATION PROJECTS.–The Secretary shall provide for the establishment of 2 projects in geographic areas that are regionally and climatically diverse to demonstrate the commercial production of hydrogen at existing nuclear power plants.

(b) ECONOMIC ANALYSIS.–Prior to making an award under subsection (a), the Secretary shall determine whether the use of existing nuclear power plants is a cost-effective means of producing hydrogen.

(c) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated to the Secretary for the purposes of carrying out this section not more than $100,000,000.

Sec. 635. Prohibition on Assumption by United States government of Liability for Certain Foreign Incidents. [3]

42 USC 16012. (a) IN GENERAL.–Notwithstanding any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in 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, as of September 11, 2001, had 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

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[1]Public Law 109-58 (119 Stat. 785), August 8, 2005: added Section 628.
[2]Public Law 109-58 (119 Stat. 790), August 8, 2005: added Section 634.
[3]Public Law 109-58 (119 Stat. 790), August 8, 2005: added Section 635.

(50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This section shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.

(b) DEFINITIONS.–The terms used in this section shall have the same meaning as those terms have under section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), unless otherwise expressly provided in this section.

Sec. 636. Authorization of Appropriations.[4]

42 USC 16013. There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

Sec. 638. Standby Support for Certain Nuclear Plant Delays.[5]

42 USC 16014. (a) DEFINITIONS.–In this section:

(1) ADVANCED NUCLEAR FACILITY.–The term "advanced nuclear facility" means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

(2) COMBINED LICENSE.–The term "combined license" means a combined construction and operating license for an advanced nuclear facility issued by the Commission.

(3) COMMISSION.–The term "Commission" means the Nuclear Regulatory Commission.

(4) SPONSOR.–The term "sponsor" means a person who has applied for or been granted a combined license.

(b) CONTRACT AUTHORITY.–

(1) IN GENERAL.–The Secretary may enter into contracts under this section with sponsors of an advanced nuclear facility that cover a total of 6 reactors, with the 6 reactors consisting of not more than 3 different reactor designs, in accordance with paragraph (2).

(2) REQUIREMENT FOR CONTRACTS.–

(A) DEFINITION OF LOAN COST.–In this paragraph, the term "loan cost" has the meaning given the term "cost of a loan guarantee" under section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

(B) ESTABLISHMENT OF ACCOUNTS.–There is established in the Department 2 separate accounts, which shall be known as the–

(i) "Standby Support Program Account"; and

(ii) "Standby Support Grant Account".

(C) REQUIREMENT.–The Secretary shall not enter into a contract under this section unless the Secretary deposits–

(i) in the Standby Support Program Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract or a combination of appropriated funds

[4]Public Law 109-58 (119 Stat. 791), August 8, 2005: added Section 636.
[5]Public Law 109-58 (119 Stat. 791), August 8, 2005: added Section 638.

and loan guarantee fees that are in an amount sufficient to cover the loan costs described in subsection (d)(5)(A); and

(ii) in the Standby Support Grant Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract, paid to the Secretary by the sponsor of the advanced nuclear facility, or a combination of appropriations and payments that are in an amount sufficient cover the costs described in subparagraphs (B), (C), and (D) of subsection (d)(5).[6]

(c) COVERED DELAYS.–

(1) INCLUSIONS.–Under each contract authorized by this section, the Secretary shall pay the costs specified in subsection (d), using funds appropriated or collected for the covered costs, if full power operation of the advanced nuclear facility is delayed by–

(A) the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria established under the combined license or the conduct of preoperational hearings by the Commission for the advanced nuclear facility; or

(B) litigation that delays the commencement of full power operations of the advanced nuclear facility.

(2) EXCLUSIONS.–The Secretary may not enter into any contract under this section that would obligate the Secretary to pay any costs resulting from–

(A) the failure of the sponsor to take any action required by law or regulation;

(B) events within the control of the sponsor; or

(C) normal business risks.

(d) COVERED COSTS.–

(1) IN GENERAL.–Subject to paragraphs (2), (3), and (4), the costs that shall be paid by the Secretary pursuant to a contract entered into under this section are the costs that result from a delay covered by the contract.

(2) INITIAL 2 REACTORS.–In the case of the first 2 reactors that receive combined licenses and on which construction is commenced, the Secretary shall pay–

(A) 100 percent of the covered costs of delay; but

(B) not more than $500,000,000 per contract.

(3) SUBSEQUENT 4 REACTORS.–In the case of the next 4 reactors that receive a combined license and on which construction is commenced, the Secretary shall pay–

(A) 50 percent of the covered costs of delay that occur after the initial 180-day period of covered delay; but

(B) not more than $250,000,000 per contract.

(4) CONDITIONS ON PAYMENT OF CERTAIN COVERED COSTS.–

(A) IN GENERAL.–The obligation of the Secretary to pay the covered costs described in subparagraph (B) of paragraph (5) is subject to the Secretary receiving from appropriations or payments

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[6]Public Law 109-58 (119 Stat. 792), August 8, 2005; section 638. **Note:** Congress did not include §§ (C) and (D) in subsection (d)(5) of this Act.

from other non-Federal sources amounts sufficient to pay the covered costs.

(B) NON-FEDERAL SOURCES.–The Secretary may receive and accept payments from any non-Federal source, which shall be made available without further appropriation for the payment of the covered costs.

(5) TYPES OF COVERED COSTS.–Subject to paragraphs (2), (3), and (4), the contract entered into under this section for an advanced nuclear facility shall include as covered costs those costs that result from a delay during construction and in gaining approval for fuel loading and full-power operation, including–

(A) principal or interest on any debt obligation of an advanced nuclear facility owned by a non-Federal entity; and

(B) the incremental difference between–

(i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay; and

(ii) the contractual price of power from the advanced nuclear facility subject to the delay.

(e) REQUIREMENTS.–Any contract between a sponsor and the Secretary covering an advanced nuclear facility under this section shall require the sponsor to use due diligence to shorten, and to end, the delay covered by the contract.

(f) REPORTS.–For each advanced nuclear facility that is covered by a contract under this section, the Commission shall submit to Congress and the Secretary quarterly reports summarizing the status of licensing actions associated with the advanced nuclear facility.

(g) REGULATIONS.–

(1) IN GENERAL.–Subject to paragraphs (2) and (3), the Secretary shall issue such regulations as are necessary to carry out this section.

Deadline.
Public information.

(2) INTERIM FINAL RULEMAKING.–Not later than 270 days after the date of enactment of this Act, the Secretary shall issue for public comment an interim final rule regulating contracts authorized by this section.

Deadline.

(3) NOTICE OF FINAL RULEMAKING.–Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a notice of final rulemaking regulating the contracts.

(h) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated such sums as are necessary to carry out this section.

Subtitle C–Next Generation Nuclear Plant Project

Sec. 641. Project Establishment.[7]

42 USC 16021.

(a) ESTABLISHMENT.–The Secretary shall establish a project to be known as the "Next Generation Nuclear Plant Project" (referred to in this subtitle as the "Project").

[7]Public Law 109-58 (119 Stat. 794), August 8, 2005: added Section 641.

(b) CONTENT.–The Project shall consist of the research, development, design, construction, and operation of a prototype plant, including a nuclear reactor that–

(1) is based on research and development activities supported by the Generation IV Nuclear Energy Systems Initiative under section 942(d); and

(2) shall be used–

(A) to generate electricity;

(B) to produce hydrogen; or

(C) both to generate electricity and to produce hydrogen.

Sec. 642. Project Management. [8]

42 USC 16022.

(a) DEPARTMENTAL MANAGEMENT.–

(1) IN GENERAL.–The Project shall be managed in the Department by the Office of Nuclear Energy, Science, and Technology.

(2) GENERATION IV NUCLEAR ENERGY SYSTEMS PROGRAM.–The Secretary may combine the Project with the Generation IV Nuclear Energy Systems Initiative.

(3) EXISTING DOE PROJECT MANAGEMENT EXPERTISE.–The Secretary may utilize capabilities for review of construction projects for advanced scientific facilities within the Office of Science to track the progress of the Project.

(b) LABORATORY MANAGEMENT.–

(1) LEAD LABORATORY.–The Idaho National Laboratory shall be the lead National Laboratory for the Project and shall collaborate with other National Laboratories, institutions of higher education, other research institutes, industrial researchers, and international researchers to carry out the Project.

(2) INDUSTRIAL PARTNERSHIPS.–

(A) IN GENERAL.–The Idaho National Laboratory shall organize a consortium of appropriate industrial partners that will carry out cost-shared research, development, design, and construction activities, and operate research facilities, on behalf of the Project.

(B) COST-SHARING.–Activities of industrial partners funded by the Project shall be cost-shared in accordance with section 988.

(C) PREFERENCE.–Preference in determining the final structure of the consortium or any partnerships under this subtitle shall be given to a structure (including designating as a lead industrial partner an entity incorporated in the United States) that retains United States technological leadership in the Project while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(3) PROTOTYPE PLANT SITING.–The prototype nuclear reactor and associated plant shall be sited at the Idaho National Laboratory in Idaho.

(4) REACTOR TEST CAPABILITIES.–The Project shall use, if appropriate, reactor test capabilities at the Idaho National Laboratory.

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[8] Public Law 109-58 (119 Stat. 795), August 8, 2005: added Section 642.

(5) OTHER LABORATORY CAPABILITIES.–The Project may use, if appropriate, facilities at other National Laboratories.

Sec. 643. Project Organization.[9]

42 USC 16023.

(a) MAJOR PROJECT ELEMENTS.–The Project shall consist of the following major program elements:

(1) High-temperature hydrogen production technology development and validation.

(2) Energy conversion technology development and validation.

(3) Nuclear fuel development, characterization, and qualification.

(4) Materials selection, development, testing, and qualification.

(5) Reactor and balance-of-plant design, engineering, safety analysis, and qualification.

(b) PROJECT PHASES.–The Project shall be conducted in the following phases:

(1) FIRST PROJECT PHASE.–A first project phase shall be conducted to–

(A) select and validate the appropriate technology under subsection (a)(1);

(B) carry out enabling research, development, and demonstration activities on technologies and components under paragraphs (2) through (4) of subsection (a);

(C) determine whether it is appropriate to combine electricity generation and hydrogen production in a single prototype nuclear reactor and plant; and

(D) carry out initial design activities for a prototype nuclear reactor and plant, including development of design methods and safety analytical methods and studies under subsection (a)(5).

(2) SECOND PROJECT PHASE.–A second project phase shall be conducted to–

(A) continue appropriate activities under paragraphs (1) through (5) of subsection (a);

(B) develop, through a competitive process, a final design for the prototype nuclear reactor and plant;

(C) apply for licenses to construct and operate the prototype nuclear reactor from the Nuclear Regulatory Commission; and

(D) construct and start up operations of the prototype nuclear reactor and its associated hydrogen or electricity production facilities.

(c) PROJECT REQUIREMENTS.–

(1) IN GENERAL.–The Secretary shall ensure that the Project is structured so as to maximize the technical interchange and transfer of technologies and ideas into the Project from other sources of relevant expertise, including–

(A) the nuclear power industry, including nuclear power plant construction firms, particularly with respect to issues associated with plant design, construction, and operational and safety issues;

(B) the chemical processing industry, particularly with respect to issues relating to–

(i) the use of process energy for production of hydrogen; and

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[9]Public Law 109-58 (119 Stat. 795), August 8, 2005: added Section 643.

(ii) the integration of technologies developed by the Project into chemical processing environments; and

(C) international efforts in areas related to the Project, particularly with respect to hydrogen production technologies.

(2) INTERNATIONAL COLLABORATION.–

(A) IN GENERAL.–The Secretary shall seek international cooperation, participation, and financial contributions for the Project.

(B) ASSISTANCE FROM INTERNATIONAL PARTNERS.–The Secretary, through the Idaho National Laboratory, may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners if the specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(C) PARTNER NATIONS.–The Project may involve demonstration of selected project objectives in a partner country.

(D) GENERATION IV INTERNATIONAL FORUM.–The Secretary shall ensure that international activities of the Project are coordinated with the Generation IV International Forum.

(3) REVIEW BY NUCLEAR ENERGY RESEARCH ADVISORY COMMITTEE.–

(A) IN GENERAL.–The Nuclear Energy Research Advisory Committee of the Department (referred to in this paragraph as the "NERAC") shall–

(i) review all program plans for the Project and all progress under the Project on an ongoing basis; and

(ii) ensure that important scientific, technical, safety, and program management issues receive attention in the Project and by the Secretary.

(B) ADDITIONAL EXPERTISE.–The NERAC shall supplement the expertise of the NERAC or appoint subpanels to incorporate into the review by the NERAC the relevant sources of expertise described under paragraph (1).

(C) INITIAL REVIEW.–Not later than 180 days after the date of enactment of this Act, the NERAC shall–

(i) review existing program plans for the Project in light of the recommendations of the document entitled "Design Features and Technology Uncertainties for the Next Generation Nuclear Plant," dated June 30, 2004; and

(ii) address any recommendations of the document not incorporated in program plans for the Project.

(D) FIRST PROJECT PHASE REVIEW.–On a determination by the Secretary that the appropriate activities under the first project phase under subsection (b)(1) are nearly complete, the Secretary shall request the NERAC to conduct a comprehensive review of the Project and to report to the Secretary the recommendation of the NERAC concerning whether the Project is ready to proceed to the second project phase under subsection (b)(2).

(E) TRANSMITTAL OF REPORTS TO CONGRESS.–Not later than 60 days after receiving any report from the NERAC

related to the Project, the Secretary shall submit to the appropriate committees of the Senate and the House of Representatives a copy of the report, along with any additional views of the Secretary that the Secretary may consider appropriate.

Sec. 644. Nuclear Regulatory Commission. [10]

42 USC 16024.

(a) IN GENERAL.–In accordance with section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), the Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this subtitle.

Deadline.

(b) LICENSING STRATEGY.–Not later than 3 years after the date of enactment of this Act, the Secretary and the Chairman of the Nuclear Regulatory Commission shall jointly submit to the appropriate committees of the Senate and the House of Representatives a licensing strategy for the prototype nuclear reactor, including–

(1) a description of ways in which current licensing requirements relating to light-water reactors need to be adapted for the types of prototype nuclear reactor being considered by the Project;

(2) a description of analytical tools that the Nuclear Regulatory Commission will have to develop to independently verify designs and performance characteristics of components, equipment, systems, or structures associated with the prototype nuclear reactor;

(3) other research or development activities that may be required on the part of the Nuclear Regulatory Commission in order to review a license application for the prototype nuclear reactor; and

(4) an estimate of the budgetary requirements associated with the licensing strategy.

(c) ONGOING INTERACTION.–The Secretary shall seek the active participation of the Nuclear Regulatory Commission throughout the duration of the Project to–

(1) avoid design decisions that will compromise adequate safety margins in the design of the reactor or impair the accessibility of nuclear safety-related components of the prototype reactor for inspection and maintenance;

(2) develop tools to facilitate inspection and maintenance needed for safety purposes; and

(3) develop risk-based criteria for any future commercial development of a similar reactor architectures.

42 USC 16025.

Sec. 645. Project Timelines and Authorization of Appropriations. [11]

Deadline.

(a)TARGET DATE TO COMPLETE THE FIRST PROJECT PHASE.–Not later than September 30, 2011, the Secretary shall–

(1) select the technology to be used by the Project for high-temperature hydrogen productions and the initial design parameters for the prototype nuclear plant; or

Reports.

(2) submit to Congress a report establishing an alternative date for making the selection.

(b) DESIGN COMPETITION FOR SECOND PROJECT PHASE.–

(1) IN GENERAL.–The Secretary, acting through the Idaho National Laboratory, shall fund not more than 4 teams for not more than 2 years to develop detailed proposals for competitive evaluation

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[10]Public Law 109-58 (119 Stat. 797), August 8, 2005: added Section 644.
[11]Public Law 109-58 (119 Stat. 798), August 8, 2005: added Section 645.

and selection of a single proposal for a final design of the prototype nuclear reactor.

(2) SYSTEMS INTEGRATION.–The Secretary may structure Project activities in the second project phase to use the lead industrial partner of the competitively selected design under paragraph (1) in a systems integration role for final design and construction of the Project.

Deadline. (c) TARGET DATE TO COMPLETE PROJECT CONSTRUCTION.–Not later than September 30, 2021, the Secretary shall–

(1) complete construction and begin operations of the prototype nuclear reactor and associated energy or hydrogen facilities; or

(2) submit to Congress a report establishing an alternative date for completion.

Reports. (d) AUTHORIZATION OF APPROPRIATIONS.–There is authorized to be appropriated to the Secretary for research and construction activities under this subtitle (including for transfer to the Nuclear Regulatory Commission for activities under section 644 as appropriate)–

(1) $1,250,000,000 for the period of fiscal years 2006 through 2015; and

(2) such sums as are necessary for each of fiscal years 2016 through 2021.

Sec. 657. Department of Homeland Security Consultation. [12]

42 USC 16042. Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

Sec. 951. Nuclear Energy. [13]

42 USC 16271. (a) IN GENERAL.–The Secretary shall conduct programs of civilian nuclear energy research, development, demonstration, and commercial application, including activities described in this subtitle. Programs under this subtitle shall take into consideration the following objectives:

(1) Enhancing nuclear power's viability as part of the United States energy portfolio.

(2) Providing the technical means to reduce the likelihood of nuclear proliferation.

(3) Maintaining a cadre of nuclear scientists and engineers.

(4) Maintaining National Laboratory and university nuclear programs, including their infrastructure.

(5) Supporting both individual researchers and multidisciplinary teams of researchers to pioneer new approaches in nuclear energy, science, and technology.

(6) Developing, planning, constructing, acquiring, and operating special equipment and facilities for the use of researchers.

(7) Supporting technology transfer and other appropriate activities to assist the nuclear energy industry, and other users of nuclear science and engineering, including activities addressing reliability, availability, productivity, component aging, safety, and security of nuclear power plants.

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[12]Public Law 109-58 (119 Stat. 814), August 8, 2005: added Section 657.
[13]Public Law 109-58 (119 Stat. 884), August 8, 2005: added Section 951.

(8) Reducing the environmental impact of nuclear energy related activities.

(b) AUTHORIZATION OF APPROPRIATIONS FOR CORE PROGRAMS.–There are authorized to be appropriated to the Secretary to carry out nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (c)–

(1) $330,000,000 for fiscal year 2007;
(2) $355,000,000 for fiscal year 2008; and
(3) $495,000,000 for fiscal year 2009.

(c) NUCLEAR INFRASTRUCTURE AND FACILITIES.–There are authorized to be appropriated to the Secretary to carry out activities under section 955–

(1) $135,000,000 for fiscal year 2007;
(2) $140,000,000 for fiscal year 2008; and
(3) $145,000,000 for fiscal year 2009.

(d) ALLOCATIONS.–From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 953–
  (A) $150,000,000 for fiscal year 2007;
  (B) $155,000,000 for fiscal year 2008; and
  (C) $275,000,000 for fiscal year 2009.
(2) For activities under section 954–
  (A) $43,600,000 for fiscal year 2007;
  (B) $50,100,000 for fiscal year 2008; and
  (C) $56,000,000 for fiscal year 2009.
(3) For activities under section 957, $6,000,000 for each of fiscal years 2007 through 2009.

(e) LIMITATION.–None of the funds authorized under this section may be used to decommission the Fast Flux Test Facility.

Sec. 952. Nuclear Energy Research Programs. [14]

42 USC 16272.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.–The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY SYSTEMS SUPPORT PROGRAM.–The Secretary shall carry out a Nuclear Energy Systems Support Program to support research and development activities addressing reliability, availability, productivity, component aging, safety, and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.–

(1) IN GENERAL.–The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations of the Nuclear Energy Research Advisory Committee of the Department in the report entitled "A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010" and dated October 2001.

(2) ADMINISTRATION.–The Program shall include–

(A) use of the expertise and capabilities of industry, institutions of higher education, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

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[14]Public Law 109-58 (119 Stat. 885), August 8, 2005: added Section 952.

(B) consideration of a variety of reactor designs suitable for both developed and developing nations;

(C) participation of international collaborators in research, development, and design efforts, as appropriate; and

(D) encouragement for participation by institutions of higher education and industry.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.–

(1) IN GENERAL.–The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan for and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application.

(2) ADMINISTRATION.–In conducting the Initiative, the Secretary shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that–

(A) are economically competitive with other electric power generation plants;

(B) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(C) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and

(D) use improved instrumentation.

(e) REACTOR PRODUCTION OF HYDROGEN.–The Secretary shall carry out research to examine designs for high-temperature reactors capable of producing large-scale quantities of hydrogen.

Sec. 953. Advanced Fuel Cycle Initiative. [15]

42 USC 16273.

(a) IN GENERAL.–The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research, development, and demonstration program (referred to in this section as the ''program'') to evaluate proliferation-resistant fuel recycling and transmutation technologies that minimize environmental and public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts.

(b) ANNUAL REVIEW.–The program shall be subject to annual review by the Nuclear Energy Research Advisory Committee of the Department or other independent entity, as appropriate.

(c) INTERNATIONAL COOPERATION.–In carrying out the program, the Secretary is encouraged to seek opportunities to enhance the progress of the program through international cooperation.

(d) REPORTS.–The Secretary shall submit, as part of the annual budget submission of the Department, a report on the activities of the program.

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[15]Public Law 109-58 (119 Stat. 886), August 8, 2005: added Section 953.

Sec. 954. University Nuclear Science and Engineering Support.[16]

42 USC 16274. (a) IN GENERAL.–The Secretary shall conduct a program to invest in human resources and infrastructure in the nuclear sciences and related fields, including health physics, nuclear engineering, and radiochemistry, consistent with missions of the Department related to civilian nuclear research, development, demonstration, and commercial application.

(b) REQUIREMENTS.–In carrying out the program under this section, the Secretary shall–

(1) conduct a graduate and undergraduate fellowship program to attract new and talented students, which may include fellowships for students to spend time at National Laboratories in the areas of nuclear science, engineering, and health physics with a member of the National Laboratory staff acting as a mentor;

(2) conduct a junior faculty research initiation grant program to assist universities in recruiting and retaining new faculty in the nuclear sciences and engineering by awarding grants to junior faculty for research on issues related to nuclear energy engineering and science;

(3) support fundamental nuclear sciences, engineering, and health physics research through a nuclear engineering education and research program;

(4) encourage collaborative nuclear research among industry, National Laboratories, and universities; and

(5) support communication and outreach related to nuclear science, engineering, and health physics.

(c) UNIVERSITY-NATIONAL LABORATORY INTERACTIONS.–The Secretary shall conduct–

(1) a fellowship program for professors at universities to spend sabbaticals at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments.

(d) STRENGTHENING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.–In carrying out the program under this section, the Secretary may support–

(1) converting research reactors from high-enrichment fuels to low-enrichment fuels and upgrading operational instrumentation;

(2) consortia of universities to broaden access to university research reactors;

(3) student training programs, in collaboration with the United States nuclear industry, in relicensing and upgrading reactors, including through the provision of technical assistance; and

(4) reactor improvements as part of a taking into consideration effort that emphasizes research, training, and education, including through the Innovations in Nuclear Infrastructure and Education Program or any similar program.

(e) OPERATIONS AND MAINTENANCE.–Funding for a project provided under this section may be used for a portion of the operating and maintenance costs of a research reactor at a university used in the project.

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[16]Public Law 109-58 (119 Stat. 886), August 8, 2005: added Section 954.

(f) DEFINITION.–In this section, the term ''junior faculty'' means a faculty member who was awarded a doctorate less than 10 years before receipt of an award from the grant program described in subsection (b)(2).

Sec. 955. Department of Energy Civilian Nuclear Infrastructure and Facilities.[17]

42 USC 16275.

(a) IN GENERAL.–The Secretary shall operate and maintain infrastructure and facilities to support the nuclear energy research, development, demonstration, and commercial application programs, including radiological facilities management, isotope production, and facilities management.

(b) DUTIES.–In carrying out this section, the Secretary shall–

(1) develop an inventory of nuclear science and engineering facilities, equipment, expertise, and other assets at all of the National Laboratories;

(2) develop a prioritized list of nuclear science and engineering plant and equipment improvements needed at each of the National Laboratories;

(3) consider the available facilities and expertise at all National Laboratories and emphasize investments which complement rather than duplicate capabilities; and

(4) develop a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment, with the goal of ensuring that Department programs under this subtitle will be generally recognized to be among the best in the world.

(c) PLAN.–The Secretary shall develop a comprehensive plan for the facilities at the Idaho National Laboratory, especially taking into account the resources available at other National Laboratories. In developing the plan, the Secretary shall–

(1) evaluate the facilities planning processes utilized by other physical science and engineering research and development institutions, both in the United States and abroad, that are generally recognized as being among the best in the world, and consider how those processes might be adapted toward developing such facilities plan;

(2) avoid duplicating, moving, or transferring nuclear science and engineering facilities, equipment, expertise, and other assets that currently exist at other National Laboratories;

(3) consider the establishment of a national transuranic analytic chemistry laboratory as a user facility at the Idaho National Laboratory;

(4) include a plan to develop, if feasible, the Advanced Test Reactor and Test Reactor Area into a user facility that is more readily accessible to academic and industrial researchers;

(5) consider the establishment of a fast neutron source as a user facility;

(6) consider the establishment of new hot cells and the configuration of hot cells most likely to advance research, development, demonstration, and commercial application in nuclear science and engineering, especially in the context of the condition and

[17]Public Law 109-58 (119 Stat. 887), August 8, 2005: added Section 955.

availability of these facilities elsewhere in the National Laboratories; and

(7) include a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment.

Deadline. (d) TRANSMITTAL TO CONGRESS.–Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the plan under subsection (c) to Congress.

Sec. 956. Security of Nuclear Facilities. [18]

42 USC 16276. The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct a research and development program on cost-effective technologies for increasing–

(1) the safety of nuclear facilities from natural phenomena; and

(2) the security of nuclear facilities from deliberate attacks.

Sec. 957. Alternatives to Industrial Radioactive Sources. [19]

42 USC 16277. (a) SURVEY.–

Deadline. (1) IN GENERAL.–Not later than August 1, 2006, the Secretary shall submit to Congress the results of a survey of industrial applications of large radioactive sources.

(2) ADMINISTRATION.–The survey shall–

(A) consider well-logging sources as one class of industrial sources;

(B) include information on current domestic and international Department, Department of Defense, State Department, and commercial programs to manage and dispose of radioactive sources; and

(C) analyze available disposal options for currently deployed or future sources and, if deficiencies are noted for either deployed or future sources, recommend legislative options that Congress may consider to remedy identified deficiencies.

(b) PLAN.–

(1) IN GENERAL.–In conjunction with the survey conducted under subsection (a), the Secretary shall establish a research and development program to develop alternatives to sources described in subsection (a) that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(2) ACCELERATORS.–Miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site shall be considered as part of the research and development efforts.

(3) REPORT.–Not later than August 1, 2006, the Secretary shall submit to Congress a report describing the details of the program plan.

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[18]Public Law 109-58 (119 Stat. 888), August 8, 2005: added Section 956.
[19]Public Law 109-58 (119 Stat. 888), August 8, 2005: added Section 957.

H. EXECUTIVE ORDER 12656—ASSIGNMENT OF EMERGENCY PREPAREDNESS RESPONSIBILITIES

November 18, 1988, 53 F.R. 47491

WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and

WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

Part 1–Preamble

Section 101. National Security Emergency Preparedness Policy.

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy, except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States.[1] All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

Section 102. Purpose.

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

Section 103. Scope.

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[1] Executive Order 13228 (10/15/2001), amended Sections 101(a), 104(a), 104(b), 104(c), 201(7), 206, and 208 by establishing Homeland Security Council duties.

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedure, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12472.

Section 104. Management of National Security Emergency.

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy, except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States.

(b) The National Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and the Federal judiciary on national security-emergency preparedness matters.

(c) The Secretary of Homeland Security[2] shall serve as an advisor to the National Security Council and the Homeland Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Secretary of Homeland Security also shall assist in the implementation of and management of those processes as the President may establish. The Secretary of Homeland Security also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedure will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

Section 105. Interagency Coordination.

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a

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[2] Executive Order 13286 (2/28/2003) amended sections 104(c), 201(15), and 701(5) by striking out "the Director of the Federal Emergency Management Agency" and replacing it with "the Secretary of Homeland Security."

national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in. Executive Order No. 12472, to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

Part 2–General Provisions

Section 201. General.

The head of each Federal department and agency. as appropriate. shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope. and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies:

(b) Identification of actions that could be taken in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council and the Homeland Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and

notices of other actions to the Archivist of the United States, for publication in the Federal Register, or to each agency designated to maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Secretary of Homeland Security Agency to ensure that those activities and plans are consistent with current Presidential guidelines and policies.[3]

Section 202. Continuity of Government.

The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

Section 203. Resource Management.

The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such an energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

Section 204. Protection of Essential Resources and Facilities.

The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

Section 205. Federal Benefit, Insurance, and Loan Programs.

The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate

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[3] Executive Order 13286 (2/28/2003) amended section 201(15) by striking out "consistent with current National Security Council guidelines and policies" in the last sentence.

with the Secretary of the Treasury in developing plans for the continuation or restoration, to the extent feasible, of such programs in national security emergencies.

Section 206. Research.

The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council and the Homeland Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

Section 207. Redelegation.

The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

Section 208. Transfer of Functions.

Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council or the Homeland Security Council.

Section 209. Retention of Existing Authority.

Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or officer thereof made by law.

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Part 7–Department Of Energy

Section 701. Lead Responsibilities.

In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Energy shall:

(1) Conduct national security emergency preparedness planning, including capabilities development, and administer operational programs for all energy, resources, including:

(a) Providing information, in cooperation with Federal, State, and energy industry officials, on energy supply and demand conditions and on the requirements for and the availability of materials and services critical to energy supply systems;

(b) In coordination with appropriate departments and agencies and in consultation with the energy industry, develop implementation plans and operational systems for priorities and allocation of all energy resource requirements for national defense and essential civilian needs to assure national security emergency preparedness;

(c) Developing, in consultation with the Board of Directors of the Tennessee Valley Authority, plans necessary for the integration of its power system into the national supply system;

(2) Identify energy facilities essential to the mobilization, deployment, and sustainment of resources to support the national security and national welfare, and develop energy supply and demand strategies to ensure continued provision of minimum essential services in national security emergencies;

(3) In coordination with the Secretary of Defense, ensure continuity of nuclear weapons production consistent with national security requirements;

(4) Assure the security of nuclear materials, nuclear weapons, or devices in the custody of the Department of Energy, as well as the security of all other Department of Energy programs and facilities;

(5) In consultation with the Secretaries of State and Defense and the Secretary of Homeland Security, conduct appropriate international liaison activities pertaining to matters within the jurisdiction of the Department of Energy;

(6) In consultation with the Secretaries of State,[4] Defense, and Homeland Security[5], the Members of the Nuclear Regulatory Commission, and others, as required, develop plans and capabilities for identification, analysis, damage assessment, and mitigation of hazards from nuclear weapons, materials, and devices;

(7) Coordinate with the Secretary of Transportation in the planning and management of transportation resources involved in the bulk movement of energy;

(8) At the request of or with the concurrence of the Nuclear Regulatory Commission and in consultation with the Secretary of Defense, recapture special nuclear materials from Nuclear Regulatory Commission licensees where necessary to assure the use, preservation, or safeguarding of such material for the common defense and security;

(9) Develop national security emergency operational procedures for the control, utilization, acquisition, leasing, assignment, and priority of occupancy of real property within the jurisdiction of the Department of Energy;

(10) Manage all emergency planning and response activities pertaining to Department of Energy nuclear facilities.

Section 702. Support Responsibilities.

The Secretary of Energy shall:

(1) Provide advice and assistance, in coordination with appropriate agencies, to Federal, State, local officials and private sector organizations to assess the radiological impact associated with national security emergencies;

(2) Coordinate with the Secretaries of Defense and the Interior regarding the operation of hydroelectric projects to assure maximum energy output;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Coordinate with the Secretary of Agriculture regarding the emergency preparedness of the rural electric supply systems throughout the Nation and the assignment of emergency preparedness responsibilities to the Rural Electrification Administration.

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Part 21–Nuclear Regulatory Commission

Section 2101. Lead Responsibilities.

In addition to the applicable responsibilities covered in Parts 1 and 2, the Members of the Nuclear Regulatory Commission shall:

(1) Promote the development and maintenance of national security emergency preparedness programs through security and safeguards programs by licensed facilities and activities;

(2) Develop plans to suspend any licenses granted by the Commission; to order the operations of any facility licensed under section 103 or 104; Atomic Energy Act of 1954, as amended (42 U.S.C. 2133 or 2134); to order the entry into any plant or facility in order to recapture special nuclear material as determined under Subsection (3) below; and operate such facilities;

(3) Recapture or authorize recapture of special nuclear materials from licensees where necessary to assure the use, preservation, or safeguarding of such materials for the common defense and security, as determined by the Commission or as requested by the Secretary of Energy.

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[4] Executive Order 13286 (2/28/2003) struck out "and" and inserted comma after "state".

[5] Executive Order 13286 (2/28/2003) inserted "Homeland Security" and struck out "the Director of the Federal Emergency Management Agency".

Section 2102. Support Responsibilities.
The Members of the Nuclear Regulator Commission shall:

(1) Assist the Secretary of Energy in assessing damage to Commission-licensed facilities, identifying useable facilities, and estimating the time and actions necessary to restart inoperative facilities;

(2) Provide advice and technical assistance to Federal, State, and local officials and private sector organizations regarding radiation hazards and protective actions in national security emergencies.

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Part 29–General
Section 2901.

Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

Ronald Reagan
The White House,
November 18, 1988

I. EXECUTIVE ORDER 12657—DEPARTMENT OF HOMELAND SECURITY ASSISTANCE IN EMERGENCY PREPAREDNESS PLANNING AT COMMERCIAL NUCLEAR POWER PLANTS[1]

Executive Order 12657 of November 18, 1988

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 225 *et seq.*), the Disaster Relief Act of 1974, as amended (42 U.S.C. 512 *et seq.*), the Atomic Energy Act of 1954, as amended (42 U.S.C. 201 *et seq.*), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, and section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

Section 1. Scope.

(a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

(b) In order to request the assistance of the Department of Homeland Security ("DHS") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to FEMA that the situation described in Subsection (a) exists.

Section 2. General Applicable Principles and Directives.

(a) Subject to the principles articulated in this Section, the Secretary of Homeland Security is hereby authorized and directed to take the actions specified in sections 3 through 6 of this Order.

(b) In carrying out any of its responsibilities under this Order, DHS:

(1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive Branch, shall make maximum feasible use of the licensee's resources;

(2) shall take care not to supplant State and local resources. DHS shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

(3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to DHS under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the Federal Register, and

(4) shall assume for purposes of sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.

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[1] Executive Order 13286 amends this Executive Order by striking out some of the references to the Federal Emergency Management Agency and its Director and replacing them with Department of Homeland Security and its Secretary.

(c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:

(1) that DHS has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

(2) that DHS shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

(3) that implementation of this Order is accomplished with an economy of resources; and

(4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

Section 3. FEMA Participation in Emergency Preparedness Planning.

(a) DHS assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended, and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

(b) DHS shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,

(1) DHS shall focus planning of Federal response activities to ensure that:

(A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and

(B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;

(2) DHS planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veteran's Administration; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

Section 4. Evaluation of Plans.

(a) DHS shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

(b) DHS shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participation in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

Section 5. Response to a Radiological Emergency.

(a) In the event of an actual radiological emergency or disaster, DHS shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall

coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.

(b) DHS shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. DHS shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.

(c) DHS shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.

(d) In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, DHS or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

Section 6. Implementation of Order.

(a) DHS shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this order.

(b) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary revisions of all DHS regulations, directives, and guidance to conform them to the terms and policies of this Order.

(c) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary renegotiations of, all interagency agreements to which DHS is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 Fed. Reg. 46542 (November 8, 1985)).

(d) To the extent permitted by law, DHS is directed to obtain full reimbursement, either jointly or severally, for services performed by DHS or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

Section 7. Amendments.

This Executive Order amends Executive Order Nos. 11490 (34 Fed. Reg. 17567 (October 28, 1969)), 12148 (44 Fed. Reg. 43239 (July 20, 1979)), and 12241 (45 Fed. Reg. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

Ronald Regan

The White House
November 18, 1988

PART II: NON-PROLIFERATION AND OTHER INTERNATIONAL MATERIALS

15: Nuclear Non-Proliferation and Export Licensing Statutes

15. Nuclear Non-Proliferation and Export Licensing Statutes

Contents

A. NUCLEAR NON-PROLIFERATION ACT OF 1978

Public Law 95-242 **92 Stat. 120**

March 10, 1978
An Act

To provide for more efficient and effective control over the proliferation of nuclear explosive capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

22 USC 3201 note. Nuclear Non-Proliferation Act of 1978.

That this Act may be cited as the "Nuclear Non-Proliferation Act of 1978."

Sec. 2. Statement of Policy

22 USC 3201.

The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continue international progress toward world peace and development. Recent events emphasize the urgency of this threat and the imperative need to increase the effectiveness of international safeguards and controls on peaceful nuclear activities to prevent proliferation. Accordingly, it is the policy of the United States to

(a) actively pursue through international initiatives mechanisms for fuel supply assurances and the establishment of more effective international controls over the transfer and use of nuclear materials and equipment and nuclear technology for peaceful purposes in order to prevent proliferation, including the establishment of common international sanctions;

(b) take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses;

(c) strongly encourage nations which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons to do so at the earliest possible date; and

(d) cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

Sec. 3. Statement of Purpose

22 USC 3202.

It is the purpose of this Act to promote the policies set forth above by–

(a) establishing a more effective framework for international cooperation to meet the energy needs of all nations and to ensure that the worldwide development of peaceful nuclear activities and the export by any nation of nuclear materials and equipment and nuclear technology intended for use in peaceful nuclear activities do not contribute to proliferation;

(b) authorizing the United States to take such actions as are required to ensure that it will act reliably in meeting its commitment to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

(c) providing incentives to the other nations of the world to join in such international cooperative efforts and to ratify the Treaty; and

(d) ensuring effective controls by the United States over its exports of nuclear materials and equipment and of nuclear technology.

Sec. 4. Definitions

(a) As used in this Act, the term–

22 USC 3203.

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "IAEA" means International Atomic Energy Agency;[1]

(3) "nuclear materials and equipment" means source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to subsection 109b. of the 1954 Act;

(4) "physical security measures" means measures to reasonably ensure that source or special nuclear material will only be used for authorized purposes and to prevent theft and sabotage;

(5) "sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to Chapter 12 of the 1954 Act;

42 USC 2011 note.

(6) "1954 Act" means the Atomic Energy Act of 1954, as amended; and

(7) "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons.

(b) All other terms used in this Act not defined in this section shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974, and the Treaty.

[1]P.L. 105-277, Div. G, Title XII, section 1225(e)(1), (112 Stat. 2681-775), Oct. 21,1998.

Title I–United States Initiatives To Provide Adequate Nuclear Fuel Supply

Sec. 101. Policy

22 USC 3221. 42 USC 5801 note.

The United States, as a matter of national policy, shall take such actions and institute such measures as may be necessary and feasible to assure other nations and groups of nations that may seek to utilize the benefits of atomic energy for peaceful purposes that it will provide a reliable supply of nuclear fuel to those nations and groups of nations which adhere to

42 USC 2201.

policies designed to prevent proliferation Such nuclear fuel shall be provided under agreements entered into pursuant to section 161 of the 1954 Act or as otherwise authorized by law. The United States shall ensure that it will have available the capacity on a long-term basis to enter into new fuel supply commitments consistent with its nonproliferation policies and domestic energy needs. The Commission shall, on a timely basis, authorize the export of nuclear materials and equipment when all the applicable statutory requirements are met.

Sec. 102. Uranium Enrichment Capacity

22 USC 3222.

The Secretary of Energy is directed to initiate construction planning and design, construction, and operation activities for expansion of uranium enrichment capacity, as elsewhere provided by law. Further the Secretary as well as the Nuclear Regulatory Commission, and the Secretary of State[2] are directed to establish and implement procedures which will ensure to the maximum extent feasible, consistent with this Act, orderly processing of subsequent arrangements and export licenses with minimum time delay.

Sec. 103. Report

22 USC 3222 note. Study. Report to Congress.

The President shall promptly undertake a study to determine the need for additional United States enrichment capacity to meet domestic and foreign needs and to promote United States non-proliferation objectives abroad. The President shall report to the Congress on the results of this study within twelve months after the date of enactment of this Act.

Sec. 104. International Undertaking

22 USC 3223. Discussions and negotiations.

(a) Consistent with section 105 of this Act, the President shall institute prompt discussions with other nations and groups of nations, including both supplier and recipient nations, to develop international approaches for meeting future worldwide nuclear fuel needs. In particular, the President is authorized and urged to seek to negotiate as soon as practicable with nations possessing nuclear fuel production facilities or material, and such other nations and groups of nations, such as the IAEA, as may be deemed appropriate, with a view toward the timely establishment of binding international undertakings providing for–

(1) the establishment of an international nuclear fuel authority (INFA) with responsibility for providing agreed fuel services and allocating agreed upon quantities of fuel resources to ensure fuel supply on reasonable terms in accordance with agreements between INFA and supplier and recipient nations;

(2) a set of conditions consistent with subsection (d) under which international fuel assurances under INFA auspices will be provided to

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[2]P.L. 105-277, Div. G, Title XII, section 1225(e)(2), (112 Stat. 2681-775), Oct. 26, 1998.

recipient nations. including conditions which will ensure that the transferred materials will not be used for nuclear explosive devices;

(3) devising, consistent with the policy goals set forth in section 403 of this Act, feasible and environmentally sound approaches for the siting, development, and management under effective international auspices and inspection of facilities for the provision of nuclear fuel services, including the storage of special nuclear material;

(4) the establishment of repositories for the storage of spent nuclear reactor fuel under effective international auspices and inspection;

(5) the establishment of arrangements under which nations placing spent fuel in such repositories would receive appropriate compensation for the energy content of such spent fuel if recovery of such energy content is deemed necessary or desirable; and

(6) sanctions for violations of the provisions of or for abrogation of such binding international undertakings.

Proposals, submitted to Congress.

(b) The President shall submit to Congress not later than six months after the date of enactment of this Act proposals for initial fuel assurances, including creation of an interim stockpile of uranium enriched to less than 20 percent in the uranium isotope 235 (low-enriched uranium) to be available for transfer pursuant to a sales arrangement to nations which adhere to strict policies designed to prevent proliferation when and if necessary to ensure continuity of nuclear fuel supply to such nations. Such submission shall include proposals for the transfer of low-enriched uranium up to an amount sufficient to produce 100,000 NWe years of power from light water nuclear reactors, and shall also include proposals for seeking contributions from other supplier nations to such an interim stockpile pending the establishment of INFA.

(c) The President shall, in the report required by section 103, also address the desirability of and options for foreign participation, including investment, in new United States uranium enrichment facilities. This report shall also address the arrangements that would be required to implement such participation and the commitments that would be required as a condition of such participation. This report shall be accompanied by any proposed legislation to implement these arrangements.

Proposed legislation.

(d) The fuel assurances contemplated by this section shall be for the benefit of nations that adhere to policies designed to prevent proliferation. In negotiating the binding international undertakings called for in this section, the President shall, in particular, seek to ensure that the benefits of such undertakings are available to non-nuclear-

weapon states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device; do not establish any new enrichment or reprocessing facilities under their de facto or de jure control, and place any such existing facilities under effective international auspices and inspection.

(e) The report required by section 601 shall include information on the progress made in any negotiations pursuant to this section.

(f)(1) The President may not enter into any binding international undertaking negotiated pursuant to subsection (a) which is not a treaty until such time as such proposed undertaking has been submitted to the Congress and has been approved by concurrent resolution.

(2) The proposals prepared pursuant to subsection (b) shall be submitted to the Congress as part of an annual authorization Act for the Department of Energy.

Sec. 105. Reevaluation of Nuclear Fuel Cycle

22 USC 3224.

The President shall take immediate initiatives to invite all nuclear supplier and recipient nations to reevaluate all aspects of the nuclear fuel cycle, with emphasis on alternatives to an economy based on the separation of pure plutonium or the presence of high enriched uranium, methods to deal with spent fuel storage, and methods to improve the safeguards for existing nuclear technology. The President shall, in the first report required by section 601, detail the progress of such international reevaluation.

Title II–United States Initiatives To Strengthen The International Safeguards System

Sec. 201. Policy

22 USC 3241.

The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to–

(a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;

(b) ensure that the IAEA has the resources to carry out the provisions of Article XII of the Statute of the IAEA;

(c) improve the IAEA safeguards system (including accountability) to ensure–

(1) the timely detection of a possible diversion of source or special nuclear materials which could be used for nuclear explosive devices;

(2) the timely dissemination of information regarding such diversion; and

(3) the timely implementation of internationally agreed procedures in the event of such diversion;

(d) ensure that the IAEA receives on a timely basis the data needed for it to administer an effective comprehensive international safeguards program and that the IAEA provides timely notice to the world community of any evidence of a violation of any safeguards agreement to which it is a party; and

(e) encourage the IAEA, to the maximum degree consistent with the Statute, to provide nations which supply nuclear materials and equipment with the data needed to assure such nations of adherence to bilateral commitments applicable to such supply.

Sec. 202. Training Program

22 USC 3242.

The Department of Energy, in consultation with the Commission, shall establish and operate a safeguards and physical security training program to be made available to persons from nations and groups of nations which have developed or acquired, or may be expected to develop or acquire, nuclear materials and equipment for use for peaceful purposes. Any such program shall include training in the most advanced safeguards and

physical security techniques and technology consistent with the national security interests of the United States.

Sec. 203. Negotiations

22 USC 3243. The United States shall seek to negotiate with other nations and groups of nations to–

(1) adopt general principles and procedures, including common international sanctions, to be followed in the event that a nation violates any material obligation with respect to the peaceful use of nuclear materials and equipment or nuclear technology, or in the event that any nation violates the principles of the Treaty, including the detonation by a non-nuclear-weapon state of a nuclear explosive device; and

(2) establish international procedures to be followed in the event of diversion, theft, or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen, or obtained or used by a nation or by any person or group in contravention of the principles of the Treaty.

Title III–Export Organization And Criteria

Sec. 301. Government-to-Government Transfers

42 USC 2074. (a) Section 54 of the 1954 Act is amended by adding a new subsection d. thereof as follows:

d. The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

42 USC 2094. (b) Section 64 of the 1954 Act is amended by inserting the following immediately after the second sentence thereof: "The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient."

(c) Chapter 10 of the 1954 Act is amended by adding a new section 111 as follows:

42 USC 2141. Sec. 111.a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided,* That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

42 USC 2112. *Supra.*

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission

until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any applicable criteria in sub section 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

Sec. 302. Special Nuclear Material Production

Special nuclear material, production.

Subsection 57b. of the 1954 Act is amended to read as follows:

b. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided.* That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of interagency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978 shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this

42 USC 2077.
Standards and criteria.
Technology transfers.

Authorization requests, procedures.

Trade secrets, protection.

42 USC 2014.
42 USC 7172

subsection shall be afforded the maximum degree of protection allowable by law: *Provided further,* That the export of component parts as defined in subsection 11v.(2) or 11cc.(2) shall be governed by sections 109 and 126 of this Act: *Provided further,* That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy and not the Federal Energy Regulatory Commission shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54d., section 64, or section 111b.

42 USC 2074.
42 USC 2094.

Sec. 303. Subsequent Arrangements

(a) Chapter 11 of the 1954 Act, as amended by sections 304, 305, 306, 307, and 308, is further amended by adding at the end thereof the following:

42 USC 2160.

Sec. 131. SUBSEQUENT ARRANGEMENTS.–

Consultation.

a. (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Director, the Commission, and the Secretary of Defense: *Provided,* That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Director declares that he intends to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the Director's declaration shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

2 USC 2121.
42 USC 2164.

Notice, publication in the Federal Register.

Nuclear Proliferation Assessment Statement.

(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the "subsequent arrangement" will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements"

Subsequent arrangements.

means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving–

Contracts.

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

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

(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 09b.;

(D) arrangements for physical security;

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

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

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

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

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

(1).

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

Report to congressional committees.

(1) the Secretary of Energy may not enter into any subsequent arrangements for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material until he has provided the Committee on International Relations of the House of Representatives and the Committee of Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

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

Nuclear materials, reprocessing or transfer procedures.

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

Controversial requests, identification. Standards and criteria.

Nuclear Proliferation Assessment Statement.

Presidential waiver. Notice to congressional committees.

Director shall so declare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Director's request the President waives the sixty-day requirement and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

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

42 USC 7172.

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

Presidential plan, submittal to Congress.

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

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

pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions;

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

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

Notice to congressional committees.

(2) Subsection (1) shall apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on International Relations and Science and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

Plan, contents.

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

Foreign spent nuclear fuel.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

(b)(1) Section 54 of the 1954 Act is amended by adding new subsection e. as follows,

e. The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a.(2)(E) shall be subject to the requirements of section 131.

42 USC 2075.

(2) Section 55 of the 1954 Act is amended by adding a proviso at the end of the section as follows, "*Providing,* That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a.(2)(E) shall be subject to the requirements of section 131."

Sec. 304. Export Licensing Procedures

(a) Chapter 11 of the 1954 Act is amended by adding a new section 126 as follows:

42 USC 2155. Exemption. *Supra.* 42 USC 2112.

Executive branch judgment, notice to Commission.

Procedures.

Contents.

Standards and criteria.

Sec 126.Export Licensing Procedures.–

a. No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 54, 64, or 82, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until –

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, the Nuclear Regulatory Commission,[3] and the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and interagency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showing, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and

[3]Public Law 105–277, Division G, Title XII, Chapter 3, section 1225(d)(5), as amended, 112 Stat. 2681-774; October 21, 1998.

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:

(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.

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

(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:

42 USC 2154.

Extension, notice to Congress.

Provided further, That, if upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year, increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint

resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act: *And additionally provided*, That the Commission is authorized to–

Findings.

(A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, or similar significance for nuclear explosive purposes and under reasonably similar circumstances, and

(B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission

Judicial review, exception.

The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

b. (1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

Presidential review.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include 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 adopts a concurrent resolution stating in

Report to Congress and congressional committees.

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 such Presidential authorization under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or–within sixty days after receipt of the executive branch judgment on the proposed export–the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further,* That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a.(1) of this section.

Review.

Concerns and requests, transmittal to executive branch.

Referral to congressional committees.

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.

42 USC 2155a.

Regulations.

(b) Within one hundred and twenty days of the date of enactment of this Act, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act, including such public hearings and access to information as the Commission deems appropriate: *Provided,* That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further,* That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

42 USC 2155a.
42 USC 2239.
Hearings.

(c) The procedures to be established pursuant to subsection (b) shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 189a. of the 1954 Act, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

42 USC 2156a.
Regulations.

(d) Within sixty days of the date of enactment of this Act, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, and the Secretary of Defense, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgment are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 127 of the 1954 Act taking into consideration variations in risks to security as appropriate.[4]

Sec. 305. Criteria Governing United States Nuclear Exports

Chapter 11 of the 1954 Act, as a amended by section 304, is further amended by adding at the end thereof the following:

42 USC 2156.

Sec. 127. CRITERIA GOVERNING UNITED STATES NUCLEAR EXPORTS–

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

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

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[4]As amended, Public Law 105-277, Div. G, Title XII, Ch. 3, section 1225(e)(3), (112 Stat. 2681-775), Oct. 21, 1998.

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

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

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

Sec. 306. Additional Export Criterion and Procedures

Chapter 11 of the 1954 Act, as amended by sections 304 and 305, is further amended by adding at the end thereof the following:

42 USC 2157.

Sec. 128. ADDITIONAL EXPORT CRITERIA AND PROCEDURES–

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

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

Export applications, criterion enforcement.

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

Report to congressional committees.

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

Congressional disapproval, resolution.

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

Export authorizations, congressional review.

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

Sec. 307. Conduct Resulting in Termination of Nuclear Exports

Export terminations, criterion. 42 USC 2158.

Chapter 11 of the 1954 Act, as amended by sections 304, 305, and 306, is further amended by adding at the end thereof:

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

No nuclear materials and equipment or sensitive nuclear technology shall be export to–

(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

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

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes; unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*

Report to Congress.

That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such

Infra.

determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

Sec. 308. Congressional Review Procedures

Chapter 11 of the 1954 Act, as amended by sections 304, 305, 306, and 307, is further amended by adding at the end thereof the following:

42 USC 2159. Congressional committee reports.

Sec. 130. CONGRESSIONAL REVIEW PROCEDURES–

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 123d., 126a.(2), 126b.(2), 128b., 129, 131a.(3), or 131f.(1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

42 USC 2121. 42 USC 2164.

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

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which

the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d.

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

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

Resolution.

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

Continuous session of Congress, computation.

g. For the purposes of this section–

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

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

h. This section is enacted by Congress–

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

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

Sec. 309. Component and Other Parts of Facilities

42 USC 2139.

(a) Section 109 of the 1954 Act is amended to read as follows:

Sec. 109. Component And Other Parts Of Facilities–

Domestic activities licenses, issuance authorization. 42 USC 2139.

a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11v.(2) or 11cc.(2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

Export licenses.

b. After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in subsection 11v.(2) or 11cc.(2) and

which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b.(2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.[5]

c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126a., that the export would be inimical to the common defense and security of the United States.

42 USC 2139a.
Regulations.

(b) The Commission, not later than one hundred and twenty days after the date of the enactment of this Act, shall publish regulations to implement the provisions of subsections b. and c. of section 109 of the 1954 Act. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

Supra.

42 USC 2139a.
Export control procedures, Presidential publications.

(c) The President, within not more than one hundred and twenty days after the date of enactment of the Act, shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations, as required, by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

42 USC 2139 note.
Savings provisions.

(d) The amendments to section 109 of the 1954 Act made by this section shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments.

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[5]P.L. 105-277, Div. G, Title XII, Ch. 3, section 1225(d)(2), (112 Stat. 2681-774).

Title IV–Negotiation Of Further Export Controls

Sec. 401. Cooperation with Other Nations

42 USC 2153.

Section 123 of the 1954 Act is amended to read as follows:

Sec. 123. Cooperation With Other Nations–

42 USC 2073, 2074, 2077, 2094, 2112, 2121, 2133, 2134, 2164.

No cooperation with any nation, group of nations or regional defense organizations pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until-"a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

Cooperative agreements, submittal to President.
Contents.

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

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., or 144c any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the

jurisdiction or control of the cooperating party without the consent of the United States;

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

(7) except in the case of agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144c., a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144c., a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144c., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

42 USC 2121.
42 USC 2164.
Agreement requirements, Presidential exemptions.
Nuclear Proliferation Assessment Statement.
Proposed cooperation agreements, submitted to President.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91c., 144b., 144c or 144d.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy; and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission. The Secretary of State shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of proposed agreement for cooperation with all the

requirements of this Act with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., or 144d., which are to be implemented by the Department of Defense, by the Secretary of Defense;

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

Submittal to congressional committees.

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130g.): *Provided, however*, That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

42 USC 2073, 2074, 2133, 2073, 2074, 2133, 2134.

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91c., 144b., 144c., or 144d., or if entailing implementation of section 53, 54a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection 123a., has been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not

become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty–day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section130i. of this Act.

42 USC 2121.
42 USC 2164.
Agency views to congressional committees.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91c., 144b., or 144c.) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123a.(2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128b.(3) for purposes of the Commission's consideration of applications and requests under section 126a.(2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

Sec. 402. Additional Requirements

42 USC 2153a.
Nuclear material enrichment, approval.

(a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided,* That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 131 of the 1954 Act, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further,* That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after the date of enactment of this Act, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

42 USC 2121.
42 USC 2164.
Enrichment facility components, export prohibition.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (exempt an agreement for cooperation pursuant to subsection 91c., 144b., 144c. of the 1954 Act) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any component part or group of component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

Major critical component.

Sec. 403. Peaceful Nuclear Activities

42 USC 2153b.
Export policies.

The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that–

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under control of any non-nuclear-weapon state;

(3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear-activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

42 USC 2104.
Enriched nuclear material and sources, prohibition.
Proposed international agreements.

(b)(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in paragraph AA.(2) of section 11 of the 1954 Act) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be

transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

Enriched nuclear material, short-term storage. International inspection.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

Sec. 404. Renegotiation of Agreements for Cooperation

42 USC 2153c.

(a) The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on the date of enactment of this Act, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreement under the 1954 Act. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 127 of the 1954 Act with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 123a. of the 1954 Act, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in the 1954 Act shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on the date of enactment of this Act.

Export agreement conditions and policy, goals, Presidential review.

(b) The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 123a. of the 1954 Act and the export policy goals set forth in section 401 to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.

Presidential export criteria proposals, submittal to Congress.

(c) If Presidential export criteria proposals, submittal to Congress. the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) If the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs[6] of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to subsection 130b. through g. of the 1954 Act.

Sec. 405. Authority to Continue Agreements

42 USC 2153d. Savings provision.

(a) The amendments to section 123 of the 1954 Act made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to the date of enactment of this Act.

(b) Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement of Cooperation.

Sec. 406. Review

42 USC 2160a.

No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act.

Sec. 407. Protection of the Environment

42 USC 2153e.

The president shall endeavor to provide in any agreement entered into pursuant to section 123 of the 1954 Act for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

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[6] Public Law 103-437 (108 Stat. 4581) substituted "Foreign Affairs" for "International Relations.

Title V–United States Assistance To Developing Countries

Sec. 501. Policy: Report

22 USC 3261. Nuclear and non-nuclear energy, resource development.

The United States shall endeavor to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources, to cooperate with both developing and industrialized nations in protecting the international environment from contamination arising from both nuclear and non-nuclear energy activities, and shall seek to cooperate with and aid developing countries in meeting their energy needs through the development of such resources and the application of non-nuclear technologies consistent with the economic factors, the material resources of those countries, and environmental protection. The United States shall additionally seek to encourage other industrialized nations and groups of nations to make commitments for similar cooperation and aid to developing countries. The President shall report annually to Congress on the level of other nations' and groups of nations' commitments under such program and the relation of any such commitments to United States efforts under this Title. In cooperating with and providing such assistance to developing countries, the United States shall give priority to parties to the Treaty.

Sec. 502. Programs

Developing countries, energy development programs.

(a) The United States shall initiate a program, consistent with the aims of section 501, to cooperate with developing countries for the purpose of–

(1) meeting the energy needs required for the development of such countries;

(2) reducing the dependence of such countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources; and

(3) expanding the energy alternatives available to such countries.

Assessment and cooperative projects.

(b) Such program shall include cooperation in evaluating the energy alternatives of developing countries, facilitating international trade in energy commodities, developing energy resources, and applying suitable energy technologies. The program shall include both general and country-specific energy assessments and cooperative projects in resource exploration and production, training, research and development.

Experts, exchange.

(c) As an integral part of such program, the Department of Energy, under the general policy guidance of the Department of State and in cooperation with the Agency for International Development and other Federal agencies as appropriate, shall initiate, as soon as practicable, a program for the exchange of United States scientists, technicians, and energy experts with those of developing countries to implement the purposes of this section.

Appropriation authorization.

(d) For the purposes of carrying out this section, there is authorized to be appropriated such sums as are contained in annual authorization Acts for the Department of Energy, including such sums which have been authorized for such purposes under previous legislation.

22 USC 2151a.
22 USC 2151d.
22 USC 2151q.

(e) Under the direction of the President, the Secretary of State shall ensure the coordination of the activities authorized by this Title with other related activities of the United States conducted abroad, including the programs authorized by sections 103(c), 106(a)(2), and 119 of the Foreign Assistance Act of 1961.

Sec. 503. Report

22 USC 3262 note. Presidential report to Congress.

Not later than twelve months after the date of enactment of this Act, the President shall report to the Congress on the feasibility of expanding the cooperative activities established pursuant to section 502(c) into an international cooperative effort to include a scientific peace corps designed to encourage large numbers of technically trained volunteers to live and work in developing countries for varying periods of time for the purpose of engaging in projects to aid in meeting the energy needs of such countries through the search for and utilization of indigenous energy resources and the application of suitable technology, including the widespread utilization of renewable and unconventional energy technologies. Such report shall also include a discussion of other mechanisms to conduct a coordinated international effort to develop, demonstrate, and encourage the utilization of such technologies in developing countries.

Title VI–Executive Reporting

Sec. 601. Reports of the President

22 USC 3281. Governmental nuclear non-proliferation activities.

(a) The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to–

(1) a description of the progress made toward–

(A) negotiating the initiatives contemplated in sections 104 and 105 of this Act;

(B) negotiating the international arrangements or other mutual undertakings contemplated in section 403 of this Act;

(C) encouraging non-nuclear-weapons states that are not party to the Treaty to adhere to the Treaty or, pending such adherence, to enter into comparable agreements with respect to safeguards and to forswear the development of any nuclear explosive devices, and discouraging nuclear exports to non-nuclear-weapon states which have not taken such steps;

(D) strengthening the safeguards of the IAEA as contemplated in section 201 of this Act; and

(E) renegotiating agreements for cooperation as contemplated in section 404(a) of this Act;

(2) an assessment of the impact of the progress, described in paragraph (1) on the non-proliferation policy of the United States; an explanation of the precise reasons why progress has not been made on any particular point and recommendations with respect to appropriate measures to encourage progress; and a statement of what legislative modifications, if any, are necessary in his judgment to achieve the non-proliferation policy of the United States;

(3) a determination as to which non-nuclear-weapon states with which the United States has an agreement for cooperation in effect or under negotiation, if any, have–

(A) detonated a nuclear device; or

(B) refused to accept the safeguards of the IAEA on all of their peaceful nuclear activities; or

(C) refused to give specific assurances that they will not manufacture or otherwise acquire any nuclear explosive device; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices;

(4) an assessment of whether any of the policies set forth in this Act have, on balance, been counterproductive from the standpoint of preventing proliferation;

(5) a description of the progress made toward establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses in order to enhance the reliability of the Unites States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

(6) a description of the implementation of nuclear and nuclear-related dual-use export controls in the preceding calendar year, including a summary by type of commodity and destination of–

(A) all transactions for which–

(i) an export license was issued for any good controlled under section 309(c) of this Act;

(ii) an export license was issued under section 109b. of the 1954 Act;

(iii) approvals were issued under the Export Administration Act of 1979, or section 109b.(3) of the 1954 Act, for the retransfer of any item, technical data, component, or substance; or

(iv) authorizations were made as required by section 57b.(2) of the 1954 Act to engage, directly or indirectly, in the production of special nuclear material;

(B) each instance in which–

(i) a sanction has been imposed under section 821(a) or section 824 of the Nuclear Proliferation Prevention Act of 1994 or section 102(b)(1) of the Arms Export Control Act;

(ii) sales or leases have been denied under section 3(f) of the Arms Export Control Act or transactions prohibited by reason of acts relating to proliferation of nuclear explosive devices as described in section 40(d) of that Act;

(iii) a sanction has not been imposed by reason of section 821(c)(2) of the Nuclear Proliferation Prevention Act of 1994 or the imposition of a sanction has been delayed under section 102(b)(4) of the Arms Export Control Act; or

(iv) a waiver of a sanction has been made under–

(I) section 821(f) or section 824 of the Nuclear Proliferation Prevention Act of 1994,

(II) section 620E(d) of the Foreign Assistance Act of 1961, or paragraph (5) or (6)(B) of section 102(b) of the Arms Export Control Act,

(III) section 40(g) of the Arms Export Control Act with respect to the last sentence of section 40(d) of that Act, or

(IV) section 614 of the Foreign Assistance Act of 1961 with respect to section 620E of that Act or section 3(f), the

last sentence of section 40(d), or 102(b)(1) of the Arms Export Control Act; and

(C) the progress of those independent states of the former Soviet Union that are non-nuclear-weapon states and of the Baltic states towards achieving the objective of applying full scope safeguards to all their peaceful nuclear activities. Portions of the information required by paragraph (6) may be submitted in classified form, as necessary. Any such information that may not be published or disclosed under section 12(c)(1) of the Export Administration Act of 1979 shall be submitted as confidential.[7]

Current civil agreements, analysis.

(b) In the first report required by this section, the President shall analyze each civil agreement for cooperation negotiated pursuant to section 123 of the 1954 Act, and shall discuss the scope and adequacy of the requirements and obligations relating to safeguards and other control therein.

Sec. 602. Additional Reports

22 USC 3282. Governmental nuclear non-proliferation activities. Reports to Congress.

(a) The annual report to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications so advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.

(b) The reporting requirements of this Title are in addition to and not to lieu of any other reporting requirements under applicable law.

(c)(1) The Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Commission, and, with regard to subparagraph (B), the Director of Central Intelligence, shall keep the Committees on Foreign Relations and Governmental Affairs of the Senate and the Committee on International Relations of the House of Representatives fully and currently informed with respect to–

(A) their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, including the proliferation of nuclear, chemical, or biological weapons, or their means of delivery; and

(B) the current activities of foreign nations which are of significance from the proliferation standpoint.

(2) For the purposes of this subsection with respect to paragraph (1)(B), the phrase 'fully and currently informed' means the transmittal of credible information not later than 60 days after becoming aware of the activity concerned.[8]

(d) Any classified portions of the reports required by this Act shall be submitted to the Senate Foreign Relations Committee and the House of International Relations Committee.

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[7]Section 6 was added by Public Law 103-236 (108 Stat. 507-511); April 30, 1994.

[8]Public Law 99-661 (100 Stat. 4004) (1986) amended section 602(c) and added (f).

Nuclear non-proliferation policies, study. Reports to Congress.

(e) Three years after enactment of this Act, the Comptroller General shall complete a study and report to the Congress on the implementation and impact of this Act on the nuclear non-proliferation policies, purposes, and objectives of this Act. The Secretaries of State, Energy, Defense, and Commerce and the Commission and the Director shall cooperate with the Comptroller General in the conduct of the study. The report shall contain such recommendations as the Comptroller General deems necessary to support the nuclear non-proliferation policies, purposes, and objectives of this Act.

(f) (1) The Secretary of Defense shall have access, on a timely basis, to all information regarding nuclear proliferation matters which the Secretary of State or the Secretary of Energy has or is entitled to have. Such access shall include access to all communications, materials, documents and records relating to nuclear proliferation matters.

(2) This subsection does not apply to any intra-departmental document of the Department of State or the Department of Energy, or any portion of such document, that is solely concerned with internal, confidential advice on policy concerning the conduct of interagency deliberations on nuclear proliferation matters.[9]

Sec. 603. Savings Clause

42 USC 2153f.

(a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges–

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

42 USC 2153f.
42 USC 2121.
42 USC 2164.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to section 91c., 144b., or 144c. of the 1954 Act or arrangements pursuant thereto as it was in effect immediately prior to the date of enactment of this Act.

22 USC 3201 note. Effective date.

(c) Except where otherwise provided, the provisions of this Act shall take effect immediately upon enactment regardless of any requirement for the promulgation of regulations to implement such provisions.

* * * *

Other Provisions: Provision of Certain Information to Congress.

(a) REQUIREMENT TO PROVIDE INFORMATION.–The head of each department and agency described in section 602(c) of the Nuclear Non–Proliferation Act of 1978 (22 USC 3282(c)) shall promptly provide information to the chairman and ranking minority member of the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives in meeting the requirements of subsection (c) or (d) of section 602 of such Act.

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[9]Public Law 99-661 (100 Stat. 4004) (1986) amended section 602(c) and added (f).

(b) ISSUANCE OF DIRECTIVES.–Not later than February 1, 2000, the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of Central Intelligence, and the Chairman of the Nuclear Regulatory Commission shall issue directives, which shall provide access to information, including information contained in special access programs, to implement their responsibilities under subsections (c) and (d) of section 602 of the Nuclear Non–Proliferation Act of 1978 (22 USC 3282(c) and (d)). Copies of such directive shall be forwarded promptly to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives upon the issuance of the directives.[10]

[10]Public Law 106–113, Division B, section 1000(a)(7), (113 Stat. 1536), (enacting into law section 1134 of Subtitle B of Title XI of Division B of H.R. 3427 (113 Stat. 1501A–494), as introduced on November 17, 1999).

B. FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1994 AND 1995

Public Law 103-236 **108 Stat. 382**

April 30, 1994

An Act

To provide for more efficient and effective control over the proliferation of nuclear explosive capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

◊◊◊◊

Title VIII—Nuclear Proliferation Prevention Act

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Part B-Sanctions For Nuclear Proliferation

Nuclear Proliferation Prevention Act of 1994. 22 USC 3201 Note.

Sec. 821. Imposition Of Procurement Sanction On Persons Engaging In Export Activities That Contribute To Proliferation.

(a) DETERMINATION BY THE PRESIDENT.–

(1) IN GENERAL.–Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the President determines in writing that, on or after the effective date of this part, a foreign person or a United States person has materially and with requisite knowledge contributed, through the export from the United States or any other country of any goods or technology (as defined in section 830(2)), to the efforts by any individual, group, or non-nuclear-weapon state to acquire unsafeguarded special nuclear material or to use, develop, produce, stockpile, or otherwise acquire any nuclear explosive device.

(2) PERSONS AGAINST WHICH THE SANCTION IS TO BE IMPOSED.–The sanction shall be imposed pursuant to paragraph (1) on–

(A) the foreign person or United States person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person or United States person;

(C) any foreign person or United States person that is a parent or subsidiary of that person if that parent or subsidiary materially and with requisite knowledge assisted in the activities which were the basis of that determination; and

(D) any foreign person or United States person that is an affiliate of that person if that affiliate materially and with requisite knowledge assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that person.

(3) OTHER SANCTIONS AVAILABLE.–The sanction which is required to be imposed for activities described in this subsection is in addition to any other sanction which may be imposed for the same activities under any other provision of law.

(4) DEFINITION.–For purposes of this subsection, the term "requisite knowledge" means situations in which a person "knows", as "knowing" is defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 USC 78dd-2).

(b) CONSULTATION WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.–

(1) CONSULTATIONS.–If the President makes a determination described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of the sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.–In order to pursue such consultations with that government, the President may delay imposition of the sanction pursuant to this section for up to 90 days. Following these consultations, the President shall impose the sanction unless the President determines and certifies in writing to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay the imposition of the sanction for up to an additional 90 days if the President determines and certifies in writing to the Congress that that government is in the process of taking the actions described in the preceding sentence.

President.

(3) REPORT TO CONGRESS.–Not later than 90 days after making a determination under subsection (a)(1), the President shall submit to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTION.–

(1) DESCRIPTION OF SANCTION.–The sanction to be imposed pursuant to subsection (a)(1) is, except as provided in paragraph (2) of this subsection, that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(2).

(2) EXCEPTIONS.–The President shall not be required to apply or maintain the sanction under this section–

(A) in the case of procurement of defense articles or defense services–

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines in writing that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that

the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanction;

(C) to–

(i) spare parts which are essential to United States products or production;

(ii) component parts, but not finished products, essential to United States products or production; or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) ADVISORY OPINIONS.–Upon the request of any person, the Secretary of State may, in consultation with the Secretary of Defense, issue in writing an advisory opinion to that person as to whether a proposed activity by that person would subject that person to the sanction under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanction, and any person who thereafter engages in such activity, may not be made subject to such sanction on account of such activity.

(e) TERMINATION OF THE SANCTION.–The sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies in writing to the Congress that–

(1) reliable information indicates that the foreign person or United States person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in that subsection; and

(2) the President has received reliable assurances from the foreign person or United States person, as the case may be, that such person will not, in the future, aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in subsection (a)(1).

(f) WAIVER.–

(1) CRITERION FOR WAIVER.–The President may waive the application of the sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies in writing to the Congress that the continued imposition of the

sanction would have a serious adverse effect on vital United States interests.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.–If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

Sec. 822. Eligibility For Assistance.

(a) AMENDMENTS TO THE ARMS EXPORT CONTROL ACT.-

(1) PROHIBITION.-Section 3 of the Arms Export Control Act (22 U.S.C. 2753) is amended by adding at the end the following new subsection:

"(f) No sales or leases shall be made to any country that the President has determined is in material breach of its binding commitments to the United States under international treaties or agreements concerning the nonproliferation of nuclear explosive devices (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994) and unsafeguarded special nuclear material (as defined in section 830(8) of that Act).".

(2) DEFINITION OF SUPPORT FOR INTERNATIONAL TERRORISM.- Section 40 of such Act (22 U.S.C. 2780) is amended-

(A) in subsection (d), by adding at the end the following new sentence: "For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material."; and

(B) in subsection (1)-

(i) in paragraph (2), by striking "and" after the semicolon;

(ii) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

"(4) the term 'nuclear explosive device' has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

"(5) the term 'unsafeguarded special nuclear material' has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.".

(b) FOREIGN ASSISTANCE ACT OF 196 1.-

(1) PRESIDENTIAL DETERMINATION 82-7.-Notwithstanding any other provision of law, Presidential Determination No. 82-7 of February 10, 1982, made pursuant to section 670(a)(2) of the Foreign Assistance Act of 1961, shall have no force or effect with respect to any grounds for the prohibition of assistance under section 102(a)(1) of the Arms Export Control Act arising on or after the effective date of this part.

(2) AMENDMENT.-Section 620E(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2375(d)) is amended to read as follows:

"(d) The President may waive the prohibitions of section 101 of the Arms Export Control A ;t with respect to any grounds for the prohibition of assistance under that section arising before the effective date of part B of the Nuclear Proliferation Prevention Act of 1994 to provide assistance

to Pakistan if he determines that to do so is in the national interest of the United States.".

Sec. 823. Role Of International Financial Institutions.

(a) IN GENERAL.-The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in section 701(a) of the International Financial Institutions Act (22 U.S.C. 262d(a)) to use the voice and vote of the United States to oppose any use of the institution's funds to promote the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of any nuclear explosive device by any non-nuclear-weapon state.

(b) DUTIES OF UNITED STATES EXECUTIVE DIRECTORS.-Section 701(b)(3) of the International Financial Institutions Act (22 U.S.C. 262d(b)(3)) is amended to read as follows:

"(3) whether the recipient country-

"(A) is seeking to acquire unsafeguarded special nuclear material (as defined in section 830(8) of the Nuclear Proliferation Prevention Act of 1994) or a nuclear explosive device (as defined in section 830(4) of that Act);

"(B) is not a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons; or

"(C) has detonated a nuclear explosive device; and".

Sec. 824. Prohibition On Assisting Nuclear Proliferation Through The Provision Of Financing.

(a) PROHIBITED ACTIVITY DEFINED.-For purposes of this section, the term "prohibited activity" means the act of knowingly, materially, and directly contributing or attempting to contribute, through the provision of financing, to—

(1) the acquisition of unsafeguarded special nuclear material; or

(2) the use, development, production, stockpiling, or other acquisition of any nuclear explosive device, by any individual, group, or non-nuclear-weapon state.

(b) PROHIBITION.-To the extent that the United States has jurisdiction to prohibit such activity by such person, no United States person and no foreign person may engage in any prohibited activity.

(c) PRESIDENTIAL DETERMINATION AND ORDER WITH RESPECT TO UNITED STATES AND FOREIGN PERSONS.-If the President determines, in writing after opportunity for a hearing on the record, that a United States person or a foreign person has engaged in a prohibited activity (without regard to whether subsection (b) applies), the President shall, by order, impose the sanctions described in subsection (d) on such person.

(d) SANCTIONS.-The following sanctions shall be imposed pursuant to any order issued under subsection (c) with respect to any United States person or any foreign person:

(1) BAN ON DEALINGS IN GOVERNMENT FINANCE.-

(A) DESIGNATION AS PRIMARY DEALER.-Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, the person as a primary dealer in United States Government debt instruments.

(B) SERVICE AS DEPOSITARY.-The person may not serve as a depositary for United States Government funds.

(2) RESTRICTIONS ON OPERATIONS.-The person may not, directly or indirectly-

(A) commence any line of business in the United States in which the person was not engaged as of the date of the order; or

(B) conduct business from any location in the United States at which the person did not conduct business as of the date of the order.

(e) JUDICIAL REVIEW.-Any determination of the President under subsection (c) shall be subject to judicial review in accordance with chapter 7 of part I of title 5, United States Code.

(f) CONSULTATION WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.-

(1) CONSULTATIONS.-If the President makes a determination under subsection (c) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with any appropriate foreign government with respect to the imposition of any sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.-

(A) SUSPENSION OF PERIOD FOR IMPOSING SANCTIONS.- In order to pursue consultations described in paragraph (1) with any government referred to in such paragraph, the President may delay, for up to 90 days, the effective date of an order under subsection (c) imposing any sanction.

(B) COORDINATION WITH ACTIVITIES OF FOREIGN GOVERNMENT.-Following consultations described in paragraph (1), the order issued by the President under subsection (c) imposing any sanction on a foreign person shall take effect unless the President determines, and certifies in writing to the Congress, that the government referred to in paragraph (1) has taken specific and effective actions, including the imposition of appropriate penalties, to terminate the involvement of the foreign person in any prohibited activity.

(C) EXTENSION OF PERIOD.-After the end of the period described in subparagraph (A), the President may delay, for up to an additional 90 days, the effective date of an order issued under subsection (b) imposing any sanction on a foreign person if the President determines, and certifies in writing to the Congress, that the appropriate foreign government is in the process of taking actions described in subparagraph (B).

(3) REPORT TO CONGRESS.-Before the end of the 90-day period beginning on the date on which an order is issued under subsection (c), the President shall submit to the Congress a report on-(A) the status of consultations under this subsection with the government referred to in paragraph (1); and (B) the basis for any determination under paragraph (2) that such government has taken specific corrective actions.

(g) TERMINATION OF THE SANCTIONS.-Any sanction imposed on any person pursuant to an order issued under subsection (c) shall-

(1) remain in effect for a period of not less than 12 months; and

(2) cease to apply after the end of such 12-month period only if the President determines, and certifies in writing to the Congress, that-

(A) the person has ceased to engage in any prohibited activity; and

(B) the President has received reliable assurances from such person that the person will not, in the future, engage in any prohibited activity.

(h) WAIVER.-The President may waive the continued application of any sanction imposed on any person pursuant to an order issued under subsection (c) if the President determines, and certifies in writing to the Congress, that the continued imposition of the sanction would have a serious adverse effect on the safety and soundness of the domestic or international financial system or on domestic or international payments systems.

(i) ENFORCEMENT ACTION.-The Attorney General may bring an action in an appropriate district court of the United States for injunctive and other appropriate relief with respect to-

(1) any violation of subsection (b); or

(2) any order issued pursuant to subsection (c).

(j) KNOWINGLY DEFINED.-

(1) IN GENERAL.-For purposes of this section, the term "knowingly" means the state of mind of a person with respect to conduct, a circumstance, or a result in which-

(A) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(B) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(2) KNOWLEDGE OF THE EXISTENCE OF A PARTICULAR CIRCUMSTANE.-If knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(k) SCOPE OF APPLICATION.-This section shall apply with respect to prohibited activities which occur on or after the date this part takes effect.

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22 USC 3201 note.

Part C-International Atomic Energy Agency

Sec. 841. Bilateral And Multilateral Initiatives.

It is the sense of the Congress that in order to maintain and enhance international confidence in the effectiveness of IAEA safeguards and in other multilateral undertakings to halt the global proliferation of nuclear weapons, the United States should seek to negotiate with other nations and groups of nations, including the IAEA Board of Governors and the Nuclear Suppliers Group, to-

(1) build international support for the principle that nuclear supply relationships must require purchasing nations to agree to full-scope international safeguards;

(2) encourage each nuclear-weapon state within the meaning of the Treaty to undertake a comprehensive review of its own procedures for

declassifying information relating to the design or production of nuclear explosive devices and to investigate any measures that would reduce the risk of such information contributing to nuclear weapons proliferation;

(3) encourage the deferral of efforts to produce weapons grade nuclear material for large-scale commercial uses until such time as safeguards are developed that can detect, on a timely and reliable basis, the diversion of significant quantities of such material for nuclear explosive purposes;

(4) pursue greater financial support for the implementation and improvement of safeguards from all IAEA member nations with significant nuclear programs, particularly from those nations that are currently using or planning to use weapons grade nuclear material for commercial purposes;

(5) arrange for the timely payment of annual financial contributions by all members of the IAEA, including the United States;

(6) pursue the elimination of international commerce in highly enriched uranium for use in research reactors while encouraging multilateral cooperation to develop and to use low-enriched alternative nuclear fuels;

(7) oppose efforts by non-nuclear-weapon states to develop or use unsafeguarded nuclear fuels for purposes of naval propulsion;

(8) pursue an international open skies arrangement that would authorize the IAEA to operate surveillance aircraft and would facilitate IAEA access to satellite information for safeguards verification purposes;

(9) develop an institutional means for IAEA member nations to share intelligence material with the IAEA on possible safeguards violations without compromising national security or intelligence sources or methods;

(10) require any exporter of a sensitive nuclear facility or sensitive nuclear technology to a non-nuclear-weapon state to notify the IAEA prior to export and to require safeguards over that facility or technology, regardless of its destination; and

(11) seek agreement among the parties to the Treaty to apply IAEA safeguards in perpetuity and to establish new limits on the right to withdraw from the Treaty.

Sec. 842. IAEA Internal Reforms.

In order to promote the early adoption of reforms in the implementation of the safeguards responsibilities of the IAEA, the Congress urges the President to negotiate with other nations and groups of nations, including the IAEA Board of Governors and the Nuclear Suppliers Group, to-

(1) improve the access of the IAEA within nuclear facilities that are capable of producing, processing, or fabricating special nuclear material suitable for use in a nuclear explosive device;

(2)(A) facilitate the IAEA's efforts to meet and to maintain its own goals for detecting the diversion of nuclear materials and equipment, giving particular attention to facilities in which there are bulk quantities of plutonium; and

(B) if it is not technically feasible for the IAEA to meet those detection goals in a particular facility, require the IAEA to declare publicly that it is unable to do so;

(3) enable the IAEA to issue fines for violations of safeguards procedures, to pay rewards for information on possible safeguards violations, and to establish a "hot line" for the reporting of such violations and other illicit uses of weapons grade nuclear material;

(4) establish safeguards at facilities engaged in the manufacture of equipment or material that is especially designated or prepared for the processing, use, or production of special fissionable material or, in the case of non-nuclear-weapon states, of any nuclear explosive device;

(5) establish safeguards over nuclear research and development activities and facilities;

(6) implement special inspections of undeclared nuclear facilities, as provided for under existing safeguards procedures, and seek authority for the IAEA to conduct challenge inspections on demand at suspected nuclear sites;

(7) expand the scope of safeguards to include tritium, uranium concentrates, and nuclear waste containing special fissionable material, and increase the scope of such safeguards on heavy water;

(8) revise downward the IAEA's official minimum amounts of nuclear material ("significant quantity") needed to make a nuclear explosive device and establish these amounts as national rather than facility standards;

(9) expand the use of full-time resident IAEA inspectors at sensitive fuel cycle facilities;

(10) promote the use of near real time material accountancy in the conduct of safeguards at facilities that use, produce, or store significant quantities of special fissionable material;

(11) develop with other IAEA member nations an agreement on procedures to expedite approvals of visa applications by IAEA inspectors;

(12) provide the IAEA the additional funds, technical assistance, and political support necessary to carry out the goals set forth in this subsection; and

Public information.

(13) make public the annual safeguards implementation information, report of the IAEA, establishing a public registry of commodities in international nuclear commerce, including dual-use goods, and creating a public repository of current nuclear trade control laws, agreements, regulations, and enforcement and judicial actions by AEA member nations.

President.

Sec. 843. Reporting Requirement.

(a) REPORT REQUIRED.-The President shall, in the report required by section 601(a) of the Nuclear Non-Proliferation Act of 1978, describe-

(1) the steps he has taken to implement sections 841 and 842, and

(2) the progress that has been made and the obstacles that have been encountered in seeking to meet the objectives set forth in sections 841 and 842.

(b) CONTENTS OF REPORT.-Each report under paragraph (1) shall describe-

(1) the bilateral and multilateral initiatives that the President has taken during the period since the enactment of this Act in pursuit of each of the objectives set forth in sections 841 and 842;

(2) any obstacles that have been encountered in the pursuit of those initiatives;

(3) any additional initiatives that have been proposed by other countries or international organizations to strengthen the implementation of IAEA safeguards;

(4) all activities of the Federal Government in support of the objectives set forth in sections 841 and 842; (5) any recommendations of the President on additional measures to enhance the effectiveness of IAEA safeguards; and

(6) any initiatives that the President plans to take in support of each of the objectives set forth in sections 841 and 842.

Sec. 844. Definitions.

As used in this part-

(1) the term "highly enriched uranium" means uranium enriched to 20 percent or more in the isotope U-35;

(2) the term "IAEA" means the International Atomic Energy Agency;

(3) the term "near real time material accountancy" means a method of accounting for the location, quantity, and disposition of special fissionable material at facilities that store or process such material, in which verification of peaceful use is continuously achieved by means of frequent physical inventories and the use of in-process instrumentation;

(4) the term "special fissionable material" has the meaning given that term by Article XX(1) of the Statute of the International Atomic Energy Agency, done at the Headquarters of the United Nations on October 26, 1956;

(5) the term "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968; and

(6) the terms "IAEA safeguards", "non-nuclear-weapon state", "nuclear explosive device", and "special nuclear material" have the meanings given those terms in section 830 of this Act.

22 USC 3201 note.

Part D-Termination

Sec. 851. Termination Upon Enactment Of Next Foreign Relations Act.

On the date of enactment of the first Foreign Relations Authorization Act that is enacted after the enactment of this Act, the provisions of parts A and B of this title shall cease to be effective, the amendments made by those parts shall be repealed, and any provision of law repealed by those parts shall be reenacted.

C. INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976

Public Law 94-329 **90 Stat. 729**

June 30, 1976
An Act

To amend the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International Security Assistance and Arms Export Control Act of 1976.

That this Act may be cited as the "International Security Assistance and Arms Export Control Act of 1976."

Title II

Sec. 38. Control of Arms Exports and Imports

22 USC 2778.

(a) Presidential Control of Exports and Imports of Defense Articles and Services, Guidance of Policy, Etc.; Designation of United States Munitions List; Issuance of Export Licenses; Condition for Export; Negotiations Information

(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreement or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this Chapter as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services; exceptions.

(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the united States Government acting in an official capacity) who engages in the

business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(1)(A)(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of brokering activities with respect to the manufacturing, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(1)(A)(ii)(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(1)(A)(ii)(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this Act, except that no license shall be required for such activities undertaken by or for an agency of the United States Government–

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(1)(A)(ii)(IV) For purposes of this clause, the term" "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.[1]

(c) CRIMINAL VIOLATIONS; PUNISHMENT

Any person who willfully violates any provision of this section or section 2779 of this Title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to

[1]As amended by P.L. 105-277, Div G, Title XII, Ch. 3, section 1225(a)(2), (112 Stat. 2681).

state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than ten years, or both.

(d) REPEALED. PUB. L. 96-70, Title III, section 3303(a)(4), SEPT. 27, 1979, 93 STAT. 499.

(e) ENFORCEMENT POWERS OF PRESIDENT.

In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979 [50 App. USC 2410(c), (d), (e), and (g)], and by subsections (a) and (c) of section 12 of such Act [50 App. USC 2411(a) and (c)], subject to the same terms and conditions as are applicable to such powers under such Act [50 App. USC 2401 et seq.]. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(g)[2] IDENTIFICATION OF PERSONS CONVICTED OR SUBJECT TO INDICTMENT FOR VIOLATIONS OF CERTAIN PROVISION

(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section–

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under–

(i) this section,

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 USC 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(xi) section 603 (b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 USC 5113(b) and (c));

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines–

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government, the President may disapprove the application. The President shall consider

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[2]Pub. L. 99-64 substituted (g) for (f).

requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person–

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government, except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection–

(A) the term "foreign corporation" means a corporation that is not incorporated in the United States;

(B) the term "foreign government" includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term "foreign person" means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and includes foreign corporations, international organizations, and foreign governments;

(D) the term "party to the export" means–

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.[3]

22 USC 2778a. EXPORTATION OF URANIUM DEPLETED IN THE ISOTOPE 235.–

Upon finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 [42 USC 2011 et seq.] and of the Nuclear Non-Proliferation Act of 1978 [22 USC 3201 et seq.] when such exports are subject to the controls established under the Arms Export Control Act [22 USC 2751 et seq.] or the Export Administration Act of 1979 [50 App. USC 2401 et seq][4]

Codification

Section was enacted as part of the International Security and Development Cooperation Act of 1980, and not as part of the Arms Export Control Act which comprises this Chapter.

Amendments

1987 - Subsec. (b)(1). Pub. L. 100-204, w 1255(b), designated existing provisions as subparagraph (A) and added subparagraph (B) relating to review by Secretary of the Treasury of munitions control registrations.

Pub. L. 100-202 designated existing provisions as subparagraph (A) and added subparagraph (B) relating to allowance of return to United States of certain military firearms, etc., under certain circumstances.

Subsec. (b) (3). Pub. L. 100-204, section 1255(c), added par. (3). Subsec. (g).

1985 - Subsec. (c), Pub. L. 99-83, section 119(a), inserted "for each violation" before "not more" and substituted "$1,000,000" for $100,000" and "ten" for "two."

Subsec. (e). Pub. L. 99-83, section 119(b), inserted provisions relating to civil penalty for each violation.

1981 - Subsec. (b)(3), Pub. L. 97-113, section 106, struck out par. (3), which placed a $100,000,000 ceiling on commercial arms exports of

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[3]Pub. L. 90-629, ch. 3, section 38, as added Pub. L. 94-329, Title II, section212(a) (1), June 30, 1976, 90 Stat. 744, and amended Pub. L. 95-92, section 20, Aug. 4, 1977, 91 Stat. 623; Pub. L. 96-70, Title III, section 3303(a)(4), Sept. 27, 1979, 93 Stat. 499; Pub. L. 96-72, section 22(a), Sept. 29, 1979, 93 Stat. 535; Pub. L. 96-92, section 21, Oct. 29, 1979, 93 Stat. 710; Pub. L. 96-533, Title I, section 107(a), (c), Dec. 16, 1980, 94 Stat. 3136; Pub. L. 97-113, Title I sections 106, 107, Dec. 29, 1981, 95 Stat. 1522; Pub. L. 99-64, Title I, section 123(a), July 12, 1985, 99 Stat. 156; Pub. L. 99-83, Title I, section 119(a), (b), Aug. 8, 1985, 99 Stat. 203, 204; Pub. L. 100-202, section 101(b) [Title VIII section 8142(a)], Dec. 22, 1987, 101 Stat. 1329-43, 1329-88; Pub. L. 100-204, Title XII. section 1255, Dec. 22, 1987, 101 Stat 1429; Pub. L. 101-222 sections 3(a), b, Dec. 12 1989, 103 Stat. 1896, 1899.)

[4]Pub. L. 96-533, Title I, section 110, Dec. 16, 1980. 94 Stat. 3138.

major defense equipment to all countries other than NATO countries, Japan, Australia, and New Zealand.

Subsec. (f), Pub. L. 97-113, section 107, added subsec. (f).

1980 - Subsec. (a)(3). Pub. L. 96-533, section 107(c), added para. (3).

Subsec. (b)(3). Pub. L. 96-533, section 107(a), increased the limitation in the sale of major defense equipment exports to $100,000,000 from $35,000,000.

1979 - Subsec. (b) (3), Pub. L. 96-92 increased the limitation in the sale of major defense equipment exports to $35,000,000 from $25,000,000.

Subsec. (d). Pub. L. 96-70 struck out subsec. (d), which provided that this section applies to and within the Canal Zone.

Subsec. (e). Pub. L. 96-72 substituted "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act" for "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969."

1977 - Subsec. (b)(3). Pub. L. 95-92 added provisions relating to exceptions to prohibitions against issuance of licenses under this section and procedures applicable for implementation of such exceptions.

TITLE III–GENERAL LIMITATIONS

Sec. 669. Nuclear Enrichment and Reprocessing Transfers: Nuclear Detonations

22 USC 2304 note.
22 USC 2429.
22 USC 2751 note.
Assistance, agreements and safeguards.

Nuclear Enrichment Transfers.[5]–(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance (including assistance under Chapter 4 of Part II)[6] providing military assistance or grant military education and training, providing assistance under Chapter 6 of Part II,[7] or extending military credits or making guarantees, to any country which, on or after the date of enactment of the International Security Assistance Act of 1977, delivers nuclear enrichment equipment, materials, or technology to any other country, or receives such equipment, materials, or technology from any other country, unless before such delivery–

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

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[5]Public Law 95-92 (91 Stat. 620) (1977) section 12, struck out old section 669 and inserted new section 669. Before amendment, old section 669 read as follows:

Section 669. NUCLEAR TRANSFERS.-(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of--

(1) providing economic assistance;

(2) providing military or security supporting assistance or military education and training; or

(3) extending military credits or making guarantees; to any country which--

(A) delivers nuclear reprocessing or enrichment equipment, materials, or technology to any other country, or

(B) receives such equipment, materials or technology from any other country; unless before such delivery--

(i) the supplying country and receiving country have reached agreement to place all such equipment, materials, and technology, upon delivery, under multilateral auspices and management when available; and

(ii) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) (1) Notwithstanding the provisions of subsection (a) of this section, the President may, by Executive Order effective not less than 30 days following its date of promulgation, furnish assistance which would otherwise be prohibited under paragraph (1), (2), or (3) of such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that--

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and (b) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2) (A) The Congress may by join resolution terminate or restrict assistance described in paragraphs (1) through (3) of subsection (a) with respect to a country to which the prohibition in such subsection applies or take any other action with respect to such assistance for such country as it deems appropriate.

(B) Any such joint resolution with respect to a country shall, if introduced within 30 days after the transmittal of a certification under paragraph (1) with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

[6]Public Law 95-384 (92 Stat. 734) (1978) section 534(a)(4), added the words "(including assistance under Chapter 4 of Part II)" and striking "or security supporting."

[7]Public Law 95-384 (92 Stat. 734) (1978) section 554(3), added the words: providing assistance under Chapter 6 of Part 11.

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

Presidential certification transmittal to Speaker of the House and congressional committee.

(b) (1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that–

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so. Such certification shall set forth the reasons supporting such determination in each particular case.

Joint resolution.

(2) Any joint resolution which would terminate or restrict assistance described in subsection (a) with respect to a country to which the prohibition in such subsection applies shall, if introduced within thirty days after the transmittal of a certification under paragraph (1) of this subsection with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

Sec. 670. Nuclear Reprocessing Transfers And Nuclear Detonations

22 USC 2429a.

(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance, (including assistance under Chapter 4 of Part II) providing military or security supporting assistance or grant military education and training, providing assistance under Chapter 6 of Part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977–

(1) delivers nuclear reprocessing equipment, materials, or technology to any other country or receives such equipment, materials, or technology from any other country (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, or technologies which are alternatives to pure plutonium reprocessing); or

(2) is not a nuclear-weapon state as defined in Article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons and which detonates a nuclear explosive device.

Presidential certification, submitted to Speaker of the House and congressional committee.

(b) (1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

Joint resolution.

(2) Any joint resolution which would terminate or restrict assistance described in subsection (a) with respect to a country to which the prohibition in such subsection applies shall, if introduced within thirty days after the transmittal of a certification under paragraph (1) of this subsection with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.[8]

[8]Public Law 95-92 (91 Stat. 620) (1977) section 12, added new section 670.

D. INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1980

Public Law 96-533 **94 Stat. 3131**

December 16, 1980

An Act

To authorize appropriations for the fiscal year 1981 for international security and development assistance, the Peace Corps, and refugee assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

22 USC 2151 note. International Security and Development Cooperation Act of 1980.

This Act may be cited as the "International Security and Development Cooperation Act of 1980."

Title I–Military And Related Assistance And Sales Programs

Sec. 110. Exportation of Uranium Depleted in the Isotope 235

22 USC 2751 note. 22 USC 2778a. 22 USC 3201 note. 42 USC 2011 note.

Upon a finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 and of the Nuclear Non-Proliferation Act of 1978 when such exports are subject to the controls established under the arms Export Control Act or the Export Administration Act of 1979.

E. INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1981

Public Law 97-113 **95 Stat. 1519**

December 29, 1981

An Act

To authorize appropriations for the fiscal years 1982 and 1983 for international security and development assistance and for the Peace Corps, to establish the Peace Corps as an autonomous agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

22 USC 2151 note. International Security and Development Cooperation Act of 1981.

This Act may be cited as the "International Security and Development Cooperation Act of 1981.

Title VII–Miscellaneous Provisions

Sec. 735. Report on Nuclear Activities

22 USC 2429a-1. Report to Congress.

Beginning with the fiscal year 1983 and for each fiscal year thereafter, the President shall prepare and transmit to the Congress, as part of the presentation materials for foreign assistance programs proposed for that fiscal year, a classified report describing the nuclear programs and related activities of any country for which a waiver of section 669 or 670 of the Foreign Assistance Act of 1961 is in effect, including an assessment of--

22 USC 2429.
22 USC 2429a.

(1) the extent and effectiveness of International Atomic Energy Agency safeguards at that country's nuclear facilities; and

(2) the capability, actions, and intentions of the government of that country with respect to the manufacture or acquisition of a nuclear explosive device.

Sec. 737. Prohibitions Relating to Nuclear Transfers and Nuclear Detonations

22 USC 2429a note.

(a) The Congress finds that any transfer of a nuclear explosive device to a non-nuclear-weapon state or, in the case of a non-nuclear-weapon state, any receipt or detonation of a nuclear explosive device would cause grave damage to bilateral relations between the United States and that country.

22 USC 2429.

(b) Section 669(b)(2) of the Foreign Assistance Act of 1961 is amended to read as follows:

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress adopts a concurrent resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the adoption of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any concurrent resolution under this paragraph shall be considered in the Senate in accordance with the provisions of

section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) For the purpose of expediting the consideration and adoption of concurrent resolutions under this paragraph, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

22 USC 2429a.

(c) Section 670 of such Act is amended to read as follows:

Sec. 670. Nuclear Reprocessing Transfers, Transfers Of Nuclear Explosive Devices, And Nuclear Detonations

22 USC 2151 note.
22 USC 2346.
22 USC 2348.
22 USC 2751 note.

(a)(1) Except as provided in paragraph (2) of this subsection, no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance (including assistance under Chapter 4 of Part II), providing military assistance or grant military education and training, providing assistance under of Part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977 delivers nuclear reprocessing equipment, materials or technology to any other country or receives such equipment, materials, or technology from any other country (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing).

Transmittal of certification to Congress.

(2) Notwithstanding paragraph (1) of this subsection, the President may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

Congressional disapproval.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress adopts a concurrent resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the adoption of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any concurrent resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) For the purpose of expediting the consideration and adoption of concurrent resolutions under this paragraph, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose of providing economic assistance (including assistance under Chapter 4 of Part II), providing military assistance or grant military education and training, providing assistance under Chapter 6 of Part II, or extending military credits or making guarantees, to any country which on or after the date of enactment of the International Security Assistance Act of 1977–

22 USC 2346.
22 USC 2458.
22 USC 2751 note.
22 USC 2151 note.

(A) transfers a nuclear explosive device to a non-nuclear-weapon state, or

(B) is a non-nuclear-weapon state and either–

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device.

Transmittal of certification to Congress.

(2)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, furnish assistance which would otherwise be prohibited under paragraph (1) of this subsection if, before furnishing such assistance, the President transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate termination of assistance to that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (3) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate and House of Representatives in accordance with subparagraphs (C) and (D) of this paragraph.

(C) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(D) For the purpose of expediting the consideration and adoption of joint resolutions under this paragraph, a motion to proceed to the consideration of such a joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

Joint resolution.

(E) For purposes of this paragraph, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress having received on a certification by the President under section 670(b)(2) of the Foreign Assistance Act of 1961 with respect to _____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 670(b)(3) of that Act," with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

22 USC 2429a.

Transmittal of certification to Congress.

(3) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (2) of this subsection, the President may furnish assistance which would

otherwise be prohibited under paragraph (1) if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(4) For purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

Non-nuclear weapon State. See 21 USC 483.

(5) As used in this subsection, the term "non-nuclear-weapon state" means any country which is not a nuclear-weapon state, as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

F. FOREIGN OPERATIONS APPROPRIATIONS (IRAQ SANCTIONS)

Public Law 101-513 **104 Stat. 2047**

November 5, 1990

Title V- Iraq Sanctions Act Of 1990

* * * *

Sec. 586. Short Title.

Iraq Sanctions Act of 1990.

Sections 586 through 586J of this Act may be cited as the 'Iraq Sanctions Act of 1990'.

Sec. 586A. Declarations Regarding Iraq's Invasion Of Kuwait.

The Congress–

(1) condemns Iraq's invasion of Kuwait on August 2, 1990;

(2) supports the actions that have been taken by the President in response to that invasion;

(3) calls for the immediate and unconditional withdrawal of Iraqi forces from Kuwait;

(4) supports the efforts of the United Nations Security Council to end this violation of international law and threat to international peace;

(5) supports the imposition and enforcement of multilateral sanctions against Iraq;

(6) calls on United States allies and other countries to support fully the efforts of the United Nations Security Council, and to take other appropriate actions, to bring about an end to Iraq's occupation of Kuwait; and

(7) condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.

Sec. 586B. Consultations With Congress.

President.

The President shall keep the Congress fully informed, and shall consult with the Congress, with respect to current and anticipated events regarding the international crisis caused by Iraq's invasion of Kuwait, including with respect to United States actions.

Sec. 586C. Trade Embargo Against Iraq.

President.

(a) CONTINUATION OF EMBARGO–Except as otherwise provided in this section, the President shall continue to impose the trade embargo and other economic sanctions with respect to Iraq and Kuwait that the United States is imposing, in response to Iraq's invasion of Kuwait, pursuant to Executive Orders Numbered 12724 and 12725 (August 9, 1990) and, to the extent they are still in effect, Executive Orders Numbered 12722 and 12723 (August 2, 1990). Notwithstanding any other provision of law, no funds, credits, guarantees, or insurance appropriated or otherwise made available by this or any other Act for fiscal year 1991 or any fiscal year thereafter shall be used to support or administer any financial or commercial operation of any United States Government department, agency, or other entity, or of any person subject to the

jurisdiction of the United States, for the benefit of the Government of Iraq, its agencies or instrumentalities, or any person working on behalf of the Government of Iraq, contrary to the trade embargo and other economic sanctions imposed in accordance with this section.

(b) HUMANITARIAN ASSISTANCE–To the extent that transactions involving foodstuffs or payments for foodstuffs are exempted 'in humanitarian circumstances' from the prohibitions established by the United States pursuant to United Nations Security Council Resolution 661 (1990), those exemptions shall be limited to foodstuffs that are to be provided consistent with United Nations Security Council Resolution 666 (1990) and other relevant Security Council resolutions.

(c) NOTICE TO CONGRESS OF EXCEPTIONS TO AND TERMINATION OF SANCTIONS–

(1) NOTICE OF REGULATIONS–Any regulations issued after the date of enactment of this Act with respect to the economic sanctions imposed with respect to Iraq and Kuwait by the United States under Executive Orders Numbered 12722 and 12723 (August 2, 1990) and Executive Orders Numbered 12724 and 12725 (August 9, 1990) shall be submitted to the Congress before those regulations take effect.

President.

(2) NOTICE OF TERMINATION OF SANCTIONS–The President shall notify the Congress at least 15 days before the termination, in whole or in part, of any sanction imposed with respect to Iraq or Kuwait pursuant to those Executive orders.

(d) Relation to Other Laws–

(1) SANCTIONS LEGISLATION–The sanctions that are described in subsection (a) are in addition to, and not in lieu of the sanctions provided for in section 586G of this Act or any other provision of law.

(2) NATIONAL EMERGENCIES AND UNITED NATIONS LEGISLATION–Nothing in this section supersedes any provision of the National Emergencies Act or any authority of the President under the International Emergency Economic Powers Act or section 5(a) of the United Nations Participation Act of 1945.

Sec. 586D. Compliance With United Nations Sanctions Against Iraq.

(a) DENIAL OF ASSISTANCE–None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including Title IV of Chapter 2 of Part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that–

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

(b) IMPORT SANCTIONS–If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the

United States of any or all products of any foreign country that has not prohibited–

(1) the importation of products of Iraq into its customs territory, and

(2) the export of its products to Iraq.

Sec. 586E. Penalties For Violations Of Embargo.

Notwithstanding section 206 of the International Emergency Economic Powers Act (50 USC 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 USC 287c(b))–

(1) a civil penalty of not to exceed $250,000 may be imposed on any person who, after the date of enactment of this Act, violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order; and

(2) whoever, after the date of enactment of this Act, willfully violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order–

(A) shall, upon conviction, be fined not more than $1,000,000, if a person other than a natural person; or

(B) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (2) may be punished by imposition of the fine or imprisonment (or both) specified in subparagraph (B) of that paragraph.

Sec. 586F. Declarations Regarding Iraq's Long–Standing Violations Of International Law.

(a) IRAQ'S VIOLATIONS OF INTERNATIONAL LAW–The Congress determines that–

(1) the Government of Iraq has demonstrated repeated and blatant disregard for its obligations under international law by violating the Charter of the United Nations, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925), as well as other international treaties;

(2) the Government of Iraq is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights and is obligated under the Covenants, as well as the Universal Declaration of Human Rights, to respect internationally recognized human rights;

(3) the State Department's Country Reports on Human Rights Practices for 1989 again characterizes Iraq's human rights record as abysmal";

(4) Amnesty International, Middle East Watch, and other independent human rights organizations have documented extensive, systematic, and continuing human rights abuses by the Government of Iraq, including summary executions, mass political killings, disappearances, widespread use of torture, arbitrary arrests and prolonged detention without trial of thousands of political opponents, forced relocation and deportation, denial of nearly all civil and

political rights such as freedom of association, assembly, speech, and the press, and the imprisonment, torture, and execution of children;

(5) since 1987, the Government of Iraq has intensified its severe repression of the Kurdish minority of Iraq, deliberately destroyed more than 3,000 villages and towns in the Kurdish regions, and forcibly expelled more than 500,000 people, thus effectively depopulating the rural areas of Iraqi Kurdistan;

(6) Iraq has blatantly violated international law by initiating use of chemical weapons in the Iran-Iraq war;

(7) Iraq has also violated international law by using chemical weapons against its own Kurdish citizens, resulting in tens of thousands of deaths and more than 65,000 refugees;

Saddam Hussein.

(8) Iraq continues to expand its chemical weapons capability, and President Saddam Hussein has threatened to use chemical weapons against other nations;

(9) persuasive evidence exists that Iraq is developing biological weapons in violation of international law;

(10) there are strong indications that Iraq has taken steps to produce nuclear weapons and has attempted to smuggle from the United States, in violation of United States law, components for triggering devices used in nuclear warheads whose manufacture would contravene the Treaty on the Non-Proliferation of Nuclear Weapons, to which Iraq is a party; and

Saddam Hussein.

(11) Iraqi President Saddam Hussein has threatened to use terrorism against other nations in violation of international law and has increased Iraq's support for the Palestine Liberation Organization and other Palestinian groups that have conducted terrorist acts.

(b) HUMAN RIGHTS VIOLATIONS–The Congress determines that the Government of Iraq is engaged in a consistent pattern of gross violations of internationally recognized human rights. All provisions of law that impose sanctions against a country whose government is engaged in a consistent pattern of gross violations of internationally recognized human rights shall be fully enforced against Iraq.

(c) SUPPORT FOR INTERNATIONAL TERRORISM–

(1) The Congress determines that Iraq is a country which has repeatedly provided support for acts of international terrorism, a country which grants sanctuary from prosecution to individuals or groups which have committed an act of international terrorism, and a country which otherwise supports international terrorism. The provisions of law specified in paragraph (2) and all other provisions of law that impose sanctions against a country which has repeatedly provided support for acts of international terrorism, which grants sanctuary from prosecution to an individual or group which has committed an act of international terrorism, or which otherwise supports international terrorism shall be fully enforced against Iraq.

(2) The provisions of law referred to in paragraph (1) are–

(A) section 40 of the Arms Export Control Act;

(B) section 620A of the Foreign Assistance Act of 1961;

(C) sections 555 and 556 of this Act (and the corresponding sections of predecessor foreign operations appropriations Acts); and

(D) section 555 of the International Security and Development Cooperation Act of 1985.

(d) MULTILATERAL COOPERATION–The Congress calls on the President to seek multilateral cooperation–

(1) to deny dangerous technologies to Iraq;

(2) to induce Iraq to respect internationally recognized human rights; and

(3) to induce Iraq to allow appropriate international humanitarian and human rights organizations to have access to Iraq and Kuwait, including the areas in northern Iraq traditionally inhabited by Kurds.

Sec. 586G. Sanctions Against Iraq.

(a) IMPOSITION–Except as provided in section 586H, the following sanctions shall apply with respect to Iraq:

(1) FMS SALES–The United States Government shall not enter into any sale with Iraq under the Arms Export Control Act.

(2) COMMERCIAL ARMS SALES- Licenses shall not be issued for the export to Iraq of any item on the United States Munitions List.

(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY–The authorities of section 6 of the Export Administration Act of 1979 (50 USC App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 USC App. 2404(c)(1)) on the control list provided for in section 4(b) of that Act (50 USC App. 2403(b)).

(4) Nuclear equipment, materials, and technology–

(A) NRC LICENSES–The Nuclear Regulatory Commission shall not issue any license or other authorization under the Atomic Energy Act of 1954 (42 USC 2011 and following) for the export to Iraq of any source or special nuclear material, any production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b. of the Atomic Energy Act of 1954 (42 USC 2139(b)), or any other material or technology requiring such a license or authorization.

(B) DISTRIBUTION OF NUCLEAR MATERIALS–The authority of the Atomic Energy Act of 1954 shall not be used to distribute any special nuclear material, source material, or byproduct material to Iraq.

(C) DOE AUTHORIZATIONS–The Secretary of Energy shall not provide a specific authorization under section 57b. (2) of the Atomic Energy Act of 1954(42 USC 2077(b)(2)) for any activity that would constitute directly or indirectly engaging in Iraq in activities that require a specific authorization under that section.

(5) ASSISTANCE FROM INTERNATIONAL FINANCIAL INSTITUTIONS–The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 USC 262d).

Credit.

(6) ASSISTANCE THROUGH THE EXPORT-IMPORT BANK–Credits and credit guarantees through the Export-Import Bank of the United States shall be denied to Iraq.

(7) ASSISTANCE THROUGH THE COMMODITY CREDIT CORPORATION–Credit, credit guarantees, and other assistance through the Commodity Credit Corporation shall be denied to Iraq.

(8) FOREIGN ASSISTANCE–All forms of assistance under the Foreign Assistance Act of 1961 (22 USC 2151 and following) other than emergency assistance for medical supplies and other forms of emergency humanitarian assistance, and under the Arms Export Control Act (22 U.S.C. 2751 and following) shall be denied to Iraq.

(b) CONTRACT SANCTITY–For purposes of the export controls imposed pursuant to subsection (a)(3), the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 USC App. 2405) shall be deemed to be August 1, 1990.

Sec. 586H. Waiver Authority.

(a) IN GENERAL–The President may waive the requirements of any paragraph of section 586G(a) if the President makes a certification under subsection (b) or subsection (c).

(b) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI POLICIES AND ACTIONS–The authority of subsection (a) may be exercised 60 days after the President certifies to the Congress that–

(1) the Government of Iraq–

(A) has demonstrated, through a pattern of conduct, substantial improvement in its respect for internationally recognized human rights;

(B) is not acquiring, developing, or manufacturing (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses; and

(C) does not provide support for international terrorism;

(2) the Government of Iraq is in substantial compliance with its obligations under international law, including–

(A) the Charter of the United Nations;

(B) the International Covenant on Civil and Political Rights (done at New York, December 16, 1966) and the International Covenant on Economic, Social, and Cultural Rights (done at New York, December 16, 1966);

(C) the Convention on the Prevention and Punishment of the Crime of Genocide (done at Paris, December 9, 1948);

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925);

(E) the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow, July 1, 1968); and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (done at Washington, London, and Moscow, April 10, 1972); and

(3) the President has determined that it is essential to the national interests of the United States to exercise the authority of subsection (a).

(c) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI LEADERSHIP AND POLICIES–The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that–

(1) there has been a fundamental change in the leadership of the Government of Iraq; and

(2) the new Government of Iraq has provided reliable and credible assurance that–

(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

(C) it is not and will not provide support for international terrorism; and(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

(d) INFORMATION TO BE INCLUDED IN CERTIFICATIONS–Any certification under subsection (b) or (c) shall include the justification for each determination required by that subsection. The certification shall also specify which paragraphs of section 586G(a) the President will waive pursuant to that certification.

Sec. 586I. Denial Of Licenses For Certain Exports To Countries Assisting Iraq's Rocket Or Chemical, Biological, Or Nuclear Weapons Capability.

(a) RESTRICTION ON EXPORT LICENSES–None of the funds appropriated by this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines is assisting, or whose government officials the President determines are assisting, Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability.

(b) NEGOTIATIONS–The President is directed to begin immediate negotiations with those governments with which the United States has bilateral supercomputer agreements, including the Government of the United Kingdom and the Government of Japan, on conditions restricting the transfer to Iraq of supercomputer or associated technology.

Sec. 586J. Reports To Congress.

(a) STUDY AND REPORT ON THE INTERNATIONAL EXPORT TO IRAQ OF NUCLEAR, BIOLOGICAL, CHEMICAL, AND BALLISTIC MISSILE TECHNOLOGY–

(1) The President shall conduct a study on the sale, export, and third party transfer or development of nuclear, biological, chemical, and ballistic missile technology to or with Iraq including–

(A) an identification of specific countries, as well as companies and individuals, both foreign and domestic, engaged in such sale or export of, nuclear, biological, chemical, and ballistic missile technology;

(B) a detailed description and analysis of the international supply, information, support, and coproduction network,

individual, corporate, and state, responsible for Iraq's current capability in the area of nuclear, biological, chemical, and ballistic missile technology; and

(C) a recommendation of standards and procedures against which to measure and verify a decision of the Government of Iraq to terminate the development, production, coproduction, and deployment of nuclear, biological, chemical, and offensive ballistic missile technology as well as the destruction of all existing facilities associated with such technologies.

(2) The President shall include in the study required by paragraph (1) specific recommendations on new mechanisms, to include, but not be limited to, legal, political, economic and regulatory, whereby the United States might contribute, in conjunction with its friends, allies, and the international community, to the management, control, or elimination of the threat of nuclear, biological, chemical, and ballistic missile proliferation.

(3) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

(b) STUDY AND REPORT ON IRAQ'S OFFENSIVE MILITARY CAPABILITY–

(1) The President shall conduct a study on Iraq's offensive military capability and its effect on the Middle East balance of power including an assessment of Iraq's power projection capability, the prospects for another sustained conflict with Iran, joint Iraqi-Jordanian military cooperation, the threat Iraq's arms transfer activities pose to United States allies in the Middle East, and the extension of Iraq's political-military influence into Africa and Latin America.

(2) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1).

(c) REPORT ON SANCTIONS TAKEN BY OTHER NATIONS AGAINST IRAQ–

(1) The President shall prepare a report on the steps taken by other nations, both before and after the August 2, 1990, invasion of Kuwait, to curtail the export of goods, services, and technologies to Iraq which might contribute to, or enhance, Iraq's nuclear, biological, chemical, and ballistic missile capability.

(2) The President shall provide a complete accounting of international compliance with each of the sanctions resolutions adopted by the United Nations Security Council against Iraq since August 2, 1990, and shall list, by name, each country which to his knowledge, has provided any assistance to Iraq and the amount and type of that assistance in violation of each United Nations resolution.

(3) The President shall make every effort to encourage other nations, in whatever forum or context, to adopt sanctions toward Iraq similar to those contained in this section.

(4) Not later than every 6 months after the date of enactment of this Act, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

* * * *

G. EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT, 2003 (IRAQ SANCTIONS)

Public Law 108-11 **117 Stat. 579**

April 16, 2003
An Act

Making emergency wartime supplemental appropriations for the fiscal year 2003, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1503.

The President may suspend the application of any provision of the Iraq Sanctions Act of 1990: *Provided*, That nothing in this section shall affect the applicability of the Iran-Iraq Arms Non- Proliferation Act of 1992 (Public Law 102-484), except that such Act shall not apply to humanitarian assistance and supplies: *Provided further*, That the President may make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have supported terrorism: *Provided further*, That military equipment, as defined by Title XVI, section 1608(1)(A) of Public Law 102-484, shall not be exported under the authority of this section: *Provided further*, That section 307 of the Foreign Assistance Act of 1961 shall not apply with respect to programs of international organizations for Iraq: *Provided further*, That provisions of law that direct the United States Government to vote against or oppose loans or other uses of funds, including for financial or technical assistance, in international financial institutions for Iraq shall not be construed as applying to Iraq: *Provided further*, That the President shall submit a notification 5 days prior to

President. Notification.

exercising any of the authorities described in this section to the Committee on Appropriations of each House of the Congress, the Committee on Foreign Relations of the Senate, and the Committee on International Relations of the House of Representatives: *Provided further*, That not more than 60 days after enactment of this Act and every 90 days thereafter the President shall submit a report to the Committee on Appropriations of each House of the Congress, the Committee on Foreign Relations of the Senate, and the Committee on International Relations of the House of Representatives containing a summary of all licenses approved for export to Iraq of any item on the Commerce Control List contained in the Export Administration Regulations, 15 CFR Part 774, Supplement 1, including identification of end users of such items: *Provided further*, That the authorities contained in this section shall expire on September 30, 2004, or on the date of enactment of a subsequent Act authorizing assistance for Iraq and that specifically amends, repeals or otherwise makes inapplicable the authorities of this section, whichever occurs first.

Deadlines. President. Reports.

Expiration date.

* * * *

H. MEMORANDUM FOR THE SECRETARY OF STATE SUSPENDING THE IRAQ SANCTIONS ACT

For Immediate Release
Office of the Press Secretary
May 7, 2003

Memorandum for the Secretary of State
Presidential Determination
No. 2003-23

THE SECRETARY OF COMMERCE

SUBJECT: Suspending the Iraq Sanctions Act, Making Inapplicable Certain Statutory Provisions Related to Iraq, and Delegating Authorities, under the Emergency Wartime Supplemental Appropriations Act, 2003

By virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 1503 and 1504 of the Emergency Wartime Supplemental Act, 2003, Public Law 108-11 (the "Act"), and section 301 of Title 3, United States Code, I hereby:

(1) suspend the application of all of the provisions, other than section 586E, of the Iraq Sanctions Act of 1990, Public Law 101-513, and

(2) make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, Public Law 87-195, as amended (the "FAA"), and any other provision of law that applies to countries that have supported terrorism.

In addition, I delegate the functions and authorities conferred upon the President by:

(1) section 1503 of the Act to submit reports to the designated committees of the Congress to the Secretary of Commerce, or until such time as the principal licensing responsibility for the export to Iraq of items on the Commerce Control List has reverted to the Department of Commerce, to the Secretary of the Treasury; and,

(2) section 1504 of the Act to the Secretary of State.

The functions and authorities delegated herein may be further delegated and redelegated to the extent consistent with applicable law.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

GEORGE W. BUSH

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I. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (IRAN-IRAQ ARMS NON-PROLIFERATION OF 1992)

Public Law 102-484 **106 Stat. 2571**

October 23, 1992

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Division A –Title XVI

* * * *

Title XVI–Iran-Iraq Arms Non-Proliferation Act Of 1992

Sec. 1601. Short Title.

Iran–Iraq Arms Non–Proliferation Act of 1992. 50 USC 1701 note.

This Title may be cited as the "Iran–Iraq Arms Non–Proliferation Act of 1992".

Sec. 1602. United States Policy.

(a) IN GENERAL–It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

President.

(b) SANCTIONS–

(1) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Chapter 7 of the Arms Export Control Act, and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) PUBLIC IDENTIFICATION–The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

Sec. 1603. Application To Iran Of Certain Iraq Sanctions.

The sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101-513), including denial of export licenses for United States persons and prohibitions on United States Government sales, shall be applied to the same extent and in the same manner with respect to Iran.

Sec. 1604. Sanctions Against Certain Persons.

(a) PROHIBITION–If any person transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by

Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) MANDATORY SANCTIONS–The sanctions to be imposed pursuant to subsection (a) are as follows:

(1) PROCUREMENT SANCTION–For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.

(2) EXPORT SANCTION- For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

Sec. 1605. Sanctions Against Certain Foreign Countries.

President.

(a) PROHIBITION–If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons, then–

(1) the sanctions described in subsection (b) shall be imposed on such country; and

(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c).

(b) MANDATORY SANCTIONS- Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows:

(1) SUSPENSION OF UNITED STATES ASSISTANCE–The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country.

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE–The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country.

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS–The United States shall suspend, for a period of one year, compliance with its obligations under any memorandum of understanding with the sanctioned country for the codevelopment or coproduction of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part.

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS–The United States shall suspend, for a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual-use technology between the United States and the sanctioned country that does not directly contribute to the security of the United States,

and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period.

(5) UNITED STATES MUNITIONS LIST–No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctioned country for a period of one year.

(c) DISCRETIONARY SANCTION–The sanction referred to in subsection (a)(2) is as follows:

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT–Except as provided in paragraph (2), the President may exercise, in accordance with the provisions of that Act, the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country.

(2) EXCEPTION–Paragraph (1) does not apply with respect to urgent humanitarian assistance.

Sec. 1606. Waiver.

President. The President may waive the requirement to impose a sanction described in section 1603, in the case of Iran, or a sanction described in section 1604(b) or 1605(b), in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and detailed rationale for such determination.

Sec. 1607. Reporting Requirement.

President. (a) ANNUAL REPORT–Beginning one year after the date of the enactment of this Act, and every 12 months thereafter, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report detailing–

(1) all transfers or retransfers made by any person or foreign government during the preceding 12-month period which are subject to any sanction under this Title; and

(2) the actions the President intends to undertake or has undertaken pursuant to this Title with respect to each such transfer.

(b) REPORT ON INDIVIDUAL TRANSFERS–Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this Title, the President shall, within 30 days after such transfer, submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report–

(1) identifying the person or government and providing the details of the transfer; and

(2) describing the actions the President intends to undertake or has undertaken under the provisions of this Title with respect to each such transfer.

(c) FORM OF TRANSMITTAL–Reports required by this section may be submitted in classified as well as in unclassified form.

Sec. 1608. Definitions.

For purposes of this Title:

(1) The term "advanced conventional weapons" includes–

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways;

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this Title.

(2) The term "cruise missile" means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag.

(3) The term "goods or technology" means–

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data.

(4) The term "person" means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries.

(5) The term "sanctioned country" means a country against which sanctions are required to be imposed pursuant to section 1605.

(6) The term "sanctioned person" means a person that makes a transfer described in section 1604(a).

(7) The term "United States assistance" means–

(A) any assistance under the Foreign Assistance Act of 1961, other than–

(i) urgent humanitarian assistance or medicine, and

(ii) assistance under Chapter 11 of Part I (as enacted by the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992);

(B) sales and assistance under the Arms Export Control Act;

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and

(D) financing under the Export-Import Bank Act.

J. NORTH KOREA THREAT REDUCTION (SUBTITLE B)

Public Law 106-113 **113 Stat. 1501–472**

November 29, 1999

An Act

making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

* * * *

Sec. 821. Short Title.

This subtitle may be cited as the "North Korea Threat Reduction Act of 1999"

Sec. 822. Restrictions On Nuclear Cooperation With North Korea.

(a) IN GENERAL.–Notwithstanding any other provision of law or any international agreement, no agreement for cooperation (as defined in section 11b. of the Atomic Energy Act of 1954 (42 USC 2014 b.)) between the United States and North Korea may become effective, no license may be issued for export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement, and no approval may be given for the transfer or retransfer directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement, until the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that–

(1) North Korea has come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), and has taken all steps that have been deemed necessary by the IAEA in this regard;

(2) North Korea has permitted the IAEA full access to all additional sites and all information (including historical records) deemed necessary by the IAEA to verify the accuracy and completeness of North Korea's initial report of May 4, 1992, to the IAEA on all nuclear sites and material in North Korea;

(3) North Korea is in full compliance with its obligations under the Agreed Framework;

(4) North Korea has consistently taken steps to implement the Joint Declaration on Denuclearization, and is in full compliance with its obligations under numbered paragraphs 1, 2, and 3 of the Joint Declaration on Denuclearization (excluding in the case of numbered paragraph 3 facilities frozen pursuant to the Agreed Framework);

(5) North Korea does not have uranium enrichment or nuclear reprocessing facilities (excluding facilities frozen pursuant to the Agreed Framework), and is making no significant progress toward acquiring or developing such facilities;

(6) North Korea does not have nuclear weapons and is making no significant effort to acquire, develop, test, produce, or deploy such weapons; and

(7) the transfer to North Korea of key nuclear components, under the proposed agreement for cooperation with North Korea and in

accordance with the Agreed Framework, is in the national interest of the United States.

(b) CONSTRUCTION.–The restrictions contained in subsection (a) shall apply in addition to all other applicable procedures, requirements, and restrictions contained in the Atomic Energy Act of 1954 and other laws.

Sec. 823. Definitions.

In this subtitle:

(1) AGREED FRAMEWORK.–The term "Agreed Framework" means the "Agreed Framework Between the United States of America and the Democratic People's Republic of Korea", signed in Geneva on October 21, 1994, and the Confidential Minute to that Agreement.

(2) IAEA.–The term "IAEA" means the International Atomic Energy Agency.

(3) NORTH KOREA.–The term "North Korea" means the Democratic People's Republic of Korea.

(4) JOINT DECLARATION ON DENUCLEARIZATION.–The term "Joint Declaration on Denuclearization" means the Joint Declaration on the Denuclearization of the Korean Peninsula, issued by the Republic of Korea and the Democratic People's Republic of Korea on January 1, 1992.

* * * *

K. IRAN NONPROLIFERATION ACT OF 2000

Public Law 106-178 **114 Stat. 38**

March 14, 2000
An Act

to provide for the application of measures to foreign persons who transfer to Iran certain goods, services, or technology, and for other purposes.

Iran Nonproliferation Act of 2000.
Arms and munitions.
Weapons.
50 USC 1701

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title.

This Act may be cited as the "Iran and Syria Nonproliferation Act".[1]

President

Sec. 2. Reports On Proliferation Relating To Iran And Syria.[2]

(a) REPORTS.–The President shall, at the times specified in subsection (b), submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after January 1, 1999, transferred to or acquired from Iran, or on or after January 1, 2005, transferred to or acquired from Syria–[3]

(1) goods, services, or technology listed on–

(A) the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/ Rev.3/ Part 1, and subsequent revisions) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/ Rev.3/ Part 2, and subsequent revisions);

(B) the Missile Technology Control Regime Equipment and Technology Annex of June 11, 1996, and subsequent revisions;

(C) the lists of items and substances relating to biological and chemical weapons the export of which is controlled by the Australia Group;

(D) the Schedule One or Schedule Two list of toxic chemicals and precursors the export of which is controlled pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; or

(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list of July 12, 1996, and subsequent revisions; or

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[1] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (e)(1) struck out "Iran Nonproliferation Act of 2000" and substituted "Iran and Syria Nonproliferation Act".

[2] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (a)(1) struck out "TO IRAN" and substituted "RELATING TO IRAN AND SYRIA".

[3] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (a)(2)(A) inserted "or acquired from" and "or on or after January 1, 2005, transferred to or acquired from Syria".

(2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran or Syria, as the case may be,[4] because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems.

Deadline.

(b) TIMING OF REPORTS.–The reports under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act, not later than 6 months after such date of enactment, and not later than the end of each 6-month period thereafter.

(c) EXCEPTIONS.–Any foreign person who–

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer; or

(2) has engaged in a transfer on behalf of, or in concert with, the Government of the United States, is not required to be identified on account of that same transfer in any report submitted thereafter under this section, except to the degree that new information has emerged indicating that the particular transfer may have continued, or been larger, more significant, or different in nature than previously reported under this section.

(d) Submission in Classified Form.--When the President considers it appropriate, reports submitted under subsection (a), or appropriate parts thereof, may be submitted in classified form.

Sec. 3. Application Of Measures To Certain Foreign Persons.

(a) APPLICATION OF MEASURES.–Subject to sections 4 and 5, the President is authorized to apply with respect to each foreign person identified in a report submitted pursuant to section 2(a), for such period of time as he may determine, any or all of the measures described in subsection (b).

(b) DESCRIPTION OF MEASURES.–The measures referred to in subsection (a) are the following:

(1) EXECUTIVE ORDER NO. 12938 PROHIBITIONS.–The measures set forth in subsections (b) and (c) of section 4 of Executive Order No. 12938.

(2) ARMS EXPORT PROHIBITION.–Prohibition on United States Government sales to that foreign person of any item on the United States Munitions List as in effect on August 8, 1995, and termination of sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(3) DUAL USE EXPORT PROHIBITION.–Denial of licenses and suspension of existing licenses for the transfer to that person of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) EFFECTIVE DATE OF MEASURES.–Measures applied pursuant to subsection (a) shall be effective with respect to a foreign person no later than–

(1) 90 days after the report identifying the foreign person is submitted, if the report is submitted on or before the date required by section 2(b);

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[4] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (a)(2)(B) inserted "or Syria, as the case may be,".

(2) 90 days after the date required by section 2(b) for submitting the report, if the report identifying the foreign person is submitted within 60 days after that date; or

(3) on the date that the report identifying the foreign person is submitted, if that report is submitted more than 60 days after the date required by section 2(b).

(d) PUBLICATION IN FEDERAL REGISTER.–The application of measures to a foreign person pursuant to subsection (a) shall be announced by notice published in the Federal Register.

Sec. 4. Procedures If Measures Are Not Applied.

(a) REQUIREMENT TO NOTIFY CONGRESS.–Should the President not exercise the authority of section 3(a) to apply any or all of the measures described in section 3(b) with respect to a foreign person identified in a report submitted pursuant to section 2(a), he shall so notify the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate no later than the effective date under section 3(c) for measures with respect to that person.

(b) WRITTEN JUSTIFICATION.–Any notification submitted by the President under subsection (a) shall include a written justification describing in detail the facts and circumstances relating specifically to the foreign person identified in a report submitted pursuant to section 2(a) that support the President's decision not to exercise the authority of section 3(a) with respect to that person.

(c) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, the notification of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

Sec. 5. Determination Exempting Foreign Person From Sections 3 And 4.

(a) IN GENERAL.–Sections 3 and 4 shall not apply to a foreign person 15 days after the President reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the President has determined, on the basis of information provided by that person, or otherwise obtained by the President, that–

(1) the person did not, on or after January 1, 1999, knowingly transfer to or acquire from Iran or Syria, as the case may be,[5] the goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a);

(2) the goods, services, or technology the transfer of which caused that person to be identified in a report submitted pursuant to section 2(a) did not materially contribute to the efforts of Iran or Syria, as the case may be,[6] to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems;

(3) the person is subject to the primary jurisdiction of a government that is an adherent to one or more relevant

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[5] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (b)(1) struck out "transfer to Iran" and inserted "transfer to or acquire from Iran or Syria, as the case may be,".

[6] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (b)(2) struck out "Iran's efforts" and inserted "the efforts of Iran or Syria, as the case may be,".

nonproliferation regimes, the person was identified in a report submitted pursuant to section 2(a) with respect to a transfer of goods, services, or technology described in section 2(a)(1), and such transfer was made consistent with the guidelines and parameters of all such relevant regimes of which such government is an adherent; or

(4) the government with primary jurisdiction over the person has imposed meaningful penalties on that person on account of the transfer of the goods, services, or technology which caused that person to be identified in a report submitted pursuant to section 2(a).

(b) OPPORTUNITY TO PROVIDE INFORMATION.–Congress urges the President–

(1) in every appropriate case, to contact in a timely fashion each foreign person identified in each report submitted pursuant to section 2(a), or the government with primary jurisdiction over such person, in order to afford such person, or governments, the opportunity to provide explanatory, exculpatory, or other additional information with respect to the transfer that caused such person to be identified in a report submitted pursuant to section 2(a); and

(2) to exercise the authority in subsection (a) in all cases where information obtained from a foreign person identified in a report submitted pursuant to section 2(a), or from the government with primary jurisdiction over such person, establishes that the exercise of such authority is warranted.

(c) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, the determination and report of the President under subsection (a), or appropriate parts thereof, may be submitted in classified form.

Sec. 6. Restriction On Extraordinary Payments In Connection With The International Space Station.

Russian Federation. President.

(a) RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.–Notwithstanding any other provision of law, no agency of the United States Government may make extraordinary payments in connection with the International Space Station to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any other organization, entity, or element of the Government of the Russian Federation, unless, during the fiscal year in which the extraordinary payments in connection with the International Space Station are to be made, the President has made the determination described in subsection (b), and reported such determination to the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate.

(b) DETERMINATION REGARDING RUSSIAN COOPERATION IN PREVENTING PROLIFERATION RELATING TO IRAN OR SYRIA.[7]–The determination referred to in subsection (a) is a determination by the President that–

[7] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (c)(1) struck out "to Iran" and inserted "RELATING TO IRAN OR SYRIA".

(1) it is the policy of the Government of the Russian Federation to oppose the proliferation to or from Iran and Syria of weapons of mass destruction and missile systems capable of delivering such weapons;

(2) the Government of the Russian Federation (including the law enforcement, export promotion, export control, and intelligence agencies of such government) has demonstrated and continues to demonstrate a sustained commitment to seek out and prevent the transfer to or from Iran and Syria[8] of goods, services, and technology that could make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems; and

(3) neither the Russian Aviation and Space Agency, nor any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, has, during the 1-year period prior to the date of the determination pursuant to this subsection, made transfers to or from Iran or Syria[9] reportable under section 2(a) of this Act (other than transfers with respect to which a determination pursuant to section 5 has been or will be made).

Deadline.

(c) PRIOR NOTIFICATION.–Not less than 5 days before making a determination under subsection (b), the President shall notify the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate of his intention to make such determination.

(d) WRITTEN JUSTIFICATION.–A determination of the President under subsection (b) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(e) SUBMISSION IN CLASSIFIED FORM.–When the President considers it appropriate, a determination of the President under subsection (b), a prior notification under subsection (c), and a written justification under subsection (d), or appropriate parts thereof, may be submitted in classified form.

(f) EXCEPTION FOR CREW SAFETY.–

(1) EXCEPTION.–The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency or any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency if the President has notified the Congress in writing that such payments are necessary to prevent the imminent loss of life by or grievous injury to individuals aboard the International Space Station.

Deadline.

(2) REPORT.–Not later than 30 days after notifying Congress that the National Aeronautics and Space Administration will make extraordinary payments under paragraph (1), the President shall submit to Congress a report describing–

(A) the extent to which the provisions of subsection (b) had been met as of the date of notification; and

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[8] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (c)(2) struck out "to Iran" in paragraphs 1 and 2 and inserted "to or from Iran and Syria".

[9] Public Law 109-112 (119 Stat. 2366) (2005) section 4 (c)(3) struck out "to Iran" and inserted "to or from Iran or Syria".

(B) the measures that the National Aeronautics and Space Administration is taking to ensure that–

(i) the conditions posing a threat of imminent loss of life by or grievous injury to individuals aboard the International Space Station necessitating the extraordinary payments are not repeated; and

(ii) it is no longer necessary to make extraordinary payments in order to prevent imminent loss of life by or grievous injury to individuals aboard the International Space Station.

(g) SERVICE MODULE EXCEPTION.–

(1) The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any subcontractor thereof for the construction, testing, preparation, delivery, launch, or maintenance of the Service Module, and for the purchase (at a total cost not to exceed $14,000,000) of the pressure dome for the Interim Control Module and the Androgynous Peripheral Docking Adapter and related hardware for the United States propulsion module, if–

(A) the President has notified Congress at least 5 days before making such payments;

(B) no report has been made under section 2 with respect to an activity of the entity to receive such payment, and the President has no credible information of any activity that would require such a report; and

(C) the United States will receive goods or services of value to the United States commensurate with the value of the extraordinary payments made.

(2) For purposes of this subsection, the term "maintenance" means activities which cannot be performed by the National Aeronautics and Space Administration and which must be performed in order for the Service Module to provide environmental control, life support, and orbital maintenance functions which cannot be performed by an alternative means at the time of payment.

Termination date.

(3) This subsection shall cease to be effective 60 days after a United States propulsion module is in place at the International Space Station.

(h) EXCEPTION.–Notwithstanding subsections (a) and (b), no agency of the United States Government may make extraordinary payments in connection with the International Space Station, or any other payments in connection with the International Space Station,[10] to any foreign person subject to measures applied pursuant to–

(1) section 3 of this Act; or

(2) section 4 of Executive Order No. 12938 (November 14, 1994), as amended by Executive Order No. 13094 (July 28, 1998).

[10] Amended by Public Law 109-112 (119 Stat. 2366) (2005) section 3 (b).

Such payments shall also not be made to any other entity if the agency of the United States Government anticipates that such payments will be passed on to such a foreign person.

(i) REPORT ON CERTAIN PAYMENTS RELATED TO INTERNATIONAL SPACE STATION.—

President.

(1) IN GENERAL.—The President shall, together with each report submitted under section 2(a), submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that identifies each Russian entity or person to whom the United States Government has, since the date of the enactment of the Iran Nonproliferation Amendments Act of 2005, made a payment in cash or in kind for work to be performed or services to be rendered under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

(2) CONTENT.—Each report submitted under paragraph (1) shall include—

(A) the specific purpose of each payment made to each entity or person identified in the report; and

(B) with respect to each such payment, the assessment of the President that the payment was not prejudicial to the achievement of the objectives of the United States Government to prevent the proliferation of ballistic or cruise missile systems in Iran and other countries that have repeatedly provided support for acts of international terrorism, is 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) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).[11]

Sec. 7. Definitions.

For purposes of this Act, the following terms have the following meanings:

(1) EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.–The term "extraordinary payments in connection with the International Space Station" means payments in cash or in kind made or to be made by the United States Government–.

(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

[11] Amended by Public Law 109-112 (119 Stat. 2366) (2005) section 3 (c).

(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date, except that such term does not mean payments in cash or in kind made or to be made by the United States Government prior to January 1, 2012, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.[12]

(2) FOREIGN PERSON; PERSON.–The terms "foreign person" and "person" mean–

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign government, including any foreign governmental entity; and[13]

(D) any successor, subunit, or subsidiary of any entity described in subparagraph (A), (B), or (C), including any entity in which any entity described in any such subparagraph owns a controlling interest.[14]

(3) EXECUTIVE ORDER NO. 12938. The term "Executive Order No. 12938" means Executive Order No. 12938 as in effect on January 1, 1999.

(4) ADHERENT TO RELEVANT NONPROLIFERATION REGIME.–A government is an "adherent" to a "relevant nonproliferation regime" if that government–

(A) is a member of the Nuclear Suppliers Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(A);

(B) is a member of the Missile Technology Control Regime with respect to a transfer of goods, services, or technology described in section 2(a)(1)(B), or is a party to a binding international agreement with the United States that was in effect on January 1, 1999, to control the transfer of such goods, services, or technology in accordance with the criteria and standards set forth in the Missile Technology Control Regime;

(C) is a member of the Australia Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(C);

(D) is a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical

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[12] Amended by Public Law 109-112 (119 Stat. 2366) (2005) section 3 (a).
[13] Amended by Public Law 109-112 (119 Stat. 2366) (2005) section 4 (d)(1).
[14] Amended by Public Law 109-112 (119 Stat. 2366) (2005) section 4 (d)(2).

Weapons and on Their Destruction with respect to a transfer of goods, services, or technology described in section 2(a)(1)(D); or

(E) is a member of the Wassenaar Arrangement with respect to a transfer of goods, services, or technology described in section 2(a)(1)(E).

(5) ORGANIZATION OR ENTITY UNDER THE JURISDICTION OR CONTROL OF THE RUSSIAN AVIATION AND SPACE AGENCY.–

(A) The term "organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency" means an organization or entity that–

(i) was made part of the Russian Space Agency upon its establishment on February 25, 1992;

(ii) was transferred to the Russian Space Agency by decree of the Russian Government on July 25, 1994, or May 12, 1998;

(iii) was or is transferred to the Russian Aviation and Space Agency or Russian Space Agency by decree of the Russian Government at any other time before, on, or after the date of the enactment of this Act; or

(iv) is a joint stock company in which the Russian Aviation and Space Agency or Russian Space Agency has at any time held controlling interest.

(B) Any organization or entity described in subparagraph (A) shall be deemed to be under the jurisdiction or control of the Russian Aviation and Space Agency regardless of whether–

(i) such organization or entity, after being part of or transferred to the Russian Aviation and Space Agency or Russian Space Agency, is removed from or transferred out of the Russian Aviation and Space Agency or Russian Space Agency; or

(ii) the Russian Aviation and Space Agency or Russian Space Agency, after holding a controlling interest in such organization or entity, divests its controlling interest.

L. HENRY J. HYDE UNITED STATES-INDIA PEACEFUL ATOMIC ENERGY COOPERATION ACT OF 2006 (TITLE 1)

Public Law 109-401
109th Congress

An Act

To exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I-- United States And India Nuclear Cooperation

22 USC 8001. **Sec. 101. Short Title.**

This title may be cited as the "Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006".

22 USC 8001. **Sec. 102. Sense Of Congress.**

It is the sense of Congress that—

(1) preventing the proliferation of nuclear weapons, other weapons of mass destruction, the means to produce them, and the means to deliver them are critical objectives for United States foreign policy;

(2) sustaining the Nuclear Non-Proliferation Treaty (NPT) and strengthening its implementation, particularly its verification and compliance, is the keystone of United States nonproliferation policy;

(3) the NPT has been a significant success in preventing the acquisition of nuclear weapons capabilities and maintaining a stable international security situation;

(4) countries that have never become a party to the NPT and remain outside that treaty's legal regime pose a potential challenge to the achievement of the overall goals of global nonproliferation, because those countries have not undertaken the NPT obligation to prohibit the spread of nuclear weapons capabilities;

(5) it is in the interest of the United States to the fullest extent possible to ensure that those countries that are not States Party to the NPT are responsible in the disposition of any nuclear technology they develop;

(6) it is in the interest of the United States to enter into an agreement for nuclear cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) with a country that has never been a State Party to the NPT if--

(A) the country has demonstrated responsible behavior with respect to the nonproliferation of technology related to nuclear weapons and the means to deliver them;

(B) the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent to that of the United States, and is working with the United States on key foreign policy initiatives related to nonproliferation;

(C) such cooperation induces the country to promulgate and implement substantially improved protections against the proliferation of technology related to nuclear weapons and the means to deliver them, and to refrain from actions that would further the development of its nuclear weapons program; and

(D) such cooperation will induce the country to give greater political and material support to the achievement of United States global and regional nonproliferation objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups that are seeking to acquire a nuclear weapons capability or other weapons of mass destruction capability and the means to deliver such weapons;

(7) the United States should continue its policy of engagement, collaboration, and exchanges with and between India and Pakistan;

(8) strong bilateral relations with India are in the national interest of the United States;

(9) the United States and India share common democratic values and the potential for increasing and sustained economic engagement;

(10) commerce in civil nuclear energy with India by the United States and other countries has the potential to benefit the people of all countries;

(11) such commerce also represents a significant change in United States policy regarding commerce with countries that are not States Party to the NPT, which remains the foundation of the international nonproliferation regime;

(12) any commerce in civil nuclear energy with India by the United States and other countries must be achieved in a manner that minimizes the risk of nuclear proliferation or regional arms races and maximizes India's adherence to international nonproliferation regimes, including, in particular, the guidelines of the Nuclear Suppliers Group (NSG); and

(13) the United States should not seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such exports are terminated under United States law.

22 USC 8002. **Sec. 103. Statements Of Policy.**

(a) In General.--The following shall be the policies of the United States:

(1) Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the NPT.

(2) Encourage States Party to the NPT to interpret the right to "develop research, production and use of nuclear energyfor peaceful purposes", as set forth in Article IV of the NPT, as being a right that applies only to the extent that it is consistent with the object and purpose of the NPT to prevent the spread of nuclear weapons and nuclear weapons capabilities, including by refraining from all nuclear cooperation with any State Party that the International Atomic Energy Agency (IAEA) determines is not in full compliance with its NPT obligations, including its safeguards obligations.

(3) Act in a manner fully consistent with the Guidelines for Nuclear Transfers and the Guidelines for Transfers of Nuclear-

Related Dual-Use Equipment, Materials, Software and Related Technology developed by the NSG, and decisions related to the those guidelines, and the rules and practices regarding NSG decision making.

(4) Strengthen the NSG guidelines and decisions concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved.

(5) Given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India.

(6) Seek to prevent the transfer to a country of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source if nuclear transfers to that country are suspended or terminated pursuant to this title, the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law.

(b) With Respect to South Asia.--The following shall be the policies of the United States with respect to South Asia:

India. Pakistan. People's Republic of China.

(1) Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China.

(2) Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the United States and India become parties.

(3) Secure India's--

(A) full participation in the Proliferation Security Initiative;

(B) formal commitment to the Statement of Interdiction Principles of such Initiative;

(C) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Control Lists of the Wassenaar Arrangement;

(D) demonstration of satisfactory progress toward implementing the decision described in subparagraph (C); and

(E) ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997.

(4) Secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction.

(5) Seek to halt the increase of nuclear weapon arsenals in South Asia and to promote their reduction and eventual elimination.

(6) Ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the United States except pursuant to the Congressional review procedures required under section 131 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2160 (f)).

(7) Pending implementation of the multilateral moratorium described in paragraph (1) or the treaty described in paragraph (2), encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.

(8) Ensure that any safeguards agreement or Additional Protocol to which India is a party with the IAEA can reliably safeguard any export or reexport to India of any nuclear materials and equipment.

(9) Ensure that the text and implementation of any agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) meet the requirements set forth in subsections a.(1) and a.(3) through a.(9) of such section.

(10) Any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.

22 USC 8003.

Sec. 104. Waiver Authority And Congressional Approval.

(a) In General.--If the President makes the determination described in subsection (b), the President may--

(1) exempt a proposed agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) from the requirement of subsection a.(2) of such section;

(2) waive the application of section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) with respect to exports to India; and

(3) waive with respect to India the application of--

(A) section 129 a.(1)(D) of the Atomic Energy Act of 1954 (42 U.S.C. 2158(a)(1)(D)); and

(B) section 129 of such Act (42 U.S.C. 2158) regarding any actions that occurred before July 18, 2005.

India.

(b) Determination by the President.--The determination referred to in subsection (a) is a determination by the President that the following actions have occurred:

(1) India has provided the United States and the IAEA with a credible plan to separate civil and military nuclear facilities, materials, and programs, and has filed a declaration regarding its civil facilities and materials with the IAEA.

(2) India and the IAEA have concluded all legal steps required prior to signature by the parties of an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programs as declared in the plan described in paragraph (1), including materials used in or produced through the use of India's civil nuclear facilities.

(3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear program.

(4) India is working actively with the United States for the early conclusion of a multilateral treaty on the cessation of the production of fissile materials for use in nuclear weapons or other nuclear explosive devices.

(5) India is working with and supporting United States and international efforts to prevent the spread of enrichment and reprocessing technology to any state that does not already possess full-scale, functioning enrichment or reprocessing plants.

(6) India is taking the necessary steps to secure nuclear and other sensitive materials and technology, including through--

(A) the enactment and effective enforcement of comprehensive export control legislation and regulations;

(B) harmonization of its export control laws, regulations, policies, and practices with the guidelines and practices of the Missile Technology Control Regime (MTCR) and the NSG; and

(C) adherence to the MTCR and the NSG in accordance with the procedures of those regimes for unilateral adherence.

(7) The NSG has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG.

(c) Submission to Congress.--

President. Reports.

(1) In general.--The President shall submit to the appropriate congressional committees the determination made pursuant to subsection (b), together with a report detailing the basis for the determination.

(2) Information to be included.--To the fullest extent available to the United States, the report referred to in paragraph (1) shall include the following information:

(A) A summary of the plan provided by India to the United States and the IAEA to separate India's civil and military nuclear facilities, materials, and programs, and the declaration made by India to the IAEA identifying India's civil facilities to be placed under IAEA safeguards, including an analysis of the credibility of such plan and declaration, together with copies of the plan and declaration.

(B) A summary of the agreement that has been entered into between India and the IAEA requiring the application of safeguards in accordance with IAEA practices to India's civil nuclear facilities as declared in the plan described in subparagraph (A), together with a copy of the agreement, and a description of the progress toward its full implementation.

(C) A summary of the progress made toward conclusion and implementation of an Additional Protocol between India and the IAEA, including a description of the scope of such Additional Protocol.

(D) A description of the steps that India is taking to work with the United States for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the United States has taken and will take to encourage India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty.

(E) A description of the steps India is taking to prevent the spread of nuclear-related technology, including enrichment and reprocessing technology or materials that can be used to acquire a nuclear weapons capability, as well as the support that India is providing to the United States to further United States objectives to restrict the spread of such technology.

(F) A description of the steps that India is taking to secure materials and technology applicable for the development, acquisition, or manufacture of weapons of mass destruction and the means to deliver such weapons through the application of comprehensive export control legislation and regulations, and through harmonization with and adherence to MTCR, NSG, Australia Group, and Wassenaar Arrangement guidelines, compliance with United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative.

(G) A description and assessment of the specific measures that India has taken to fully and actively participate in United States and international efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel and the means to deliver weapons of mass destruction.

(H) A description of the decision of the NSG relating to nuclear cooperation with India, including whether nuclear cooperation by the United States under an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is consistent with the decision, practices, and policies of the NSG.

(I) A description of the scope of peaceful cooperation envisioned by the United States and India that will be implemented under the agreement for nuclear cooperation, including whether such cooperation will include the provision of enrichment and reprocessing technology.

(J) A description of the steps taken to ensure that proposed United States civil nuclear cooperation with India will not in any way assist India's nuclear weapons program.

(d) Restrictions on Nuclear Transfers.--

(1) In general.--Pursuant to the obligations of the United States under Article I of the NPT, nothing in this title constitutes authority to carry out any civil nuclear cooperation between the United States and a country that is not a nuclear- weapon State Party to the NPT that would in any way assist, encourage, or induce that country to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices.

(2) NSG transfer guidelines.--Notwithstanding the entry into force of an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and pursuant to this title, no item subject to such agreement or subject to the transfer guidelines of the NSG, or to NSG decisions related thereto, may be transferred to India if such transfer would be inconsistent with the transfer guidelines of the NSG in effect on the date of the transfer.

(3) Termination of nuclear transfers to India.--

President.

(A) In general.-- Notwithstanding the entry into force of an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and pursuant to this title, and except as provided under subparagraph (B), exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if there is any materially significant transfer by an Indian person of--

(i) nuclear or nuclear-related material, equipment, or technology that is not consistent with NSG guidelines or decisions, or

(ii) ballistic missiles or missile-related equipment or technology that is not consistent with MTCR guidelines, unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.

(B) Exception.--The President may choose not to terminate exports of nuclear and nuclear-related material, equipment, and technology to India under subparagraph (A) if--

(i) the transfer covered under such subparagraph was made without the knowledge of the Government of India;

(ii) at the time of the transfer, either the Government of India did not own, control, or direct the Indian person that made the transfer or the Indian person that made the transfer is a natural person who acted without the knowledge of any entity described in subparagraph (B) or (C) of section 110(5); and

Certification.

(iii) the President certifies to the appropriate congressional committees that the Government of India has taken or is taking appropriate judicial or other enforcement actions against the Indian person with respect to such transfer.

(4) Exports, reexports, transfers, and retransfers to India related to enrichment, reprocessing, and heavy water production.--

(A) In general.--

(i) Nuclear regulatory commission.--The Nuclear Regulatory Commission may only issue licenses for the export or reexport to India of any equipment, components, or materials related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water if the requirements of subparagraph (B) are met.

(ii) Secretary of energy.--The Secretary of Energy may only issue authorizations for the transfer or retransfer to India of any equipment, materials, or technology related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water (including under the terms of a subsequent arrangement under section 131 of the Atomic Energy Act of 1954 (42 U.S.C. 2160)) if the requirements of subparagraph (B) are met.

(B) Requirements for approvals.--Exports, reexports, transfers, and retransfers referred to in subparagraph (A) may only be approved if--

(i) the end user--

(I) is a multinational facility participating in an IAEA-approved program to provide alternatives to national fuel cycle capabilities; or

(II) is a facility participating in, and the export, reexport, transfer, or retransfer is associated with, a bilateral or multinational program to develop a proliferation-resistant fuel cycle;

(ii) appropriate measures are in place at any facility referred to in clause (i) to ensure that no sensitive nuclear technology, as defined in section 4(5) of the Nuclear Nonproliferation Act of 1978 (22 U.S.C. 3203(5)), will be diverted to any person, site, facility, location, or program not under IAEA safeguards; and

President. (iii) the President determines that the export, reexport, transfer, or retransfer will not assist in the manufacture or acquisition of nuclear explosive devices or the production of fissile material for military purposes.

(5) Nuclear export accountability program.--

President. (A) In general.--The President shall ensure that all appropriate measures are taken to maintain accountability with respect to nuclear materials, equipment, and technology sold, leased, exported, or reexported to India so as to ensure—

(i) full implementation of the protections required under section 123 a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2153 (a)(1)); and

(ii) United States compliance with Article I of the NPT.

(B) Measures.--The measures taken pursuant to subparagraph (A) shall include the following:

(i) Obtaining and implementing assurances and conditions pursuant to the export licensing authorities of the Nuclear Regulatory Commission and the Department of Commerce and the authorizing authorities of the Department of Energy, including, as appropriate, conditions regarding end-use monitoring.

(ii) A detailed system of reporting and accounting for technology transfers, including any retransfers in India, authorized by the Department of Energy pursuant to section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)). Such system shall be capable of providing assurances that--

(I) the identified recipients of the nuclear technology are authorized to receive the nuclear technology;

(II) the nuclear technology identified for transfer will be used only for peaceful safeguarded nuclear activities and will not be used for any military or nuclear explosive purpose; and

(III) the nuclear technology identified for transfer will not be retransferred without the prior consent of the United States, and facilities, equipment, or materials derived through the use of transferred technology will not be transferred without the prior consent of the United States.

(iii) In the event the IAEA is unable to implement safeguards as required by an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), appropriate assurance that arrangements will be put in place expeditiously that are consistent with the requirements of section 123 a.(1) of such Act (42 U.S.C. 2153(a)(1)) regarding the maintenance of safeguards as set forth in the agreement regardless of whether the agreement is terminated or suspended for any reason.

(C) Implementation.--The measures described in subparagraph (B) shall be implemented to provide reasonable assurances that the recipient is complying with the relevant requirements, terms, and conditions of any licenses issued by the United States regarding such exports, including those relating to the use, retransfer, safe handling, secure transit, and storage of such exports.

(e) Joint Resolution of Approval Requirement.--Section 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) is amended in the second proviso by inserting after "that subsection" the following: ", 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,".

(f) Sunset.--The authority provided under subsection (a)(1) to exempt an agreement shall terminate upon the enactment of a joint resolution under section 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) approving such an agreement.

(g) Reporting to Congress.--

President. (1) Information on nuclear activities of India.--The President shall keep the appropriate congressional committees fully and currently informed of the facts and implications of any significant nuclear activities of India, including--

(A) any material noncompliance on the part of the Government of India with--

(i) the nonproliferation commitments undertaken in the Joint Statement of July 18, 2005, between the President of the United States and the Prime Minister of India;

(ii) the separation plan presented in the national parliament of India on March 7, 2006, and in greater detail on May 11, 2006;

(iii) a safeguards agreement between the Government of India and the IAEA;

(iv) an Additional Protocol between the Government of India and the IAEA;

(v) an agreement for cooperation between the Government of India and the United States Government arranged pursuant to section 123 of the Atomic Energy Act

of 1954 (42 U.S.C. 2153) or any subsequent arrangement under section 131 of such Act (42 U.S.C. 2160);

(vi) the terms and conditions of any approved licenses regarding the export or reexport of nuclear material or dual-use material, equipment, or technology; and

(vii) United States laws and regulations regarding such licenses;

(B) the construction of a nuclear facility in India after the date of the enactment of this title;

(C) significant changes in the production by India of nuclear weapons or in the types or amounts of fissile material produced; and

(D) changes in the purpose or operational status of any unsafeguarded nuclear fuel cycle activities in India.

President. (2) Implementation and compliance report.--Not later than 180 days after the date on which an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) enters into force, and annually thereafter, the President shall submit to the appropriate congressional committees a report including--

(A) a description of any additional nuclear facilities and nuclear materials that the Government of India has placed or intends to place under IAEA safeguards;

(B) a comprehensive listing of--

(i) all licenses that have been approved by the Nuclear Regulatory Commission and the Secretary of Energy for exports and reexports to India under parts 110 and 810 of title 10, Code of Federal Regulations;

(ii) any licenses approved by the Department of Commerce for the export or reexport to India of commodities, related technology, and software which are controlled for nuclear nonproliferation reasons on the Nuclear Referral List of the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulation, or any successor regulation;

(iii) any other United States authorizations for the export or reexport to India of nuclear materials and equipment; and

(iv) with respect to each such license or other form of authorization described in clauses (i), (ii), and (iii)--

(I) the number or other identifying information of each license or authorization;

(II) the name or names of the authorized end user or end users;

(III) the name of the site, facility, or location in India to which the export or reexport was made;

(IV) the terms and conditions included on such licenses and authorizations;

(V) any post-shipment verification procedures that will be applied to such exports or reexports; and

(VI) the term of validity of each such license or authorization;

(C) a description of any significant nuclear commerce between India and other countries, including any such trade that--

(i) is not consistent with applicable guidelines or decisions of the NSG; or

(ii) would not meet the standards applied to exports or reexports of such material, equipment, or technology of United States origin;

(D) either--

(i) an assessment that India is in full compliance with the commitments and obligations contained in the agreements and other documents referenced in clauses (i) through (vi) of paragraph (1)(A); or

(ii) an identification and analysis of all compliance issues arising with regard to the adherence by India to its commitments and obligations, including--

(I) the measures the United States Government has taken to remedy or otherwise respond to such compliance issues;

(II) the responses of the Government of India to such measures;

(III) the measures the United States Government plans to take to this end in the coming year; and

(IV) an assessment of the implications of any continued noncompliance, including whether nuclear commerce with India remains in the national security interest of the United States;

(E)(i) an assessment of whether India is fully and actively participating in United States and international efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability (including the capability to enrich uranium or reprocess nuclear fuel), and the means to deliver weapons of mass destruction, including a description of the specific measures that India has taken in this regard; and

(ii) if India is not assessed to be fully and actively participating in such efforts, a description of--

(I) the measures the United States Government has taken to secure India's full and active participation in such efforts;

(II) the responses of the Government of India to such measures; and

(III) the measures the United States Government plans to take in the coming year to secure India's full and active participation;

(F) an analysis of whether United States civil nuclear cooperation with India is in any way assisting India's nuclear weapons program, including through--

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex;

(ii) the replication and subsequent use of any United States technology by India in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and

(iii) the provision of nuclear fuel in such a manner as to facilitate the increased production by India of highly enriched uranium or plutonium in unsafeguarded nuclear facilities;

(G) a detailed description of--

(i) United States efforts to promote national or regional progress by India and Pakistan in disclosing, securing, limiting, and reducing their fissile material stockpiles, including stockpiles for military purposes, pending creation of a worldwide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty;

(ii) the responses of India and Pakistan to such efforts; and

(iii) assistance that the United States is providing, or would be able to provide, to India and Pakistan to promote the objectives in clause (i), consistent with its obligations under international law and existing agreements;

(H) an estimate of--

(i) the amount of uranium mined and milled in India during the previous year;

(ii) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices; and

(iii) the rate of production in India of--

(I) fissile material for nuclear explosive devices; and

(II) nuclear explosive devices;

(I) an estimate of the amount of electricity India's nuclear reactors produced for civil purposes during the previous year and the proportion of such production that can be attributed to India's declared civil reactors;

(J) an analysis as to whether imported uranium has affected the rate of production in India of nuclear explosive devices;

(K) a detailed description of efforts and progress made toward the achievement of India's--

(i) full participation in the Proliferation Security Initiative;

(ii) formal commitment to the Statement of Interdiction Principles of such Initiative;

(iii) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Controls List of the Wassenaar Arrangement; and

(iv) effective implementation of the decision described in clause (iii); and

(L) the disposal during the previous year of spent nuclear fuel from India's civilian nuclear program, and any plans or activities relating to future disposal of such spent nuclear fuel.

(3) Submittal with other annual reports.--

(A) Report on proliferation prevention.--Each annual report submitted under paragraph (2) after the initial report may be submitted together with the annual report on proliferation prevention required under section 601(a) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)).

(B) Report on progress toward regional nonproliferation.--The information required to be submitted under paragraph (2)(F) after the initial report may be submitted together with the annual report on progress toward regional nonproliferation required under section 620F(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2376(c)).

(4) Form.--Each report submitted under this subsection shall be submitted in unclassified form, but may contain a classified annex.

22 USC 8004.

Sec. 105. United States Compliance With Its Nuclear Nonproliferation Treaty Obligations.

Nothing in this title constitutes authority for any action in violation of an obligation of the United States under the NPT.

President.

Sec. 106. Inoperability Of Determination And Waivers.

22 USC 8005.

A determination and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this title.

22 USC 8006.

Sec. 107. MTCR Adherent Status.

Congress finds that India is not an MTCR adherent for the purposes of section 73 of the Arms Export Control Act (22 U.S.C. 2797b).

Sec. 108. Technical Amendment.

Section 1112(c)(4) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106-113 and contained in appendix G of that Act; 113 Stat.

22 USC 2652c.

1501A-486)) is amended--

(1) in subparagraph (B), by striking "and" after the semicolon at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) so much of the reports required under section 104 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 as relates to verification or compliance matters; and".

22 USC 8007.

Sec. 109. United States-India Scientific Cooperative Nuclear Nonproliferation Program.

(a) Establishment.--The Secretary of Energy, acting through the Administrator of the National Nuclear Security Administration, is authorized to establish a cooperative nuclear nonproliferation program to pursue jointly with scientists from the United States and India a program

to further common nuclear nonproliferation goals, including scientific research and development efforts, with an emphasis on nuclear safeguards (in this section referred to as "the program").

(b) Consultation.--The program shall be carried out in consultation with the Secretary of State and the Secretary of Defense.

(c) National Academies Recommendations.--

Contracts.

(1) In general.--The Secretary of Energy shall enter into an agreement with the National Academies to develop recommendations for the implementation of the program.

(2) Recommendations.--The agreement entered into under paragraph (1) shall provide for the preparation by qualified individuals with relevant expertise and knowledge and the communication to the Secretary of Energy each fiscal year of--

(A) recommendations for research and related programs designed to overcome existing technological barriers to nuclear nonproliferation; and

(B) an assessment of whether activities and programs funded under this section are achieving the goals of the activities and programs.

(3) Public availability.--The recommendations and assessments prepared under this subsection shall be made publicly available.

(d) Consistency With Nuclear Non-Proliferation Treaty.--All United States activities related to the program shall be consistent with United States obligations under the Nuclear Non-Proliferation Treaty.

(e) Authorization of Appropriations.--There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2011.

22 USC 8008.

Sec. 110. Definitions.

In this title:

(1) The term "Additional Protocol" means a protocol additional to a safeguards agreement with the IAEA, as negotiated between a country and the IAEA based on a Model Additional Protocol as set forth in IAEA information circular

(INFCIRC) 540.

(2) The term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(3) The term "dual-use material, equipment, or technology" means material, equipment, or technology that may be used in nuclear or nonnuclear applications.

(4) The term "IAEA safeguards" has the meaning given the term in section 830(3) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6305(3)).

(5) The term "Indian person" means--

(A) a natural person that is a citizen of India or is subject to the jurisdiction of the Government of India;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of India or has its principal place of business in India; and

(C) any Indian governmental entity, including any governmental entity operating as a business enterprise.

(6) The terms "Missile Technology Control Regime", "MTCR", and "MTCR adherent" have the meanings given the terms in section 74 of the Arms Export Control Act (22 U.S.C. 2797c).

(7) The term "nuclear materials and equipment" means source material, special nuclear material, production and utilization facilities and any components thereof, and any other items or materials that are determined to have significance for nuclear explosive purposes pursuant to subsection 109 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2139(b)).

(8) The terms "Nuclear Non-Proliferation Treaty" and "NPT" mean the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (21 UST 483).

(9) The terms "Nuclear Suppliers Group" and "NSG" refer to a group, which met initially in 1975 and has met at least annually since 1992, of Participating Governments that have promulgated and agreed to adhere to Guidelines for Nuclear Transfers (currently IAEA INFCIRC/254/Rev.8/Part 1) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software, and Related Technology (currently IAEA INFCIRC/254/Rev.7/Part 2).

(10) The terms "nuclear weapon" and "nuclear explosive device" mean any device designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(11) The term "process" includes the term "reprocess".

(12) The terms "reprocessing" and "reprocess" refer to the separation of irradiated nuclear materials and fission products from spent nuclear fuel.

(13) The term "sensitive nuclear technology" means any information, including information incorporated in a production or utilization facility or important component part thereof, that is not available to the public and which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water.

(14) The term "source material" has the meaning given the term in section 11 z. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

(15) The term "special nuclear material" has the meaning given the term in section 11 aa. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

(16) The term "unsafeguarded nuclear fuel-cycle activity" means research on, or development, design, manufacture, construction, operation, or maintenance of--

(A) any existing or future reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, plant for the separation of isotopes of source or special fissionable material, or separate storage installation with respect to which there is no obligation to accept IAEA safeguards at the relevant reactor, facility, plant, or installation that contains source or special fissionable material; or

(B) any existing or future heavy water production plant with respect to which there is no obligation to accept IAEA safeguards on any nuclear material produced by or used in connection with any heavy water produced therefrom.

M. UNITED STATES-INDIA NUCLEAR COOPERATION APPROVAL AND NONPROLIFERATION ENHANCEMENT ACT

Public Law 110-369
110th Congress

An Act To approve the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title And Table Of Contents.

22 USC 8001. Note.

(a) SHORT TITLE.--This Act may be cited as the "United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act".

(b) TABLE OF CONTENTS.--The table of contents for this Act is as follows:

Sec. 2. Definitions.

In this Act:

(1) AGREEMENT.--The term "United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy" or "Agreement" means 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.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.--The term "appropriate congressional committees" means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

Title I--Approval Of United States-India Agreement For Cooperation On Peacful Uses Of Nuclear Energy

Sec. 101. Approval Of Agreement.

(a) IN GENERAL.--Notwithstanding the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153 (b) and (d)), Congress hereby approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, subject to subsection (b).

(b) APPLICABILITY OF ATOMIC ENERGY ACT OF 1954, HYDE ACT, AND OTHER PROVISIONS OF LAW.--The Agreement shall be subject to the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8001 et. seq; Public Law 109-401), and any other applicable United States law as if the Agreement had been approved pursuant to the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954.

(c) SUNSET OF EXEMPTION AUTHORITY UNDER HYDE ACT.--Section 104(f) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8003(f)) is amended by striking "the enactment of" and all that follows through "agreement" and inserting "the date of the enactment of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act".

Sec. 102. Declarations Of Policy; Certification Requirement; Rule Of Costrution.

(a) DECLARATIONS OF POLICY RELATING TO MEANING AND LEGAL EFFECT OF AGREEMENT.--Congress declares that it is the understanding of the United States that the provisions of the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy have the meanings conveyed in the authoritative representations provided by the President and his representatives to the Congress and its committees prior to September 20, 2008, regarding the meaning and legal effect of the Agreement.

(b) DECLARATIONS OF POLICY RELATING TO TRANSFER OF NUCLEAR EQUIPMENT, MATERIALS, AND TECHNOLOGY TO INDIA.--Congress makes the following declarations of policy:

(1) Pursuant to section 103(a)(6) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8002(a)(6)), in the event that nuclear transfers to India are suspended or terminated pursuant to title I of such Act (22 U.S.C. 8001 et seq.), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law, it is the policy of the United States to

seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the Nuclear Suppliers Group (NSG) or from any other source.

(2) Pursuant to section 103(b)(10) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8002(b)(10)), any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.

President. (c) CERTIFICATION REQUIREMENT.--Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to Congress that entry into force and implementation of the Agreement pursuant to its terms is consistent with the obligation of the United States under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the "Nuclear Non-Proliferation Treaty"), not in any way to assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices.

(d) RULE OF CONSTRUCTION.--Nothing in the Agreement shall be construed to supersede the legal requirements of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 or the Atomic Energy Act of 1954.

Sec. 103. Additional Protocol Between India And The IAEA.

Congress urges the Government of India to sign and adhere to an Additional Protocol with the International Atomic Energy Agency (IAEA), consistent with IAEA principles, practices, and policies, at the earliest possible date.

Sec. 104. Implementation Of Safeguards Agreement Between India And The IAEA.

President. Certification. Licenses may be issued by the Nuclear Regulatory Commission for transfers pursuant to the Agreement only after the President determines and certifies to Congress that--

(1) the Agreement Between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities, as approved by the Board of Governors of the International Atomic Energy Agency on August 1, 2008 (the "Safeguards Agreement"), has entered into force; and

(2) the Government of India has filed a declaration of facilities pursuant to paragraph 13 of the Safeguards Agreement that is not materially inconsistent with the facilities and schedule described in paragraph 14 of the separation plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the separation plan.

Sec. 105. Modified Reporting To Congress.

(a) INFORMATION ON NUCLEAR ACTIVITIES OF INDIA.--Subsection (g)(1) of section 104 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8003) is amended--

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(2) by inserting after subparagraph (A) the following new

subparagraph:

"(B) any material inconsistencies between the content or timeliness of notifications by the Government of India pursuant to paragraph 14(a) of the Safeguards Agreement and the facilities and schedule described in paragraph (14) of the separation plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the separation plan;".

(b) IMPLEMENTATION AND COMPLIANCE REPORT.--Subsection (g)(2) of such section is amended--

(1) in subparagraph (K)(iv), by striking "and" at the end;

(2) in subparagraph (L), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(M) with respect to the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy (hereinafter in this subparagraph referred to as the 'Agreement') approved under section 101(a) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act--

"(i) a listing of--

"(I) all provision of sensitive nuclear technology to India, and other such information as may be so designated by the United States or India under Article 1(Q); and

"(II) all facilities in India notified pursuant to Article 7(1) of the Agreement;

"(ii) a description of--

"(I) any agreed safeguards or any other form of verification for by-product material decided by mutual agreement pursuant to the terms of Article 1(A) of the Agreement;

"(II) research and development undertaken in such areas as may be agreed between the United States and India as detailed in Article 2(2)(a.) of the Agreement;

"(III) the civil nuclear cooperation activities undertaken under Article 2(2)(d.) of the Agreement;

"(IV) any United States efforts to help India develop a strategic reserve of nuclear fuel as called for in Article 2(2)(e.) of the Agreement;

"(V) any United States efforts to fulfill political commitments made in Article 5(6) of the Agreement;

"(VI) any negotiations that have occurred or are ongoing under Article 6(iii.) of the Agreement; and

"(VII) any transfers beyond the territorial jurisdiction of India pursuant to Article 7(2) of the Agreement, including a listing of the receiving country of each such transfer;

"(iii) an analysis of--

"(I) any instances in which the United States or

India requested consultations arising from concerns over compliance with the provisions of Article 7(1) of the Agreement, and the results of such consultations; and

"(II) any matters not otherwise identified in this report that have become the subject of consultations pursuant to Article 13(2) of the Agreement, and a statement as to whether such matters were resolved by the end of the reporting period; and

"(iv) a statement as to whether--

"(I) any consultations are expected to occur under Article 16(5) of the Agreement; and

"(II) any enrichment is being carried out pursuant to Article 6 of the Agreement.".

Title II--Strengthening United States Nonproliferation Law Relating To Peaceful Nuclear Cooperation

Sec. 201. Procedures Regarding A Subsequent Arrangement On Reprocessing.

(a) IN GENERAL.--Notwithstanding section 131 of the Atomic Energy Act of 1954 (42 U.S.C. 2160), no proposed subsequent arrangement concerning arrangements and procedures regarding reprocessing or other alteration in form or content, as provided for in Article 6 of the Agreement, shall take effect until the requirements specified in subsection (b) are met.

(b) REQUIREMENTS.--The requirements referred to in subsection (a) are the following:

President. Reports.

(1) The President transmits to the appropriate congressional committees a report containing--

(A) the reasons for entering into such proposed subsequent arrangement;

(B) a detailed description, including the text, of such proposed subsequent arrangement; and

(C) a certification that the United States will pursue efforts to ensure that any other nation that permits India to reprocess or otherwise alter in form or content nuclear material that the nation has transferred to India or nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment that it has transferred to India requires India to do so under similar arrangements and procedures.

Time period.

(2) A period of 30 days of continuous session (as defined by section 130 g. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (g)(2)) has elapsed after transmittal of the report required under paragraph (1).

(c) RESOLUTION OF DISAPPROVAL.--Notwithstanding the requirements in subsection (b) having been met, a subsequent arrangement referred to in subsection (a) shall not become effective if during the time specified in subsection (b)(2), Congress adopts, and there is enacted, a joint resolution stating in substance that Congress does not favor such subsequent arrangement. Any such resolution shall be considered pursuant

to the procedures set forth in section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (i)), as amended by section 205 of this Act.

Sec. 202. Initiatives And Negotiations Relating To Agreements For Peaceful Nuclear Cooperation.

Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is amended by adding at the end the following:

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).".

Sec. 203. Actions Required For Resumption Of Peaceful Nuclear Cooperation.

Section 129 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2158 (a)) is amended by striking "Congress adopts a concurrent resolution" and inserting "Congress adopts, and there is enacted, a joint resolution".

President. **Sec. 204. United States Government Policy At The Nuclear Suppliers Group To Strengthen The International Nuclear Nonproliferation Regime.**

(a) CERTIFICATION.--Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to the appropriate congressional committees that it is the policy of the United States to work with members of the Nuclear Suppliers Group (NSG), individually and collectively, to agree to further restrict the transfers of equipment and technology related to the enrichment of uranium and reprocessing of spent nuclear fuel.

(b) PEACEFUL USE ASSURANCES FOR CERTAIN BY-PRODUCT MATERIAL.--The President shall seek to achieve, by the earliest possible date, either within the NSG or with relevant NSG Participating Governments, the adoption of principles, reporting, and exchanges of information as may be appropriate to assure peaceful use and accounting of by-product material in a manner that is substantially equivalent to the relevant provisions of the Agreement.

(c) REPORT.--

(1) IN GENERAL.--Not later than six months after the date of the enactment of this Act, and every six months thereafter, the President shall transmit to the appropriate congressional committees a report on efforts by the United States pursuant to subsections (a) and (b).

(2) TERMINATION.--The requirement to transmit the report under paragraph (1) terminates on the date on which the President transmits a report pursuant to such paragraph stating that the objectives in subsections (a) and (b) have been achieved.

Sec. 205. Conforming Amendments.

Section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (i)) is amended--

(1) in paragraph (1), by striking "means a joint resolution" and all that follows through ", with the date" and inserting the following: "means--

"(A) for an agreement for cooperation pursuant to section 123 of this Act, 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_____.',

"(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"; and

(2) in paragraph (4)--

(A) by inserting after "45 days after its introduction" the following "(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)"; and

(B) by inserting after "45-day period" the following: "(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)".

16: Selected Treaties, Agreements and Implementing Legislation

16. Selected Treaties, Agreements, and Implementing Legislation

Contents

A. NUCLEAR NON-PROLIFERATION TREATY

Treaty on the Non-Proliferation of Nuclear Weapons

The States concluding this Treaty, hereinafter referred to as the "Parties to the Treaty",

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measurements to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities.

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States, to the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the cooperation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

ARTICLE I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

ARTICLE II

Each non-nuclear weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

ARTICLE III

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

ARTICLE IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty. 2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear- weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

ARTICLE V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

ARTICLE VI

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and compete disarmament under strict and effective international control.

ARTICLE VII

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

ARTICLE VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the

Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

ARTICLE IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

4. For States whose instruments of ratification of accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to article 102 of the Charter of the United Nations.

ARTICLE X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United National Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue to force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

ARTICLE XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly

certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.

DONE in triplicate, at the cities of Washington, London and Moscow, this first day of July one thousand nine hundred sixty-eight.

Table: Signature, Ratification, Acceptance, Approval or Accession by States or Organization

Country	Date of Signature	Date of Deposit of Ratification	Date of Deposit of Accession (A) or Successions (S)
Afghanistan*	7/1/68	2/4/70	
Albania**			9/12/90(A)
Algeria			1/12/95(A)
Andorra			6/07/96(A)
Angola			10/14/96(A)
Antigua and Barbuda			6/17/85(S)
Argentina			2/10/95(A)
Armenia			7/15/93(A)
Australia*	2/27/70	1/23/73	
Austria*	7/1/68	6/27/69	
Azerbaijan			9/22/92(A)
Bahamas, The			8/11/76(S)
Bahrain			11/3/88(A)
Bangladesh*			8/31/79(A)
Barbados	7/1/68	2/21/80	
Belarus			7/22/93(A)
Belgium*	8/20/68	5/2/75	
Belize			8/9/85(S)
Benin	7/1/68	10/31/72	
Bhutan*			5/23/85(A)
Bolivia	7/1/68	5/26/70	
Bosnia and Herzegovina			8/15/94(S)
Botswana	7/1/68	4/28/69	
Brazil			9/18/98(A)
Brunei*			3/26/85(A)
Bulgaria*	7/1/68	9/5/69	
Burkina Faso	11/25/68	3/3/70	
Burundi			3/19/71(A)
Cambodia			6/2/72(A)
Cameroon	7/17/68	1/8/69	
Canada*	7/23/68	1/8/69	
Cape Verde			10/24/79(A)
Central African Republic			10/25/70(A)
Chad	7/1/68	3/10/71	
Chile			5/25/95(A)
China			3/9/92(A)
Colombia**	7/1/68	4/8/86	
Comoros			10/4/95(A)
Congo			10/23/78(A)
Costa Rica*	7/1/68	3/3/70	
Cote d'Ivoire*	7/1/68	3/6/73	
Croatia			6/29/92(S)
Cuba			11/4/02(A)
Cyprus*	7/1/68	2/10/70	
Czech Republic			1/1/93(S)

Country	Date of Signature	Date of Deposit of Ratification	Date of Deposit of Accession (A) or Successions (S)
Democratic People's Republic of Korea (Withdrew from treaty 1/10/03; Effective 4/10/2003)			12/12/85(A)
Democratic Republic of the Congo (Formerly Zaire)*	7/22/68	8/4/70	
Denmark*	7/1/68	1/3/69	
Djibouti			10/16/96(A)
Dominica			8/10/84(S)
Dominican Republic*	7/1/68	7/24/71	
Ecuador*	7/9/68	3/7/69	
Egypt*	7/1/68	2/26/81[1]	
El Salvador*	7/1/68	7/11/72	
Equatorial Guinea			11/1/84(A)
Eritrea			3/3/95(A)
Estonia			1/7/92(A)
Ethiopia*	9/5/68	2/5/70	
Fiji*			7/14/72(S)
Finland*	7/1/68	2/5/69	
France			8/3/92(A)
Gabon			2/19/74(A)
Gambia*	9/4/68	5/12/75	
Georgia			3/7/94(A)
Germany*, Fed. Republic of	11/28/69	5/2/75 [1,2]	
Ghana*	7/1/68	5/4/70	
Greece*	7/1/68	3/11/70	
Grenada			9/2/75(S)
Guatemala*	7/26/68	9/22/70	
Guinea			4/29/85(A)
Guinea-Bissau			8/20/76(S)
Guyana			10/19/93(A)
Haiti	7/1/68	6/2/70	
Holy See*			2/25/71(A)[1]
Honduras*	7/1/68	5/16/73	
Hungary*, Republic of	7/1/68	5/27/69	
Iceland*	7/1/68	7/18/69	
Indonesia*	3/2/70	7/12/79[1]	
Iran*	7/1/68	2/2/70	
Iraq*	7/1/68	10/29/69	
Ireland*	7/1/68	7/1/68	
Italy*	1/28/69	5/2/75[1]	
Jamaica*	4/14/69	3/5/70	
Japan*	2/3/70	6/8/76[1]	
Jordan*	7/10/68	2/11/70	
Kazakhstan			2/14/94(A)
Kenya	7/1/68	6/11/70	
Kiribati			4/18/85(S)
Kuwait	8/15/68	11/17/89	
Kyrgyzstan			7/5/94(A)

Country	Date of Signature	Date of Deposit of Ratification	Date of Deposit of Accession (A) or Successions (S)
Laos	7/1/68	2/20/70	
Latvia			1/31/92(A)
Lebanon*	7/1/68	7/15/70	
Lesotho*	7/9/68	5/20/70	
Liberia	7/1/68	3/5/70	
Libya*	7/18/68	5/26/75	
Liechtenstein*			4/20/78(A)[1]
Lithuania			9/23/91(A)
Luxembourg*	8/14/68	5/2/75	
Madagascar*	8/22/68	10/8/70	
Malawi*			2/18/86(S)
Malaysia*	7/1/68	3/5/70	
Maldive Islands*	9/11/68	4/7/70	
Mali	7/14/69	2/10/70	
Malta*	4/17/69	2/6/70	
Marshall Islands			1/30/95(A)
Mauritania			10/26/93(A)
Mauritius*	7/1/68	4/8/69	
Mexico*	7/26/68	1/21/69[1]	
Micronesia			4/14/95(A)
Moldova			10/11/94(A)
Monaco			3/13/95(A)
Mongolia*	7/1/68	5/14/69	
Montenegro			6/3/06(A)
Morocco*	7/1/68	11/27/70	
Mozambique			9/4/90(A)
Myanmar (Burma)			12/2/92(A)
Namibia			10/2/92(A)
Nauru*			6/7/82(A)
Nepal*	7/1/68	1/5/70	
Netherlands*	8/20/68	5/2/75[3]	
New Zealand*	7/1/68	9/10/69	
Nicaragua*	7/1/68	3/6/73	
Niger			10/9/92(A)
Nigeria*	7/1/68	9/27/68	
Norway*	7/1/68	2/5/69	
Oman			1/23/97(A)
Palau			4/12/95(A)
Panama	7/1/68	1/13/77	
Papua New Guinea*			1/13/82(A)
Paraguay*	7/1/68	2/4/70	
Peru*	7/1/68	3/3/70	
Philippines*	7/1/68	10/5/72	
Poland*	7/1/68	6/12/69	
Portugal*			12/15/77(A)
Qatar			4/3/89(A)
Republic of Korea*	7/1/68	4/23/75	
Romania*	7/1/68	2/4/70	

Country	Date of Signature	Date of Deposit of Ratification	Date of Deposit of Accession (A) or Succession (S)
Russia[5]	7/1/68	3/5/70	
Rwanda			5/20/75(A)
St. Kitts and Nevis			3/22/93(S)
St. Lucia*			12/28/79(S)
St. Vincent and the Grenadines			11/6/84(S)
Samoa			3/17/1975(A)
San Marino	7/1/68	8/10/70	
Sao Tome and Principe			7/20/83(A)
Saudi Arabia			10/3/88(A)
Senegal*	7/1/68	12/17/70	
Serbia[8]			1/1/93; 9/5/01
Seychelles			3/12/85(A)
Sierra Leone			2/26/75(A)
Singapore*	2/5/70	3/10/76	
Slovakia			1/1/93(S)
Slovenia			4/7/92(S)
Solomon Islands			6/17/81(S)
Somalia	7 /1/68	3/5/70	
South Africa*			7/10/91(A)
Spain*			11/5/87(A)
Sri Lanka*	7/1/68	3/5/79	
Sudan*	12/24/68	10/31/73	
Suriname*			6/30/76(S)(b)
Swaziland*	6/24/69	12/11/69	
Sweden*	8/19/68	1/9/70	
Switzerland*	11/27/69	3/9/77[1]	
Syrian Arab Republic	7/1/68	9/24/69	
Taiwan[7]	7/1/68	1/27/70	
Tajikistan			1/17/95(A)
Tanzania			5/31/91(A)
Thailand*			12/2/72(A)
The Former Yugoslav Republic of Macedonia			4/12/95(A)
Timor-Leste			5/5/2003 (A)
Togo	7/1/68	2/26/70	
Tonga			7/7/71(S)
Trinidad and Tobago	8/20/68	10/30/86	
Tunisia*	7/1/68	2/26/70	
Turkey*	1/28/69	4/17/80 [1]	
Turkmenistan			9/29/94(A)
Tuvalu*			1/19/79(S)
Uganda			10/20/82(A)
Ukraine			12/5/94(A)
United Arab Emirates			9/26/95(A)
United Kingdom of Great Britain and Northern Ireland	7/1/68	11/27/68[4]	
United States	7/1/68	3/5/70	
Uruguay*	7/1/68	8/31/70	

Country	Date of Signature	Date of Deposit of Ratification	Date of Deposit of Accession (A) or Successions (S)
Uzbekistan*			5/2/92(A)
Vanuatu			8/26/95(A)
Venezuela*	7/1/68	9/25/75	
Vietnam*			6/14/82(A)
Yemen[6]	11/14/68	6/1/79	
Zambia			5/15/91(A)
Zimbabwe			9/26/91(A)

TOTAL: 191 (Total does not include, which has dissolved.)

* - Entries with asterisk have NPT safeguards agreements that have entered into force as of 10/31/92.

** - Non-NPT, full-scope safeguards agreement in force.

a - Dates given are the earliest dates on which a country signed the Treaty or deposited its instrument of ratification or accession–whether in Washington, London, or Moscow. In the case of a country that was a dependent territory which became a party through succession, the date given is the date on which the country gave notice that it would continue to be bound by the terms of the Treaty.

b - Effective 11/25/75.

[1] With Statement.

[2] The former German Democratic Republic, which united with the Federal Republic of Germany on 10/3/90, had signed the NPT on 7/1/68 and deposited its instrument of ratification on 10/31/69.

[3] Extended to Netherlands Antilles and Aruba.

[4] Extended to Aguilla and territories under the territorial sovereignty of the United Kingdom.

[5] Russia has given notice that it would continue to exercise the rights and fulfill the obligations of the former Soviet Union arising from the NPT.

[6] The Republic of Yemen resulted from the union of the Yemen Arab Republic and the People's Democratic Republic of Yemen. The table indicates the date of signature and ratification by the People's Democratic Republic of Yemen; the first of these two states to become a party to the NPT. The Yemen Arab Republic signed the NPT on 9/23/68 and deposited its instrument of ratification on 5/14/86.

[7] On 1/27/70, an instrument of ratification was deposited in the name of the Republic of China. Effective 1/1/79, the United States recognized the People's Republic of China as the sole legal government of China. The authorities on Taiwan state that they will continue to abide by the provisions of the Treaty and the United States regards them as bound by the obligations imposed by the Treaty.

[8] Effective date of succession to the Treaty by the Federal Republic of Yugoslavia is April 27, 1992; the former Socialist Federal Republic of Yugoslavia signed the Treaty on July 10, 1968 and deposited an instrument of ratification, with a declaration, on March 4, 1970 and 5 March 1970. The Federal Republic of Yugoslavia changed its name to Serbia and Montenegro on February 4, 2003.

April 15, 2009

B. THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

THE STATES PARTIES TO THIS CONVENTION,
RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,
CONVINCED of the need for facilitating international co-operation in the peaceful application of nuclear energy,
DESIRING to avert the potential dangers posed by the unlawful taking and use of nuclear material,
CONVINCED that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,
AWARE OF THE NEED FOR international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,
CONVINCED that this Convention should facilitate the safe transfer of nuclear material,
STRESSING also the importance of the physical protection of nuclear material in domestic use, storage and transport,
RECOGNIZING the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,
HAVE AGREED as follows:

Article 1

For the purposes of this Convention:

(a) "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

(b) "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(c) "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while

in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

(b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance; if requested;

(iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention form another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

Article 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft of robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or

(ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and

(g) an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases;

(a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is presented in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to Article 8 and, where appropriate, all other States concerned.

Article 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of Article 8.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary of five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

3. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

(a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.

(c) When becoming party to this Convention such an organization shall communicate to the depository a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty-first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to being not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for nay other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party any denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

(d) any communication made by an organization in accordance with paragraph 4(c) of article 18;

(e) the entry into force of this Convention;

(f) the entry into force of any amendment to this Convention; and

(g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

ANNEX 1

Levels of Physical Protection to be Applied in International Transport of Nuclear Materials as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

(a) For Category III materials, storage within an area to which access is controlled;

(b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate responses forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(c) For natural uranium other than in the form of ore or ore-residue; transportation protection for quantities exceeding 500 kilograms uranium shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II
TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III[1]
1. Plutonium[2]	Unirradiated[3]	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated[3]			
	•uranium enriched to 20% ^{235}U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	•uranium enriched to 10% ^{235}U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	•uranium enriched above natural, but less than 10% ^{235}U			10 kg or more
3. Uranium-233	Unirradiated[3]	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fossile content)[4] [5]	

[1]Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.
[2]All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
[3]Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metr unshielded.
[4]Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
[5]Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

Table: Convention On The Physical Protection Of Nuclear Material

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		Entry into Force
Afghanistan		acceded	12 Sep 2003	12 Oct 2003
Albania		acceded	05 Mar 2002	04 Apr 2002
Algeria		acceded	30 Apr 2003	03 May 2003
Andorra		acceded	27 Jun 2006	27 Jul 2006
Antigua & Barbuda		acceded	04 Aug 1993	03 Sep 1993
Argentina	28 Feb 1986	ratified	06 Apr 1989	06 May 1989
Armenia		acceded	24 Aug 1993	23 Sep 1993
Australia	22 Feb 1984	ratified	22 Sep 1987	22 Oct 1987
Austria[a]	03 Mar 1980	ratified	22 Dec 1988	21 Jan 1989
Azerbaijan		acceded	19 Jan 2004	18 Feb 2004
Bahamas		acceded	21 May 2008	20 Jun 2008
Bangladesh		acceded	11 May 2005	10 Jun 2005
Belarus		succession	09 Sep 1993	14 Jun 1993
Belgium[*,a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Bolivia		acceded	24 Jan 2002	23 Feb 2002
Bosnia and Herzegovina		succession	30 Jun 1998	01 Mar 1992
Botswana		acceded	19 Sep 2000	19 Oct 2000
Brazil	15 May 1981	ratified	17 Oct 1985	08 Feb 1987
Bulgaria	23 Jun 1981	ratified	10 Apr 1984	08 Feb 1987
Burkina Faso		acceded	13 Jan 2004	12 Feb 2004
Cambodia		acceded	04 Aug 2006	03 Sep 2006
Cameroon		acceded	29 Jun 2004	29 Jul 2004
Canada	23 Sep 1980	ratified	21 Mar 1986	08 Feb 1987
Cape Verde		acceded	23 Feb 2007	25 Mar 2007
Central African Republic		acceded	20 Feb 2008	21 Mar 2008
Chile		acceded	27 Apr 1994	27 May 1994
China		acceded	10 Jan 1989	09 Feb 1989
Columbia		acceded	28 Mar 2003	27 Apr 2003
Comoros		acceded	18 May 2007	17 Jun 2007
Costa Rica		acceded	02 May 2003	01 Jun 2003
Croatia		succession	29 Sep 1992	08 Oct 1991
Cuba		acceded	26 Sep 1997	26 Oct 1997
Cyprus		acceded	23 Jul 1998	22 Aug 1998
Czech Republic		succession	24 Mar 1993	01 Jan 1993
Democratic Rep. of the Congo		acceded	21 Sep 2004	21 Oct 2004
Denmark[*]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Djibouti		acceded	22 Jun 2004	22 Jul 2004
Dominica		acceded	08 Nov 2004	08 Dec 2004
Dominican Republic	03 Mar 1980			
Ecuador	26 Jun 1986	ratified	17 Jan 1996	16 Feb 1996

Table: Convention On The Physical Protection Of Nuclear Material

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		Entry into Force
El Salvador		acceded	15 Dec 2006	14 Jun 2007
Equatorial Guinea		acceded	24 Nov 2003	24 Dec 2003
Estonia		acceded	09 May 1994	08 Jun 1994
Fiji		acceded	23 May 2008	22 Jun 2008
Finland[a]	25 Jun 1981	accepted	22 Sep 1989	22 Oct 1989
France[*,a]	13 Jun 1980	approved	06 Sep 1991	06 Oct 1991
Gabon		acceded	19 Feb 2008	20 Mar 2008
Georgia		acceded	07 Sep 2006	07 Oct 2006
Germany[*,a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Ghana		acceded	16 Oct 2002	15 Nov 2002
Greece[*,a]	03 Mar 1980	ratified	06 Sep 1991	06 Oct 1991
Grenada		acceded	09 Jan 2002	08 Feb 2002
Guatemala	12 Mar 1980	ratified	23 Apr 1985	08 Feb 1987
Guinea		acceded	29 Nov 2005	29 Dec 2005
Guyana		acceded	13 Sep 2007	13 Oct 2007
Haiti	09 Apr 1980			
Honduras		acceded	28 Jan 2004	27 Feb 2004
Hungary	17 Jun 1980	ratified	04 May 1984	08 Feb 1987
Iceland		acceded	18 Jun 2002	18 Jul 2002
India		acceded	12 Mar 2002	11 Apr 2002
Indonesia	03 Jul 1986	ratified	05 Nov 1986	08 Feb 1987
Ireland[*,a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Israel	17 Jun 1983	ratified	22 Jan 2002	21 Feb 2002
Italy[*,a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Jamaica		acceded	16 Aug 2005	15 Sep 2005
Japan		acceded	28 Oct 1988	27 Nov 1988
Kazakhstan		acceded	02 Sep 2005	02 Oct 2005
Kenya		acceded	11 Feb 2002	13 Mar 2002
Korea, Republic of	29 Dec 1981	ratified	07 Apr 1982	08 Feb 1987
Kuwait		acceded	23 Apr 2004	23 May 2004
Latvia		acceded	06 Nov 2002	06 Dec 2002
Lebanon		acceded	16 Dec 1997	15 Jan 1998
Libyan Arab Jamahiriya		acceded	18 Oct 2000	17 Nov 2000
Liechtenstein	13 Jan 1986	ratified	25 Nov 1986	08 Feb 1987
Lithuania		acceded	07 Dec 1993	06 Jan 1994
Luxembourg[*,a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
Madagascar		acceded	28 Oct 2003	27 Nov 2003
Mali		acceded	07 May 2002	06 Jun 2002
Malta		acceded	16 Oct 2003	15 Nov 2003
Marshall Islands		acceded	07 Feb 2003	09 Mar 2003
Mauritania		acceded	29 Jan 2008	28 Feb 2008

Table: Convention On The Physical Protection Of Nuclear Material

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		Entry into Force
Mexico		acceded	04 Apr 1988	04 May 1988
Monaco		acceded	09 Aug 1996	08 Sep 1996
Mongolia	23 Jan 1986	ratified	28 May 1986	08 Feb 1987
Montenegro		succession	21 Mar 2007	03 Jun 2006
Morocco	25 Jul 1980	ratified	23 Aug 2002	22 Sep 2002
Mozambique		acceded	03 Mar 2003	02 Apr 2003
Namibia		acceded	02 Oct 2002	01 Nov 2002
Nauru		acceded	12 Aug 2005	11 Sep 2005
Netherlands[*,a]	13 Jun 1980	accepted	06 Sep 1991	06 Oct 1991
New Zealand		acceded	19 Dec 2003	18 Jan 2004
Nicaragua		acceded	10 Dec 2004	09 Jan 2005
Niger	07 Jan 1985	ratified	19 Aug 2004	18 Sep 2004
Nigeria		acceded	04 Apr 2007	04 May 2007
Norway[a]	26 Jan 1983	ratified	15 Aug 1985	08 Feb 1987
Oman		acceded	11 Jun 2003	11 Jul 2003
Pakistan		acceded	12 Sep 2000	12 Oct 2000
Palau		acceded	24 Apr 2007	24 May 2007
Panama	18 Mar 1980	ratified	01 Apr 1999	01 May 1999
Paraguay	21 May 1980	ratified	06 Feb 1985	08 Feb 1987
Peru		acceded	11 Jan 1995	10 Feb 1995
Philippines	19 May 1980	ratified	22 Sep 1981	08 Feb 1987
Poland	06 Aug 1980	ratified	05 Oct 1983	08 Feb 1987
Portugal[*,a]	19 Sep 1984	ratified	06 Sep 1991	06 Oct 1991
Qatar		acceded	09 Mar 2004	08 Apr 2004
Republic of Moldova		acceded	07 May 1998	06 Jun 1998
Romania	15 Jan 1981	ratified	23 Nov 1993	23 Dec 1993
Russian Federation	22 May 1980	ratified	25 May 1983	08 Feb 1987
Rwanda		acceded	28 Jun 2002	28 July 2002
Saint Kitts and Nevis		acceded	29 Aug 2008	28 Sep 2008
Senegal		acceded	03 Nov 2003	03 Dec 2003
Serbia	15 Jul 1980	succession	05 Feb 2002	27 Apr 1992
Seychelles		acceded	13 Aug 2003	12 Sep 2003
Slovakia		succession	10 Feb 1993	01 Jan 1993
Slovenia		succession	07 Jul 1992	25 Jun 1991
South Africa	18 May 1981	ratified	17 Sep 2007	17 Oct 2007
Spain[*,a]	07 Apr 1986	ratified	06 Sep 1991	06 Oct 1991
Sudan		acceded	18 May 2000	17 Jun 2000
Swaziland		acceded	17 Apr 2003	17 May 2003
Sweden[a]	02 Jul 1980	ratified	01 Aug 1980	08 Feb 1987
Switzerland[a]	09 Jan 1987	ratified	09 Jan 1987	08 Feb 1987
Tajikistan		acceded	11 Jul 1996	10 Aug 1996
The Frmr. Yug. Rep.				

Table: Convention On The Physical Protection Of Nuclear Material

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		Entry into Force
Macedonia		succession	20 Sep 1996	17 Nov 1991
Togo		acceded	07 Jun 2006	07 Jul 2006
Tonga		acceded	24 Jan 2003	23 Feb 2003
Trinidad and Tobago		acceded	25 Apr 2001	25 May 2001
Tunisia		acceded	08 Apr 1993	08 May 1993
Turkey	23 Aug 1983	ratified	27 Feb 1985	08 Feb 1987
Turkmenistan		acceded	07 Jan 2005	06 Feb 2005
Uganda		acceded	10 Dec 2003	10 Jan 2004
Ukraine		acceded	06 Jul 1993	05 Aug 1993
United Arab Emirates		acceded	16 Oct 2003	15 Nov 2003
United Kingdom*,[a]	13 Jun 1980	ratified	06 Sep 1991	06 Oct 1991
United Republic of Tanzania		acceded	24 May 2006	23 Jun 2006
United States of America	03 Mar 1980	ratified	13 Dec 1982	08 Feb 1987
Uruguay		acceded	24 Oct 2003	23 Nov 2003
Uzbekistan		acceded	09 Feb 1998	11 Mar 1998
Yemen		acceded	31 May 2007	30 Jun 2007
EURATOM[a]	13 Jun 1980	confirmed	06 Sep 1991	06 Oct 1991

*Signed/ratified as a EURATOM Member State.

[a]Deposited an objection to the declaration of Pakistan.

Notes: The Convention entered into force on 8 February 1987, *i.e.*, on the thirtieth day following the deposit of the twenty-first instrument of ratification, acceptance or approval with the Director General pursuant to Article 19, paragraph 1.

Status: 137 parties
45 signatories

Last change of status: 29 August 2008

C. CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL IMPLEMENTATION ACT OF 1982[1]

Public Law 97-351 **96 Stat. 1663**

October 18, 1982
An Act

To amend Title 18 of the United States Code to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

18 USC 831 note. Convention on the Physical Protection of Nuclear Material Implementation Act of 1982.

This Act may be cited as the "Convention on the Physical Protection of Nuclear Material Implementation Act of 1982."

Sec. 2. Implementation of Convention and Prohibition of Related Offenses

(a) Chapter 39 of Title 18 of the United States Code is amended by inserting after the table of sections at the beginning of such Chapter the following new section:

18 USC 831.

Sec. 831. Prohibited transactions involving nuclear materials

(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs–

(1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material for nuclear byproduct material and–

(A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property or to the environment; or

(B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;

(2) with intent to deprive another of nuclear material or nuclear byproduct material, knowingly–

(A) takes and carries away nuclear material or nuclear byproduct material of another without authority;

(B) makes an unauthorized uses, disposition, or transfer, of nuclear material or nuclear byproduct material belonging to another; or

(C) uses fraud and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(3) knowingly–

(A) uses force; or

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[1] Added October 15, 1982, Public Law 97–351, section 2(a), 96 Stat. 1663; November 18, 1988, Public Law 100–690, Title VII, Subtitle B, section 7022, 102 Stat. 4397; July 5, 1994, Public Law 103–272, section 5(e)(6), 108 Stat. 1374; September 13, 1994, Public Law 103–322, Title XXXIII, section 330016(2)(C), 108 Stat. 2148. As amended April 24, 1996, Public Law 104–132, Title V, Subtitle A, section 502, 110 Stat. 1282.

(B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material or nuclear byproduct material belonging to another from the person or presence of any other;

(4) intentionally intimidates any person and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;

(6) knowingly threatens to use nuclear material or nuclear byproduct material to cause death or serious bodily injury to any person or substantial damage to property or to the environment under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

(7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or

(8) is a party to a conspiracy of two of more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under–

(1) paragraphs (1) through (7) of subsection (a) of this section is–

(A) a fine under this Title; and

(B) imprisonment–

(i) for any term of years or for life

(I) if, while committing the offense, the offender knowingly causes the death of any person; or

(II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious body injury to any person; and

(ii) for not more than 20 years in any other case; and

(2) paragraph (8) of subsection (a) of this section is–

(A) a fine under this Title; and

(B) imprisonment–

(i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and

(ii) for not more than 10 years in any other case.

(c) The circumstances referred to in subsection (a) of this section are that–

(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the

special aircraft jurisdiction of the United States (as defined in section 46501 of Title 49);

(2) an offender or a victim is–

(A) a national of the United States; or

(B) a United States corporation or other legal entity;

(3) after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or

(4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material or nuclear byproduct mater by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States; or

(5) either–

(A) the governmental entity under subsection (a)(5) is the United States; or

(B) the threat under subsection (a)(6) is directed at the United States

10 USC 371 *et seq.*

(d) The Attorney General may request assistance from the Secretary of Defense under Chapter 18 of Title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with Chapter 18 of Title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.

18 USC 1385.

(e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this Title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if–

(A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and

(B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(2) As used in this subsection, the term "emergency situation" means a circumstance–

Emergency situation.

(A) that poses a serious threat to the interests of the United States; and

(B) in which–

(i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(3) Assistance under this section may include–

(A) use of personnel of the Department of Defense to arrest persons and conduct searches and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(4) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(5) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

Definitions.

(f) As used in this section–

(1) the term "nuclear material" means material containing any–

(A) plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(3) the term "international organization" means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22USC288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(4) the term "serious bodily injury" means bodily injury which involves–

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "bodily injury" means–

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of a function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

(6) the term "national of the United States" has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 USC 1101(a)(22)); and

(7) the term "United States corporation or other legal entity" means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.

D. CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT

Adopted September 26, 1986, Entered into Force October 27, 1986

THE STATES PARTIES TO THIS CONVENTION,

AWARE that nuclear activities are being carried out in a number of States,

NOTING THAT comprehensive measures have been and are being taken to ensure a high level of safety in nuclear activities, aimed at preventing nuclear accidents and minimizing the consequences of any such accident, should it occur,

DESIRING to strengthen further international co-operation on the safe development and use of nuclear energy,

CONVINCED of the need for States to provide relevant information about nuclear accidents as early as possible in order that transboundary radiological consequences can be minimized,

NOTING the usefulness of bilateral and multilateral arrangements on information exchange in this area,

HAVE AGREED as follows:

Article 1–Scope of Application

1. This Convention shall apply in the event of any accident involving facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control, referred to in paragraph 2 below, from which a release of radioactive material occurs or is likely to occur and which has resulted or may result in an international transboundary release that could be of radiological safety significance for another State.

2. The facilities and activities referred to in paragraph 1 are the following:

(a) any nuclear reactor wherever located;

(b) any nuclear fuel cycle facility;

(c) any radioactive waste management facility;

(d) the transport and storage of nuclear fuels or radioactive wastes;

(e) the manufacture, use, storage, disposal and transport of radioisotopes for agricultural, industrial, medical and related scientific and research purposes; and

(f) the use of radioisotopes for power generation in space objects.

Article 2–Notification and Information

In the event of an accident specified in article 1 (hereinafter referred to as a "nuclear accident"), the State Party referred to in that article shall:

(a) forthwith notify, directly or through the International Atomic Energy Agency (hereinafter referred to as the "Agency"), those States which are or may be physically affected as specified in article 1 and the Agency of the nuclear accident, its nature, the time of its occurrence and its exact location where appropriate; and

(b) promptly provide the States referred to in subparagraph (a), directly or through the Agency, and the Agency with such available information relevant to minimizing the radiological consequences in those States, as specified in article 5.

Article 3–Other Nuclear Accidents

With a view to minimizing the radiological consequences, States Parties may notify in the event of nuclear accidents other than those specified in article 1.

Article 4–Functions of the Agency

The Agency shall:

(a) forthwith inform States Parties, Member States, other States which are or may be physically affected as specified in article 1 and relevant international intergovernmental organizations (hereinafter referred to as "international organizations") of a notification received pursuant to subparagraph (a) of article 2; and

(b) promptly provide any State Party, Member State or relevant international organization, upon request, with the information received pursuant to sub-paragraph (b) of article 2.

Article 5–Information to be Provided

1. The information to be provided pursuant to subparagraph (b) of article 2 shall comprise the following data as then available to the notifying State Party:

(a) the time, exact location where appropriate, and the nature of the nuclear accident;

(b) the facility or activity involved;

(c) the assumed or established cause and the foreseeable development of the nuclear accident relevant to the transboundary release of the radioactive materials;

(d) the general characteristics of the radioactive release, including, as far as is practicable and appropriate, the nature, probable physical and chemical form and the quantity, composition and effective height of the radioactive release;

(e) information on current and forecast meteorological and hydrological conditions, necessary for forecasting the transboundary release of the radioactive materials;

(f) the results of environmental monitoring relevant to the transboundary release of the radioactive materials;

(g) the off-site protective measures taken or planned;

(h) the predicted behavior over time of the radioactive release.

2. Such information shall be supplemented as appropriate intervals by further relevant information on the development of the emergency situation, including its foreseeable or actual termination.

3. Information received pursuant to sub-paragraph (b) of article 2 may be used without restriction, except when such information is provided in confidence by the notifying State Party.

Article 6–Consultations

A State Party providing information pursuant to subparagraph (b) of article 2 shall, as far as is reasonably practicable, response promptly to a request for further information or consultations sought by an affected State Party with a view to minimizing the radiological consequences in that State.

Article 7–Competent Authorities and Points of Contact

1. Each State Party shall make known to the Agency and to other States Parties, directly or through the Agency, its competent authorities and point of contact responsible for issuing and receiving the notification and information referred to in article

2. Such points of contact and a focal point within the Agency shall be available continuously. 2. Each State Party shall promptly inform the Agency of any changes that may occur in the information referred to in paragraph 1.

3. The Agency shall maintain an up-to-date list of such national authorities and points of contact as well as points of contact of relevant international organizations and shall provide it to States Parties and Member States and to relevant international organizations.

Article 8–Assistance to State Parties

The Agency shall, in accordance with its Statute and upon a request of a State Party which does not have nuclear activities itself and borders on a State having an active nuclear programme but not Party, conduct investigations into the feasibility and establishment of an appropriate radiation monitoring system in order to facilitate the achievement of the objectives of this Convention.

Article 9–Bilateral and Multilateral Arrangements

In furtherance of their mutual interests, States Parties may consider, where deemed appropriate, the conclusion of bilateral or multilateral arrangements relating to the subject matter of this Convention.

Article 10–Relationship to Other International Agreements

This Convention shall not affect the reciprocal rights and obligations of States Parties under existing international agreements which relate to the matters covered by this Convention, or under future international agreements concluded in accordance with the object and purpose of this Convention.

Article 11–Settlement of Disputes

1. In the event of a dispute between States Parties, or between a State Party and the Agency, concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character between States Parties cannot be settled within one year from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a State Party for which such a declaration is in force.

4. A State Party which made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the depositary.

Article 12–Entry into Force

1. This Convention shall be open for signature by all States and Namibia, represented by the United Nations Council for Namibia, at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York, from 26 September 1986 and 6 October 1986 respectively, until its entry into force or for twelve months, whichever period is longer.

2. A State and Namibia, represented by the United Nations Council for Namibia, may express its consent to be bound by this Convention either by signature, or by deposit of an instrument of ratification, acceptance or approval following signature made subject to ratification, acceptance or approval, or by deposit of an instrument of accession. The instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

3. This Convention shall enter into force thirty days after consent to be bound has been expressed by three States.

4. For each State expressing consent to be bound by this Convention after its entry into force, this Convention shall enter into force for that State thirty days after the date of expression of consent.

5. (a) This Convention shall be open for accession, as provided for in this article, by international organizations and regional integration organizations constituted by sovereign States, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence such organizations shall, on their own behalf, exercise the rights and fulfill the obligations which this Convention attributes to States Parties.

(c) When depositing its instrument of accession, such an organization shall communicate to the depositary a declaration indicating the extent of its competence in respect of matters covered by this Convention.

(d) Such an organization shall not hold any vote additional to those of its Member States.

Article 13–Provisional Application

A State may, upon signature or at any later date before this Convention enters into force for it, declare that it will apply this Convention provisionally.

Article 14–Amendments

1. A State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all other States Parties.

2. If a majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be laid down in a protocol which is open to signature in Vienna and New York by all States Parties.

3. The protocol shall enter into force thirty days after consent to be bound has been expressed by three States. For each State expressing consent to be bound by the protocol after its entry into force, the protocol shall enter into force for that State thirty days after the date of expression of consent.

Article 15–Denunciation

1. A State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year following the date on which the notification is received by the depositary.

Article 16–Depositary

1. The Director General of the Agency shall be the depositary of this Convention.

2. The Director General of the Agency shall promptly notify States Parties and all other States of:

(a) each signature of this Convention or any protocol of amendment;

(b) each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention or any protocol of amendment;

(c) any declaration or withdrawal thereof in accordance with article 11;

(d) any declaration of provisional application of this Convention in accordance with article 13;

(e) the entry into force of this Convention and of any amendment thereto; and

(f) any denunciation made under article 15.

Article 17–Authentic Texts and Certified Copies

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies to States Parties and all other States.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention, open for signature as provided for in paragraph 1 of article 12.

ADOPTED by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on the twenty -sixth day of September one thousand nine hundred and eighty-six.

Table: Convention On Early Notification Of A Nuclear Accident

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/ Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		D / W*		Entry into Force
		Instrument	Date of Deposit			
Afghanistan	26 Sep 1986			✓		
Albania		accession	30 Sep 2003			30 Oct 2003
Algeria	24 Sep 1987	ratification	15 Jan 2004	✓		15 Feb 2004
Angola		accession	22 Dec 2004			22 Jan 2005
Argentina		accession	17 Jan 1990	✓		17 Feb 1990
Armenia		accession	24 Aug 1993			24 Sep 1993
Australia	26 Sep 1986	ratification	22 Sep 1987	✓		23 Oct 1987
Austria	26 Sep 1986	ratification	18 Feb 1988			20 Mar 1988
Bangladesh		accession	07 Jan 1988			07 Feb 1988
Belarus	26 Sep 1986	ratification	26 Jan 1987	✓		26 Feb 1987
Belgium	26 Sep 1986	ratification	04 Jan 1999			04 Feb 1999
Bolivia		accession	22 Aug 2003	✓		21 Sep 2003
Bosnia and Herzegovina		succession	30 Jun 1988			01 Mar 1992
Brazil	26 Sep 1986	ratification	04 Dec 1990			04 Jan 1991
Bulgaria	26 Sep 1986	ratification	24 Feb 1988	✓	✓	26 Mar 1988
Cameroon	25 Sep 1987	ratification	17 Jan 2006			16 Feb 2006
Canada	26 Sep 1986	ratification	18 Jan 1990	✓		18 Feb 1990
Chile	26 Sep 1986	ratification	15 Nov 2005			15 Dec 2005
China	26 Sep 1986	ratification	10 Sep 1987	✓		11 Oct 1987
Colombia		accession	28 Mar 2003			28 Apr 2003
Costa Rica	26 Sep 1986	ratification	16 Sep 1991			17 Oct 1991
Côte d'Ivoire	26 Sep 1986					
Croatia		succession	29 Sep 1992			08 Oct 1991
Cuba	26 Sep 1986	ratification	08 Jan 1991	✓		08 Feb 1991
Cyprus		accession	04 Jan 1989			04 Feb 1989
Czech Republic		succession	24 Mar 1993			01 Jan 1993
Dem. P.R. of Korea	29 Sep 1986			✓		
Dem. Republic of the Congo	30 Sep 1986					
Denmark	26 Sep 1986	signature	26 Sep 1986			27 Oct 1986
Egypt	26 Sep 1986	ratification	06 Jul 1988	✓		06 Aug 1988
El Salvador		accession		✓		26 Feb 2005
Estonia		accession	09 May 1994			09 Jun 1994
Finland	26 Sep 1986	approval	11 Dec 1986			11 Jan 1987
France	26 Sep 1986	approval	06 Mar 1989	✓		06 Apr 1989
Gabon		accession	19 Feb 2008			20 Mar 2008
Germany	26 Sep 1986	ratification	14 Sep 1989	✓		15 Oct 1989
Greece	26 Sep 1986	ratification	06 Jun 1991	✓		07 Jul 1991
Guatemala	26 Sep 1986	ratification	08 Aug 1988			08 Sep 1988
Holy See	26 Sep 1986					
Hungary	26 Sep 1986	ratification	10 Mar 1987	✓	✓	10 Apr 1987

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		Instrument	Date of Deposit			
Iceland	26 Sep 1986	ratification	27 Sep 1989			28 Oct 1989
India	29 Sep 1986	ratification	28 Jan 1988	✓		28 Feb 1988
Indonesia	26 Sep 1986	ratification	12 Nov 1993	✓		13 Dec 1993
Iran, Islamic Republic of	26 Sep 1986	ratification	09 Oct 2000	✓		09 Nov 2000
Iraq	12 Aug 1987	ratification	21 Jul 1988	✓		21 Aug 1988
Ireland	26 Sep 1986	ratification	13 Sep 1991			14 Oct 1991
Israel	26 Sep 1986	ratification	25 May 1989	✓		25 Jun 1989
Italy	26 Sep 1986	ratification	08 Feb 1990	✓		11 Mar 1990
Japan	06 Mar 1987	acceptance	09 Jun 1987			10 Jul 1987
Jordan	02 Oct 1986	ratification	11 Dec 1987			11 Jan 1988
Korea, Republic of		accession	08 Jun 1990			09 Jul 1990
Kuwait		accession	13 May 2003			13 Jun 2003
Latvia		accession	28 Dec 1992			28 Jan 1993
Lebanon	26 Sep 1986	ratification	17 Apr 1997			18 May 1997
Liechtenstein	26 Sep 1986	ratification	19 Apr 1994			20 May 1994
Lithuania		accession	16 Nov 1994			17 Dec 1994
Luxembourg	26 Sep 1986	ratification	26 Sep 2000			27 Oct 2000
Malaysia	01 Sep 1987	signature	01 Sep 1987	✓		02 Oct 1987
Mali	02 Oct 1986	ratification	01 Oct 2007			31 Oct 2007
Mauritius		accession	17 Aug 1992	✓		17 Sep 1992
Mexico	26 Sep 1986	ratification	10 May 1988			10 Jun 1988
Monaco	26 Sep 1986	approval	19 Jul 1989	✓		19 Aug 1989
Mongolia	08 Jan 1987	ratification	11 Jun 1987	✓	✓	12 Jul 1987
Montenegro		succession	21 mar 2007			03 Jun 2006
Morocco	26 Sep 1986	ratification	07 Oct 1993			07 Nov 1993
Myanmar		accession	18 Dec 1997	✓		18 Jan 1998
Netherlands	26 Sep 1986	acceptance	23 Sep 1991	✓		24 Oct 1991
New Zealand		accession	11 Mar 1987			11 Apr 1987
Nicaragua		accession	11 Nov 1993	✓		12 Dec 1993
Niger	26 Sep 1986					
Nigeria	21 Jan 1987	ratification	10 Aug 1990			10 Sep 1990
Norway	26 Sep 1986	signature	26 Sep 1986			27 Oct 1986
Pakistan		accession	11 Sep 1989	✓		12 Oct 1989
Panama	26 Sep 1986	ratification	01 Apr 1999			02 May 1999
Paraguay	02 Oct 1986					
Peru		accession	17 Jul 1995	✓		17 Aug 1995
Philippines		accession	05 May 1997			05 Jun 1997
Poland	26 Sep 1986	ratification	24 Mar 1988	✓	✓	24 Apr 1988

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		Instrument	Date of Deposit		
Portugal	26 Sep 1986	ratification	30 Apr 1993		31 May 1993
Qatar		accession	04 Nov 2005		04 Dec 2005
Republic of Moldova		accession	07 May 1998		07 Jun 1998
Romania		accession	12 Jun 1990	✓	13 Jul 1990
Russian Federation	26 Sep 1986	ratification	23 Dec 1986	✓	24 Jan 1987
St. Vincent & the Grenadines		accession	18 Sep 2001		19 Oct 2001
Saudi Arabia		accession	03 Nov 1989	✓	04 Dec 1989
Senegal	15 Jun 1987				
Serbia	27 May 1987	succession	05 Feb 2002		27 Apr 1992
Sierra Leone	25 Mar 1987				
Singapore		accession	15 Dec 1997		15 Jan 1998
Slovakia		succession	10 Feb 1993	✓	01 Jan 1993
Slovenia		succession	07 Jul 1992	✓	25 Jun 1991
South Africa	10 Aug 1987	ratification	10 Aug 1987	✓	10 Sep 1987
Spain	26 Sep 1986	ratification	13 Sep 1989	✓	14 Oct 1989
Sri Lanka		accession	11 Jan 1991	✓	11 Feb 1991
Sudan	26 Sep 1986				
Sweden	26 Sep 1986	ratification	27 Feb 1987		30 Mar 1987
Switzerland	26 Sep 1986	ratification	31 May 1988		01 Jul 1988
Syrian Arab Republic	02 Jul 1987				
Thailand	25 Sep 1987	ratification	21 Mar 1989	✓	21 Apr 1989
The Fmr.Yug. Rep. of Macedonia		succession	20 Sep 1996		17 Nov 1991
Tunisia	24 Feb 1987	ratification	24 Feb 1989		27 Mar 1989
Turkey	26 Sep 1986	ratification	03 Jan 1991	✓	03 Feb 1991
Ukraine	26 Sep 1986	ratification	26 Jan 1987	✓	26 Feb 1987
United Arab Emirates		accession	02 Oct 1987	✓	02 Nov 1987
United Kingdom	26 Sep 1986	ratification	09 Feb 1990	✓	12 Mar 1990
United Republic of Tanzania		accession	27 Jan 2005		26 Feb 2005
United States of America	26 Sep 1986	ratification	19 Sep 1988	✓	20 Oct 1988
Uruguay		accession	21 Dec 1989		21 Jan 1990
Viet Nam		accession	29 Sep 1987	✓	30 Oct 1987
Zimbabwe	26 Sep 1986				
EURATOM		accession	14 Nov 2006	✓	14 Dec 2006

Table: Convention On Early Notification Of A Nuclear Accident

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Country/ Organization	Date of Signature	Means/Date of Deposit of Expression of Consent to be Bound		D / W*	Entry into Force
		Instrument	Date of Deposit		
Food & Agriculture Org. (FAO)		accession	19 Oct 1990	✓	19 Nov 1990
World Health Org. (WHO)		accession	10 Aug 1988	✓	10 Sep 1988
World Meteorological Org. (WMO)		accession	17 Apr 1990	✓	18 May 1990

*"D" denotes Declaration etc. / "W" denotes Withdrawal.

Note: The Convention entered into force on 27 October 1986, *i.e.* thirty days after the date on which the third State expressed their consent to be bound, pursuant to Article 12, para. 3.

Number of Parties: 102
Signatories: 70

Last change of status: 19 February 2008

E. CONVENTION ON NUCLEAR SAFETY

Adopted September 20, 1994, Entered into Force October 27, 1986

Preamble

The Contracting Parties,

(i) Aware of the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound;

(ii) Reaffirming the necessity of continuing to promote a high level of nuclear safety worldwide;

(iii) Reaffirming that responsibility for nuclear safety rests with the State having jurisdiction over a nuclear installation;

(iv) Desiring to promote an effective nuclear safety culture;

(v) Aware that accidents at nuclear installations have the potential for transboundary impacts;

(vi) Keeping in mind the Convention on the Physical Protection of Nuclear Material (1979), the Convention on Early Notification of a Nuclear Accident (1986), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986);

(vii) Affirming the importance of international cooperation for the enhancement of nuclear safety through existing bilateral and multilateral mechanisms and the establishment of this incentive Convention;

(viii) Recognizing that this Convention entails a commitment to the application of fundamental safety principles for nuclear installations rather than of detailed safety standards and that there are internationally formulated safety guidelines which are updated from time to time and so can provide guidance on contemporary means of achieving a high level of safety;

(ix) Affirming the need to begin promptly the development of an international convention on the safety of radioactive waste management as soon as the ongoing process to develop waste management safety fundamentals has resulted in broad international agreement;

(x) Recognizing the usefulness of further technical work in connection with the safety of other parts of the nuclear fuel cycle, and that this work may, in time, facilitate the development of current or future international instruments;

Have agreed as follows:

Chapter 1
Objectives, Definitions And Scope Of Application

Article 1–Objectives

The objectives of this Convention are:

(i) to achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international co-operation including, where appropriate, safety-related technical co-operation;

(ii) to establish and maintain effective defenses in nuclear installations against potential radiological hazards in order to protect individuals, society and the environment from harmful effects of ionizing radiation from such installations;

(iii) to prevent accidents with radiological consequences and to mitigate such consequences should they occur.

Article 2–Definitions

For the purpose of this Convention:

(i) "nuclear installation" means for each Contracting Party any land-based civil nuclear power plant under its jurisdiction including such storage, handling and treatment facilities for radioactive materials as are on the same site and are directly related to the operation of the nuclear power plant. Such a plant ceases to be a nuclear installation when all nuclear fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures, and a decommissioning program has been agreed to by the regulatory body;

(ii) "regulatory body" means for each Contracting Party any body or bodies given the legal authority by that Contracting Party to grant licences and to regulate the siting, design, construction, commissioning, operation or decommissioning of nuclear installations;

(iii) "licence" means any authorization granted by the regulatory body to the applicant to have the responsibility for the siting, design, construction, commissioning, operation or decommissioning of a nuclear installation.

Article 3–Scope of Application

This Convention shall apply to the safety of nuclear installations.

Chapter 2
Obligations

(a) General Provisions

Article 4– Implementing Measures

Each Contracting Party shall take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under this Convention.

Article 5–Reporting

Each Contracting Party shall submit for review, prior to each meeting referred to in Article 20, a report on the measures it has taken to implement each of the obligations of this Convention.

Article 6–Existing Nuclear Installations

Each Contracting Party shall take the appropriate steps to ensure that the safety of nuclear installations existing at the time the Convention enters into force for that Contracting Party is reviewed as soon as possible. When necessary in the context of this Convention, the Contracting Party shall ensure that all reasonably practicable improvements are made as a matter of urgency to upgrade the safety of the nuclear

installation. If such upgrading cannot be achieved, plans should be implemented to shut down the nuclear installation as soon as practically possible. The timing of the shutdown may take into account the whole energy context and possible alternatives as well as the social, environmental and economic impact.

(b) Legislation and Regulation

Article 7–Legislative and Regulatory Framework

1. Each Contracting Party shall establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations.
2. The legislative and regulatory framework shall provide for:

(i) the establishment of applicable national safety requirements and regulations;

(ii) a system of licensing with regard to nuclear installations and the prohibition of the operation of a nuclear installation without a license;

(iii) a system of regulatory inspection and assessment of nuclear installations to ascertain compliance with applicable regulations and the terms of licenses;

(iv) the enforcement of applicable regulations and of the terms of licenses, including suspension, modification or revocation.

Article 8–Regulatory Body

1. Each Contracting Party shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to in Article 7, and provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities.
2. Each Contracting Party shall take the appropriate steps to ensure an effective separation between the functions of the regulatory body and those of any other body or organization concerned with the promotion or utilization of nuclear energy.

Article 9–Responsibility of the License Holder

Each Contracting Party shall ensure that prime responsibility for the safety of a nuclear installation rests with the holder of the relevant license and shall take the appropriate steps to ensure that each such license holder meets its responsibility.

(c) General Safety Considerations

Article 10–Priority to Safety

Each Contracting Party shall take the appropriate steps to ensure that all organizations engaged in activities directly related to nuclear installations shall establish policies that give due priority to nuclear safety.

Article 11–Financial and Human Resources

1. Each Contracting Party shall take the appropriate steps to ensure that adequate financial resources are available to support the safety of each nuclear installation throughout its life.

2. Each Contracting Party shall take the appropriate steps to ensure that sufficient numbers of qualified staff with appropriate education, training and retraining are available for all safety-related activities in or for each nuclear installation, throughout its life.

Article 12–Human Factors

Each Contracting Party shall take the appropriate steps to ensure that the capabilities and limitations of human performance are taken into account throughout the life of a nuclear installation.

Article 13–Quality Assurance

Each Contracting Party shall take the appropriate steps to ensure that quality assurance programs are established and implemented with a view to providing confidence that specified requirements for all activities important to nuclear safety are satisfied throughout the life of a nuclear installation.

Article 14–Assessment and Verification of Safety

Each Contracting Party shall take the appropriate steps to ensure that:

(i) comprehensive and systematic safety assessments are carried out before the construction and commissioning of a nuclear installation and throughout its life. Such assessments shall be well documented, subsequently updated in the light of operating experience and significant new safety information, and reviewed under the authority of the regulatory body;

(ii) verification by analysis, surveillance, testing and inspection is carried out to ensure that the physical state and the operation of a nuclear installation continue to be in accordance with its design, applicable national safety requirements, and operational limits and conditions.

Article 15–Radiation Protection

Each Contracting Party shall take the appropriate steps to ensure that in all operational states the radiation exposure to the workers and the public caused by a nuclear installation shall be kept as low as reasonably achievable and that no individual shall be exposed to radiation doses which exceed prescribed national dose limits.

Article 16–Emergency Preparedness

1. Each Contracting Party shall take the appropriate steps to ensure that there are on-site and off-site emergency plans that are routinely tested for nuclear installations and cover the activities to be carried out in the event of an emergency. For any new nuclear installation, such plans shall be prepared and tested before it commences operation above a low power level agreed by the regulatory body.

2. Each Contracting Party shall take the appropriate steps to ensure that, insofar as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are, provided with appropriate information for emergency planning and response.

3. Contracting Parties which do not have a nuclear installation on their territory, insofar as they are likely to be affected in the event of a radiological emergency at a nuclear installation in the vicinity, shall take the appropriate steps for the preparation and

testing of emergency plans for their territory that cover the activities to be carried out in the event of such an emergency.

(d) Safety of Installations

Article 17–Siting

Each Contracting Party shall take the appropriate steps to ensure that appropriate procedures are established and implemented:

(i) for evaluating all relevant site-related factors likely to affect the safety of a nuclear installation for its projected lifetime;

(ii) for evaluating the likely safety impact of a proposed nuclear installation on individuals, society and the environment;

(iii) for re-evaluating as necessary all relevant factors referred to in sub-paragraphs (i) and (ii) so as to ensure the continued safety acceptability of the nuclear installation; (iv) for consulting Contracting Parties in the vicinity of a proposed nuclear installation, insofar as they are likely to be affected by that installation and, upon request providing the necessary information to such Contracting Parties, in order to enable them to evaluate and make their own assessment of the likely safety impact on their own.

territory of the nuclear installation.

Article 18–Design and Construction

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the design and construction of a nuclear installation provides for several reliable levels and methods of protection (defense in depth) against the release of radioactive materials, with a view to preventing the occurrence of accidents and to mitigating their radiological consequences should they occur;

(ii) the technologies incorporated in the design and construction of a nuclear installation are proven by experience or qualified by testing or analysis;

(iii) the design of a nuclear installation allows for reliable, stable and easily manageable operation, with specific consideration of human factors and the man-machine interface.

Article 19–Operation

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the initial authorization to operate a nuclear installation is based upon an appropriate safety analysis and a commissioning program demonstrating that the installation, as constructed, is consistent with design and safety requirements;

(ii) operational limits and conditions derived from the safety analysis, tests and operational experience are defined and revised as necessary for identifying safe boundaries for operation;

(iii) operation, maintenance, inspection and testing of a nuclear installation are conducted in accordance with approved procedures;

(iv) procedures are established for responding to anticipated operational occurrences and to accidents;

(v) necessary engineering and technical support in all safety related fields is available throughout the lifetime of a nuclear installation;

(vi) incidents significant to safety are reported in a timely manner by the holder of the relevant license to the regulatory body;

(vii) programs to collect and analyze operating experience are established, the results obtained and the conclusions drawn are acted upon and that existing mechanisms are used to share important experience with international bodies and with other operating organizations and regulatory bodies;

(viii) the generation of radioactive waste resulting from the operation of nuclear installation is kept to the minimum practicable for the process concerned, both in activity and in volume, and any necessary treatment and storage of spent fuel and waste directly related to the operation and on the same site as that of the nuclear installation take into consideration conditioning and disposal.

Chapter 3
Meetings Of The Contracting Parties

Article 20–Review Meetings

1. The Contracting Parties shall hold meetings (hereinafter referred to as "review meetings") for the purpose of reviewing the reports submitted pursuant to Article 5 in accordance with the procedures adopted under Article 22.

2. Subject to the provisions of Article 24 sub-groups comprised of representatives of Contracting Parties may be established and may function during the review meetings as deemed necessary for the purpose of reviewing specific subjects contained in the reports.

3. Each Contracting Party shall have a reasonable opportunity to discuss the reports submitted by other Contracting Parties and to seek clarification of such reports.

Article 21–Timetable

1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

2. At this preparatory meeting, the Contracting Parties shall determine the date for the first review meeting. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention.

3. At each review meeting, the Contracting Parties shall determine the date for the next such meeting. The interval between review meetings shall not exceed three years.

Article 22–Procedural Arrangements

1. At the preparatory meeting held pursuant to Article 21 the Contracting Parties shall prepare and adopt by consensus Rules of Procedure and Financial Rules. The Contracting Parties shall establish in particular and in accordance with the Rules of Procedure:

(i) guidelines regarding the form and structure of the reports to be submitted pursuant to Article 5;

(ii) a date for the submission of such reports;

(iii) the process for reviewing such reports;

2. At review meetings the Contracting Parties may, if necessary, review the arrangements established pursuant to subparagraphs (i)-(iii) above, and adopt revisions by consensus unless otherwise provided for in the Rules of Procedure. They may also amend the Rules of Procedure and the Financial Rules, by consensus.

Article 23–Extraordinary Meetings

An extraordinary meeting of the Contracting Parties shall be held:

(i) if so agreed by a majority of the Contracting Parties present and voting at a meeting, abstentions being considered as voting; or

(ii) at the written request of a Contracting Party, within six months of this request having been communicated to the Contracting Parties and notification having been received by the secretariat referred to in Article 28, that the request has been supported by a majority of the Contracting Parties.

Article 24–Attendance

1. Each Contracting Party shall attend meetings of the Contracting Parties and be represented at such meetings by one delegate, and by such alternates, experts and advisers as it deems necessary.

2. The Contracting Parties may invite, by consensus, any intergovernmental organization which is competent in respect of matters governed by this Convention to attend, as an observers, any meeting, or specific sessions thereof. Observers shall be required to accept in writing, and in advance, the provisions of Article 27.

Article 25–Summary Reports

The Contracting Parties shall adopt, by consensus, and make available to the public a document addressing issues discussed and conclusions reached during a meeting.

Article 26–Languages

1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

2. Reports submitted pursuant to Article 5 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

3. Notwithstanding the provisions of paragraph 2, if compensated, the secretariat will assume the translation into the designated language of reports submitted in any other language of the meeting.

Article 27–Confidentiality

1. The provisions of this Convention shall not affect the rights and obligations of the Contracting Parties under their law to protect information from disclosure. For the purposes of this Article, "information" includes, inter alia:

(i) personal data;

(ii) information protected by intellectual property rights or by industrial or commercial confidentiality; and

(iii) information relating to national security or to the physical protection of nuclear materials or nuclear installations.

2. When, in the context of this Convention, a Contracting Party provides information identified by it as protected as described in paragraph 1, such information shall be used only for the purposes for which it has been provided and its confidentiality shall be respected.

3. The content of the debates during the reviewing of the reports by the Contracting Parties at each meeting shall be confidential.

Article 28–Secretariat

1. The International Atomic Energy Agency, (hereinafter referred to as the "Agency") shall provide secretariat for the meetings of the Contracting Parties.

2. The secretariat shall:

(i) convene, prepare and service the meetings of the Contracting Parties;

(ii) transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in subparagraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its program and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source.

Chapter 4
Final Clauses And Other Provisions

Article 29–Resolution of Disagreements

In the event of a disagreement between two or more Contracting Parties concerning the interpretation or application of this Convention, the Contracting Parties shall consult within the framework of a meeting of the Contracting Parties with a view to resolving the disagreement.

Article 30–Signature, Ratification, Acceptance, Approval, Accession

1. This Convention shall be open for signature by all States at the Headquarters of the Agency in Vienna from 20 September 1994 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention shall be open for accession by all States.

4. (i) This Convention shall be open for signature or accession by regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation,

conclusion and application of international agreements in matters covered by this Convention.

(ii) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

(iii) When becoming party to this Convention, such an organization shall communicate to the Depositary referred to in Article 34, a declaration indicating which States are members thereof, which articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

(iv) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 31–Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit with the Depositary of the twenty-second instrument of ratification, acceptance or approval, including the instruments of seventeen States, each having at least one nuclear installation which has achieved criticality in a reactor core.

2. For each State or regional organization of an integration or other nature which ratifies, accepts, approves or accedes to this Convention after the date of deposit of the last instrument required to satisfy the conditions set forth paragraph 1, this Convention shall enter into force on the ninetieth day after the date of deposit with the Depositary of the appropriate instrument by such a State or organization.

Article 32–Amendments to the Convention

1. Any Contracting Party may propose an amendment to this Convention. Proposed amendments shall be considered at a review meeting or an extraordinary meeting.

2. The text of any proposed amendment and the reasons for it shall be provided to the Depositary who shall communicate the proposal to the Contracting Parties promptly and at least ninety days before the meeting for which it is submitted for consideration. Any comments received on such a proposal shall be circulated by the Depositary to the Contracting Parties.

3. The Contracting Parties shall decide after consideration of the proposed amendment whether to adopt it by consensus, or, in the absence of consensus, to submit it to a Diplomatic Conference. A decision to submit a proposed amendment to a Diplomatic Conference shall require a two-thirds majority vote of the Contracting Parties present and voting at the meeting, provided that at least one half of the Contracting Parties are present at the time of voting. Abstentions shall be considered as voting.

4. The Diplomatic Conference to consider and adopt amendments to this Convention shall be convened by the Depositary and held no later than one year after the appropriate decision taken in accordance with paragraph 3 of this Article. The Diplomatic Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted with a two-thirds majority of all Contracting Parties.

5. Amendments to this Convention adopted pursuant to paragraphs 3 and 4 above shall be subject to ratification, acceptance, approval, or confirmation by the Contracting Parties and shall enter into force for those Contracting Parties which have ratified, accepted, approved or confirmed them on the ninetieth day after the receipt by the Depositary of the relevant instruments by at least three fourths of the Contracting Parties. For a Contracting Party which subsequently ratifies, accepts, approves or confirms the said amendments, the amendments will enter into force on the ninetieth day after that Contracting Party has deposited its relevant instrument.

Article 33–Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification.

Article 34–Depositary

1. The Director General of the Agency shall be the Depositary of this Convention.

2. The Depositary shall inform the Contracting Parties of:

(i) the signature of this Convention and of the deposit of instruments of ratification, acceptance, approval or accession, in accordance with Article 30;

(ii) the date on which the Convention enters into force, in accordance with Article 31;

(iii) the notifications of denunciation of the Convention and the date thereof, made in accordance with Article 33;

(iv) the proposed amendments to this Convention submitted by Contracting Parties, the amendments adopted by the relevant Diplomatic Conference or by the meeting of the Contracting Parties, and the date of entry into force of the said amendments, in accordance with Article 32.

Article 35–Authentic Texts

The original of this Convention of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary, who shall send certified copies thereof to the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Convention.

DONE AT VIENNA on the 20th day of September 1994.

Table: Signatories And Parties On The Convention On Nuclear Safety

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

State/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound	Entry into Force
Algeria	20 Sep 1994		
Argentina*	20 Oct 1994	ratified 17 Apr 1997	16 Jul 1997
Armenia*	22 Sep 1994	ratified 21 Sep 1998	20 Dec 1998
Australia	20 Sep 1994	ratified 24 Dec 1996	24 Mar 1997
Austria[a]	20 Sep 1994	ratified 26 Aug 1997	24 Nov 1997
Bangladesh	21 Sep 1995	accepted 21 Sep 1995	24 Oct 1996
Belarus		acceded 29 Oct 1998	27 Jan 1999
Belgium*	20 Sep 1994	ratified 13 Jan 1997	13 Apr 1997
Brazil*	20 Sep 1994	ratified 04 Mar 1997	02 Jun 1997
Bulgaria*	20 Sep 1994	ratified 08 Nov 1995	24 Oct 1996
Canada*	20 Sep 1994	ratified 12 Dec 1995	24 Oct 1996
Chile	20 Sep 1994	ratified 20 Dec 1996	20 Mar 1997
China*	20 Sep 1994	ratified 09 Apr 1996	24 Oct 1996
Croatia	10 Apr 1995	approved 18 Apr 1996	24 Oct 1996
Cuba	20 Sep 1994		
Cyprus		acceded 17 Mar 1999	15 Jun 1999
Czech Republic*	20 Sep 1994	approved 18 Sep 1995	24 Oct 1996
Denmark	20 Sep 1994	accepted 13 Nov 1998	11 Feb 1999
Egypt	20 Sep 1994		
Estonia		acceded 03 Feb 2006	04 May 2006
Finland*	20 Sep 1994	accepted 22 Jan 1996	24 Oct 1996
France*	20 Sep 1994	approved 13 Sep 1995	24 Oct 1996
Germany*	20 Sep 1994	ratified 20 Jan 1997	20 Apr 1997
Ghana	06 Jul 1995		
Greece	01 Nov 1994	ratified 20 Jun 1997	18 Sep 1997
Hungary*	20 Sep 1994	ratified 18 Mar 1996	24 Oct 1996
Iceland	21 Sep 1995	ratified 04 Jun 2008	02 Sep 2008
India*	20 Sep 1994	ratified 31 Mar 2005	29 Jun 2005
Indonesia	20 Sep 1994	ratified 12 Apr 2002	11Jul 2002
Ireland	20 Sep 1994	ratified 11 Jul 1996	24 Oct 1996
Israel	22 Sep 1994		
Italy	27 Sep 1994	ratified 15 Apr 1998	14 Jul 1998
Japan*	20 Sep 1994	accepted 12 May 1995	24 Oct 1996
Jordan	06 Dec 1994		
Kazakhstan*	20 Sep 1996		
Korea*, Republic of	20 Sep 1994	ratified 19 Sep 1995	24 Oct 1996

State/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound	Entry into Force
Kuwait		acceded 11 May 2006	09 Aug 2006
Latvia		acceded 25 Oct 1996	23 Jan 1997
Lebanon	07 Mar 1995	ratified 05 Jun 1996	24 Oct 1996
Lithuania*	22 Mar 1995	ratified 12 Jun 1996	24 Oct 1996
Luxembourg	20 Sep 1994	ratified 07 Apr 1997	06 Jul 1997
Mali	22 May 1995	ratified 13 May 1996	24 Oct 1996
Malta		acceded 15 Nov 2007	13 Feb 2008
Mexico*	09 Nov 1994	ratified 26 Jul 1996	24 Oct 1996
Monaco	16 Sep 1996		
Morocco	01 Dec 1994		
Netherlands*,b	20 Sep 1994	accepted 15 Oct 1996	13 Jan 1997
Nicaragua	23 Sep 1994		
Nigeria	21 Sep 1994	ratified 04 Apr 2007	03 Jul 2007
Norway	21 Sep 1994	ratified 29 Sep 1994	24 Oct 1996
Pakistan*	20 Sep 1994	ratified 30 Sep 1997	29 Dec 1997
Peru	22 Sep 1994	ratified 01 Jul 1997	29 Sep 1997
Philippines	14 Oct 1994		
Poland	20 Sep 1994	ratified 14 Jun 1995	24 Oct 1996
Portugal	03 Oct 1994	ratified 20 May 1998	18 Aug 1998
Republic of Moldova		acceded 07 May 1998	05 Aug 1998
Romania*	20 Sep 1994	ratified 01 Jun 1995	24 Oct 1996
Russian Federation*	20 Sep 1994	accepted 12 Jul 1996	24 Oct 1996
Singapore		acceded 15 Dec 1997	15 Mar 1998
Slovakia*	20 Sep 1994	ratified 07 Mar 1995	24 Oct 1996
Slovenia*	20 Sep 1994	ratified 20 Nov 1996	18 Fed 1997
South Africa*	20 Sep 1994	ratified 24 Dec 1996	24 Mar 1997
Spain*	15 Nov 1994	ratified 04 Jul 1995	24 Oct 1996
Sri Lanka		acceded 11 Aug 1999	09 Nov 1999
Sudan	20 Sept 1994		
Sweden*	20 Sep 1994	ratified 11 Sep 1995	24 Oct 1996
Switzerland*	31 Oct 1995	ratified 12 Sep 1996	11 Dec 1996
Syrian Arab Repub.	23 Sep 1994		
The Frmr. Yug, Rep. of Macedonia		acceded 15 Mar 2006	13 Jun 2006
Tunisia	20 Sep 1994		
Turkey	20 Sep 1994	ratified 08 Mar 1995	24 Oct 1996
Ukraine*	20 Sep 1994	ratified 08 Apr 1998	07 Jul 1998
United Kingdom*,c	20 Sep 1994	ratified 17 Jan 1996	24 Oct 1996
United States*	20 Sep 1994	ratified 11 Apr 1999	10 Jul 1999
Uruguay	28 Feb 1996	ratified 03 Sep 2003	02 Dec 2003
EURATOM		acceded 31 Jan 2000	30 Apr 2000

* Indicates that the State has at least one nuclear installation which has achieved criticality in a reactor core; sources: Table 1 "Nuclear Power Reactors in Operation and Under Construction, 31 Dec 1997", Apr 1998 Edition of "Nuclear Power Reactors in the World", Reference Data Series No. 2, IAEA, Vienna; Government notification.

[a] On 9 April 1999, Austria deposited an objection to reservation by Ukraine.

[b] for the Kingdom in Europe.

[c] for the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

Notes: The Convention, pursuant to Article 31.1, entered into force on the ninetieth day after the date of deposit with the Depositary of the twenty-second instrument of ratification, acceptance or approval, including the instruments of seventeen States, each having at least one nuclear installation which has achieved criticality in a reactor core, i.e. 24 October 1996.

Number of Parties: 62
Signatories: 65

Last change of status: 04 June 2008

F. CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY

ADOPTED SEPTEMBER 26, 1986

THE STATES PARTIES TO THIS CONVENTION,

AWARE that nuclear activities are being carried out in a number of States,

NOTING THAT comprehensive measures have been and are being taken to ensure a high level of safety in nuclear activities, aimed at preventing nuclear accidents and minimizing the consequences of any such accident, should it occur,

DESIRING to strength further international co-operation in the safe development and use of nuclear energy,

CONVINCED of the need for an international framework which will facilitate the prompt provision of assistance in the event of a nuclear accident or radiological emergency to mitigate its consequences,

NOTING the usefulness of bilateral and multilateral arrangements on mutual assistance in this area,

NOTING the activities of the International Atomic Energy Agency in developing guidelines for mutual emergency assistance arrangements in connection with a nuclear accident or radiological emergency,

HAVE AGREED as follows:

Article 1 – General provisions

1. The States Parties shall cooperate between themselves and with the International Atomic Energy Agency (hereinafter referred to as the "Agency") in accordance with the provisions of this Convention to facilitate prompt assistance in the event of a nuclear accident or radiological emergency to minimize its consequences and to protect life, property and the environment from the effects of radioactive releases.

2. To facilitate such cooperation States Parties may agree on bilateral or multilateral arrangements or, where appropriate, a combination of these, for preventing or minimizing injury and damage which may result in the event of a nuclear accident or radiological emergency.

3. The States Parties request the Agency, acting within the framework of its Statute, to use its best endeavours in accordance with the provisions of this Convention to promote, facilitate and support the cooperation between States Parties provided for in this Convention.

Article 2 – Provisions of Assistance

1. If a State Party needs assistance in the event of a nuclear accident or radiological emergency, whether or not such accident or emergency originates within its territory, jurisdiction or control, it may call for such assistance from any other State Party, directly or through the Agency, and from the Agency, or, where appropriate, from other international intergovernmental organizations (hereinafter referred to as "international organizations").

2. A State Party requesting assistance shall specify the scope and type of assistance required and, where practicable, provide the assistance party with such

information as may be necessary for that party to determine the extent to which it is able to meet the request. In the event that it is not practicable for the requesting State Party to specify the scope and type of assistance required, the requesting State Party and the assisting party shall, in consultation, decide upon the scope and type of assistance required.

3. Each State Party to which a request for such assistance is directed shall promptly decide and notify the requesting State Party, directly or through the Agency, whether it is in a position to render the assistance requested, and the scope and terms of the assistance that might be rendered.

4. States Parties shall, within the limits of their capabilities, identify and notify the Agency of experts, equipment and materials which could be made available for the provision of assistance to other States Parties in the event of a nuclear accident or radiological emergency as well as the terms, especially financial, under which such assistance could be provided.

5. Any State Party may request assistance relating to medical treatment or temporary relocation into the territory of another State Party of people involved in a nuclear accident or radiological emergency.

6. The Agency shall respond, in accordance with its Statute and as provided for in this Convention, to a requesting State Party's or a Member State's request for assistance in the event of a nuclear accident or radiological emergency by:

(a) making appropriate resources allocated for this purpose;

(b) transmitting promptly the request to other States and international organizations which, according to the Agency's information, may possess the necessary resources; and

(c) if so requested by the requesting State, coordinating the assistance at the international level which may thus become available.

Article 3 – Direction and Control of Assistance

Unless otherwise agreed:

(a) the overall direction, control, co-ordination and supervision of the assistance shall be the responsibility within its territory of the requesting State. The assisting party should, where the assistance involves personnel, designate in consultation with the requesting State, the person who should be in charge of and retain immediate operational supervision over the personnel and the equipment provided by it. The designated person should exercise such supervision in cooperation with the appropriate authorities of the requesting State;

(b) the requesting State shall provide, to the extent of its capabilities, local facilities and services for the proper and effective administration of the assistance. It shall also ensure the protection of personnel, equipment and materials brought into its territory by or on behalf of the assisting party for such purpose;

(c) ownership of equipment and materials provided by either party during the periods of assistance shall be unaffected, and their return shall be ensured;

(d) a State Party providing assistance in response to a request under paragraph 5 of article 2 shall co-ordinate that assistance within its territory.

Article 4 – Competent authorities and Points of Contact

1. Each State Party shall make known to the Agency and to other States Parties, directly or through the Agency, its competent authorities and point of contact authorized to make and receive requests for and to accept offers of assistance. Such points of contact and a focal point within the Agency shall be available continuously.

2. Each State Party shall promptly inform the Agency of any changes that may occur in the information referred to in paragraph 1.

3. The Agency shall regularly and expeditiously provide to States Parties, Member States and relevant international organizations the information referred to in paragraphs 1 and 2.

Article 5 – Functions of the Agency

The States Parties request the Agency, in accordance with paragraph 3 of article 1 and without prejudice to other provisions of this Convention, to:

(a) collect and disseminate to States Parties and Member States information concerning:

(i) experts, equipment and materials which could be made available in the event of nuclear accidents or radiological emergencies;

(ii) methodologies, techniques and available results of research relating to response to nuclear accidents or radiological emergencies;

(b) assist a State Party or a Member State when requested in any of the following or other appropriate matters:

(i) preparing both emergency plans in the case of nuclear accidents and radiological emergencies and the appropriate legislation;

(ii) developing appropriate training programmes for personnel to deal with nuclear accidents and radiological emergencies;

(iii) transmitting requests for assistance and relevant information in the event of nuclear accident or radiological emergency;

(iv) developing appropriate radiation monitoring programmes, procedures and standards;

(v) conducting investigations into the feasibility of establishing appropriate radiation monitoring systems; and public

(c) make available to a State Party or a Member State requesting assistance in the event of a nuclear accident or radiological emergency appropriate resources allocated for the purpose of conducting an initial assessment of the accident or emergency;

(d) offer its good offices to the States Parties and Member States in the event of a nuclear accident or radiological emergency;

(e) establish and maintain liaison with relevant international organizations for the purposes of obtaining and exchanging relevant information and data, and make a list of such organizations available to States Parties, Member States and the aforementioned organizations.

Article 6 – Confidentiality and Public Statements

1. The requesting State and the assisting party shall protect the confidentiality of any confidential information that becomes available to either of them in connection with

the assistance in the event of a nuclear accident or radiological emergency. Such information shall be used exclusively for the purpose of the assistance agreed upon.

2. The assisting party shall make every effort to coordinate with the requesting State before releasing information to the public on the assistance provided in connection with a nuclear accident or radiological emergency.

Article 7 – Reimbursement of Costs

1. An assisting party may offer assistance without costs to the requesting State. When considering whether to offer assistance on such a basis, the assisting party shall take into account:

(a) the nature of the nuclear accident or radiological emergency;

(b) the place of origin of the nuclear accident or radiological emergency;

(c) the needs of developing countries;

(d) the particular needs of countries without nuclear facilities; and

(e) any other relevant factors.

2. When assistance is provided wholly or partly on a reimbursement basis, the requesting State shall reimburse the assisting party for the costs incurred for the services rendered by persons or organizations acting on its behalf, and for all expenses in connection with the assistance to the extent that such expenses are not directly defrayed by the requesting State. Unless otherwise agreed, reimbursement shall be provided promptly after the assisting party has presented its request for reimbursement to the requesting State, and in respect of costs other than local costs, shall be freely transferable.

3. Notwithstanding paragraph 2, the assisting party may at any time waive, or agree to the postponement of, the reimbursement in whole or in part. In considering such waiver or postponement, assisting parties shall give due consideration to the needs of developing countries.

Article 8 – Privileges, Immunities and Facilities

1. The requesting State shall afford to personnel of the assisting party and personnel acting on its behalf the necessary privileges, immunities and facilities for the performance of their assistance functions.

2. The requesting State shall afford the following privileges and immunities to personnel of the assisting party or personnel acting on its behalf who have been duly notified to and accepted by the requesting State:

(a) immunity from arrest, detention and legal process, including criminal, civil and administrative jurisdiction, of the requesting State, in respect of acts or omissions in the performance of their duties; and

(b) exemption from taxation, duties or other charges, except those which are normally incorporated in the price of goods or paid for services rendered, in respect of the performance of their assistance functions.

3. The requesting State shall:

(a) afford the assisting party exemption from taxation, duties or other charges on the equipment and property brought into the territory of the requesting State by the assisting party for the purpose of the assistance; and

(b) provide immunity from seizure, attachment, or requisition of such equipment and property.

4. The requesting State shall ensure the return of such equipment and property. If requested by the assisting party, the requesting State shall arrange, to the extent it is able to do so, for the necessary decontamination of recoverable equipment involved in the assistance before its return.

5. The requesting State shall facilitate the entry into, stay in and departure from its national territory of personnel notified pursuant to paragraph 2 and of equipment and property involved in the assistance.

6. Nothing in this article shall require the require the requesting State to provide its nationals or permanent residents with the privileges and immunities provided for in the foregoing paragraphs.

7. Without prejudice to the privileges and immunities, all beneficiaries enjoying such privileges and immunities under this article have a duty to respect the laws and regulations of the requesting State. They shall also have the duty not to interfere in the domestic affairs of the requesting State.

8. Nothing in this article shall prejudice rights and obligations with respect to privileges and immunities afforded pursuant to other international agreements or the rules of customary international law.

9. When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound in whole or in part by paragraphs 2 and 3.

10. A State Party which has made a declaration in accordance with paragraph 9 may at any time withdraw it by notification to the depositary.

Article 9 – Transit of Personnel, Equipment and Property

Each State Party shall, at the request of the requesting State or the assisting party, seek to facilitate the transit through its territory of duly notified personnel, equipment and property involved in the assistance to and from the requesting State.

Article 10 – Claims and Compensation

1. The States Parties shall closely cooperate in order to facilitate the settlement of legal proceedings and claims under this article.

2. Unless otherwise agreed, a requesting State shall in respect of death or injury to persons, damage to or loss of property, or damage to the environment caused within its territory or other area under its jurisdiction or control in the course of providing the assistance requested:

(a) not bring any legal proceedings against the assisting party or persons or other legal entities acting on its behalf;

(b) assume responsibility for dealing with legal proceedings and claims brought by third parties against the assisting party or against persons or other legal entities acting on its behalf;

(c) hold the assisting party or persons or other legal entities acting on its behalf harmless in respect of legal proceedings and claims referred to in sub-paragraph (b); and

(d) compensate the assisting party or persons or other legal entities acting on its behalf for:

(i) death of or injury to personnel of the assisting party or persons acting on its behalf;

(ii) loss of or damage to non-consumable equipment or materials related to the assistance; except in cases of willful misconduct by the individuals who caused the death, injury, loss or damage.

3. This article shall not prevent compensation or indemnity available under any applicable international agreement or national law of any State.

4. Nothing in this article shall require the requesting State to apply paragraph 2 in whole or in part to its nationals or permanent residents.

5. When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare:

(a) that it does not consider itself bound in whole or in part by paragraph 2;

(b) that it will not apply paragraph 2 in whole or in part in cases of gross negligence by the individuals who caused the death, injury, loss or damage.

6. A State Party which has made a declaration in accordance with paragraph 5 may at any time withdraw it by notification to the depositary.

Article 11 – Termination of Assistance

The requesting State or the assisting party may at any time, after appropriate consultations and by notification in writing, request the termination of assistance received or provided under this Convention. Once such a request has been made, the parties involved shall consult with each other to make arrangements for the proper conclusion of the assistance.

Article 12 – Relationship to Other International Agreements

This Convention shall not affect the reciprocal rights and obligations of States Parties under existing international agreements which relate to the matters covered by this Convention, or under future international agreements concluded in accordance with the object and purpose of this Convention.

Article 13 – Settlement of Disputes

1. In the event of a dispute between States Parties, or between a State Party and the Agency, concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character between States Parties cannot be settled within one year from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute

settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a State Party for which such a declaration is in force.

4. A State Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the depositary.

Article 14 – Entry into Force

1. This Convention shall be open for signature by all States and Namibia, represented by the United Nations Council for Namibia, at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York, from 26 September 1986 and 6 October 1986 respectively, until its entry into force or for twelve months, whichever period is longer.

2. A State and Namibia, represented by the United Nations Council for Namibia, may express its consent to be bound by this Convention either by signature, or by deposit of an instrument of ratification, acceptance or approval following signature made subject to ratification, acceptance or approval, or by deposit of an instrument of accession. The instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

3. This Convention shall enter into force thirty days after consent to be bound has been expressed by three States.

4. For each State expressing consent to be bound by this Convention after its entry into force, this Convention shall enter into force for that Sate thirty days after the date of expression of consent.

5. (a) This Convention shall be open for accession, as provided for in this article, by international organizations and regional integration organizations constituted by sovereign States, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence such organizations shall, on their own behalf, exercise the rights and fulfill the obligations which this Convention attributes to States Parties.

(c) When depositing its instrument of accession, such an organization shall communicate to the depositary a declaration indicating the extent of its competence in respect of matters covered by this Convention.

(d) Such an organization shall not hold any vote additional to those of its Member States.

Article 15 – Provisional Application

A State may, upon signature or at any later date before this Convention enters into force for it, declare that it will apply this Convention provisionally.

Article 16 – Amendments

1. A State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all other States Parties.

2. If a majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States

Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be laid down in a protocol which is open to signature in Vienna and New York by all States Parties.

3. The protocol shall enter into force thirty days after consent to be bound has been expressed by three States. For each State expressing consent to be bound by the protocol after its entry into force, the protocol shall enter into force for that State thirty days after the date of expression of consent.

Article 17 – Denunciation

1. A State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year following the date on which the notification is received by the depositary.

Article 18 – Depositary

1. The Director General of the Agency shall be the depositary of this Convention.

2. The Director General of the Agency shall promptly notify States Parties and all other States of:

(a) each signature of this Convention or any protocol of amendment;

(b) each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention or any protocol of amendment;

(c) any declaration or withdrawal thereof in accordance with articles 8, 10 and 13;

(d) any declaration of provisional application of this Convention in accordance with article 15;

(e) the entry into force of this Convention and of any amendment thereto; and

(f) any denunciation made under article 17.

Article 19 – Authentic Texts and Certified Copies

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies to States Parties and all other States.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention, open for signature as provided for in paragraph 1 of article 14.

ADOPTED by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on the twenty-sixth day of September one thousand nine hundred and eighty-six.

Table: Convention On Assistance In The Case Of A Nuclear Accident Or Radiological Emergency

Signature, Ratification, Acceptance, Approval or Accession by States or Organizations

Country/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound		Entry into Force
Afghanistan	26 Sep 1986			
Albania		acceded	30 Apr 2003	31 May 2003
Algeria	24 Sep 1987	ratified	15 Jan 2004	15 Feb 2004
Argentina		acceded	17 Jan 1990	17 Feb 1990
Armenia		acceded	24 Aug 1993	24 Sep 1993
Australia	26 Sep 1986	ratified	22 Sep 1987	23 Oct 1987
Austria	26 Sep 1986	ratified	21 Nov 1989	22 Dec 1989
Bangladesh		acceded	07 Jan 1988	07 Feb 1988
Belarus	26 Sep 1986	ratified	26 Jan 1987	26 Feb 1987
Belgium	26 Sep 1986	ratified	04 Jan 1999	04 Feb 1999
Bolivia		acceded	22 Aug 2003	21 Sep 2003
Bosnia and Herzegovina		succeeded	30 June 1998	01 Mar 1992
Brazil	26 Sep 1986	ratified	04 Dec 1990	04 Jan 199
Bulgaria	26 Sep 1986	ratified	24 Feb 1988	26 Mar 1988
Cameroon	25 Sep 1987	ratified	17 Jan 2006	16 Feb 2006
Canada	26 Sep 1986	ratified	12 Aug 2002	12 Sep 2002
Chile	26 Sep 1986	ratified	22 Sep 2004	23 Oct 2004
China	26 Sep 1986	ratified	10 Sep 1987	11 Oct 1987
Colombia		acceded	23 Jun 2005	23 Jul 2005
Costa Rica	26 Sep 1986	ratified	16 Sep 1991	17 Oct 1991
Cote d'Ivoire	26 Sep 1986			
Croatia		succeeded	29 Sep 1992	08 Oct 1991
Cuba	26 Sep 1986	ratified	08 Jan 1991	08 Feb 1991
Cyprus		acceded	04 Jan 1989	04 Feb 1989
Czech Republic		succeeded	24 Mar 1993	01 Jan 1993
Dem. P.R. of Korea	29 Sep 1986			
Dem. Rep. Of the Congo	30 Sep 1986			
Denmark	26 Sep 1986			
Egypt	26 Sep 1986	ratified	17 Oct 1988	17 Nov 1988
El Salvador		acceded	28 Jul 2005	27 Aug 2005
Estonia		acceded	09 May 1994	09 Jun 1994
Finland	26 Sep 1986	approved	27 Nov 1990	28 Dec 1990
France	26 Sep 1986	approved	06 Mar 1989	06 Apr 1989
Gabon		acceded	19 Feb 2008	20 Mar 2008

Country/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound		Entry into Force
Germany	26 Sep 1986	ratified	14 Sep 1989	15 Oct 1989
Greece	26 Sep 1986	ratified	06 Jun 1991	07 Jul 1991
Guatemala	26 Sep 1986	ratified	08 Aug 1988	08 Sep 1988
Holy See	26 Sep 1986			
Hungary	26 Sep 1986	ratified	10 Mar 1987	10 Apr 1987
Iceland	26 Sep 1986	ratified	27 Jan 2006	26 Feb 2006
India	29 Sep 1986	ratified	28 Jan 1988	28 Feb 1988
Indonesia	26 Sep 1986	ratified	12 Nov 1993	13 Dec 1993
Iran, Islamic Republic of	26 Sep 1986	ratified	09 Oct 2000	09 Nov 2000
Iraq	12 Aug 1987	ratified	21 Jul 1988	21 Aug 1988
Ireland	26 Sep 1986	ratified	13 Sep 1991	14 Oct 1991
Israel	26 Sep 1986	ratified	25 May 1989	25 Jun 1989
Italy	26 Sep 1986	ratified	25 Oct 1990	25 Nov 1990
Japan	06 Mar 1987	accepted	09 Jun 1987	10 Jul 1987
Jordan	02 Oct 1986	ratified	11 Dec 1987	11 Jan 1988
Korea, Rep. of		acceded	08 Jun 1990	09 Jul 1990
Kuwait		acceded	13 May 2003	13 Jun 2003
Latvia		acceded	28 Dec 1992	28 Jan 1993
Lebanon	26 Sep 1986	ratified	17 Apr 1997	18 May 1997
Libyan Arab Jamahiriya		acceded	27 Jun 1990	28 Jul 1990
Liechtenstein	26 Sep 1986	ratified	19 Apr 1994	20 May 1994
Lithuania		acceded	21 Sep 2000	22 Oct 2000
Luxembourg		acceded	26 Sep 2000	27 Oct 2000
Malaysia	01 Sep 1987	signature	01 Sep 1987	02 Oct 1987
Mali	02 Oct 1986	ratified	01 Oct 2007	31 Oct 2007
Mauritius		acceded	17 Aug 1992	17 Sep 1992
Mexico	26 Sep 1986	ratified	10 May 1988	10 Jun 1988
Monaco	26 Sep 1986	approval	19 Jul 1989	19 Aug 1989
Mongolia	08 Jan 1987	ratified	11 Jun 1987	12 Jul 1987
Montenegro		succeeded	21 Mar 2007	03 Jun 2006
Morocco	26 Sep 1986	ratified	07 Oct 1993	07 Nov 1993
Netherlands	26 Sep 1986	accepted	23 Sep 1991	24 Oct 1991
New Zealand		acceded	11 Mar 1987	11 Apr 1987
Nicaragua		acceded	11 Nov 1993	12 Dec 1993
Niger	26 Sep 1986			
Nigeria	21 Jan 1987	ratified	10 Aug 1990	10 Sep 1990
Norway	26 Sep 1986	signature	26 Sep 1986	26 Feb 1987
Pakistan		acceded	11 Sep 1989	12 Oct 1989
Panama	26 Sep 1986	ratified	01 Apr 1999	02 May 1999
Paraguay	02 Oct 1986			

Country/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound		Entry into Force
Peru		acceded	17 Jul 1995	17 Aug 1995
Philippines		acceded	05 May 1997	05 Jun 1997
Poland	26 Sep 1986	ratified	24 Mar 1988	24 Apr 1988
Portugal	26 Sep 1986	ratified	23 Oct 2003	23 Nov 2003
Qatar		acceded	04 Nov 2005	04 Dec 2005
Republic of Moldova		acceded	07 May 1988	07 Jun 1998
Romania		acceded	12 Jun 1990	13 Jul 1990
Russian Federation	26 Sep 1986	ratified	23 Dec 1986	26 Feb 1987
Saint Vincent & the Grenadines		acceded	18 Sep 2001	19 Oct 2001
Saudi Arabia		acceded	03 Nov 1989	04 Dec 1989
Senegal	15 Jun 1987			
Serbia		succeeded	05 Feb 2002	27 Apr 1992
Sierra Leone	25 Mar 1987			
Singapore		acceded	15 Dec 1997	15 Jan 1998
Slovakia		succeeded	10 Feb 1993	01 Jan 1993
Slovenia		succeeded	07 Jul 1992	25 Jun 1991
South Africa	10 Aug 1987	ratified	10 Aug 1987	10 Sep 1987
Spain	26 Sep 1986	ratified	13 Sep 1989	14 Oct 1989
Sri Lanka		acceded	11 Jan 1991	11 Feb 1991
Sudan	26 Sep 1986			
Sweden	26 Sep 1986	ratified	24 Jun 1992	25 Jul 1992
Switzerland	26 Sep 1986	ratified	31 May 1988	01 Jul 1988
Syrian Arab Republic	02 Jul 1987			
Thailand	25 Sep 1987	ratified	21 Mar 1989	21 Apr 1989
The Frmr.Yug.Rep. of Macedonia		succeeded	20 Sep 1996	17 Nov 1991
Tunisia	24 Feb 1987	ratified	24 Feb 1989	27 Mar 1989
Turkey	26 Sep 1986	ratified	03 Jan 1991	03 Feb 1991
Ukraine	26 Sep 1986	ratified	26 Jan 1987	26 Feb 1987
United Arab Emirates		acceded	02 Oct 1987	02 Nov 1987
United Kingdom	26 Sep 1986	ratified	09 Feb 1990	12 Mar 1990
United Republic of Tanzania		acceded	27 Jan 2005	26 Feb 2005
United States of America	26 Sep 1986	ratified	19 Sep 1988	20 Oct 1988
Uruguay		acceded	21 Dec 1989	21 Jan 1990
Viet Nam		acceded	29 Sep 1987	30 Oct 1987
Zimbabwe	26 Sep 1986			

Country/ Organization	Date of Signature	Means and Date of Expression of Consent to be Bound		Entry into Force
EURATOM		acceded	14 Nov 2006	14 Dec 2006
Food & Agriculture Org (FAO)		acceded	19 Oct 1990	19 Nov 1990
World Health Org Org (WHO)		acceded	10 Aug 1988	10 Sep 1988
World Meteorological Org (WMO)		acceded	17 Apr 1990	18 May 1990

Note: The Convention entered into force on 26 February 1987, *i.e.* thirty days after the date on which the third State expressed its consent to be bound, pursuant to Article 14, paragraph 3.

Number of Parties: 100
Number of Signatories: 68

19 February 2008

G. ADDITIONAL PROTOCOL I TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

Done at Mexico February 14, 1967;
Transmitted by the President of the United States of America to the Senate May 24, 1978 (S. Ex. I, 95th Cong., 2d Sess.);
Reported favorably by the Senate Committee on Foreign Relations October 19, 1981 (S. Ex. Rep. No. 97-23, 97th Cong., 1st Sess.);
Advice and consent to ratification by the Senate, with understandings, November 13, 1981;
Ratified by the President, with said understandings, November 19, 1981;
Ratification of the United States of America deposited with Mexico November 23, 1981;
Proclaimed by the President December 14, 1981;
Entered into force with respect to the United States of America November 23, 1981.

By the President of the United States of America

A Proclamation

Considering that:

Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America was signed on behalf of the United States of America at Mexico City on May 26, 1977, a certified copy of which is hereto annexed;[1]

The Senate of the United States of America by its resolution of November 13, 1981, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of Additional Protocol I, subject to the following understandings:

1) That the provisions of the Treaty made applicable by this Additional Protocol do not affect the exclusive power and legal competence under international law of a State adhering to this Protocol to grant or deny transit and transport privileges to its own or any other vessels or aircraft irrespective of cargo or armaments.

2) That the provisions of the Treaty made applicable by this Additional Protocol do not affect rights under the international law of a State adhering to this Protocol regarding the exercise of the freedom of the seas, or regarding passage through or over waters subject to the sovereignty of a State.

3) That the understandings and declarations attached by the United States to its ratification of Additional Protocol II (text attached) apply also to its ratification of Additional Protocol I.

The President of the United States of America on November 19, 1981, ratified Additional Protocol I, subject to the said understandings, in pursuance of the advice and

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[1]Texts of the English, French, Portuguese and Spanish languages as certified by the Department of Foreign Relations of Mexico.

consent of the Senate, and the United States of America deposited its instrument of ratification with the Government of the United Mexican States on November 23, 1981;

Pursuant to the provisions of Additional Protocol I, Additional Protocol I, subject to the said understandings, entered into force for the United States of America on November 23, 1981;

Now, Therefore, I, Ronald Reagan, President of the United States of America, proclaim and make public Additional Protocol I, subject to the said understandings, to the end that it shall be observed and fulfilled with good faith by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

In testimony whereof, I have signed this proclamation and caused the seal of the United States of America to be affixed.

(seal)

Done at the city of Washington this fourteenth day of December in the year of our Lord one thousand nine hundred eighty-one and of the Independence of the United States of America the two hundred sixth.

Ronald Reagan

By the President:
Alexander M. Haig, Jr.
Secretary of State

Understandings And Declarations Attached By The United States To Its Ratification Of Additional Protocol II

I.[2] That the United States Government understands the reference in Article 3 of the treaty to "its own legislation" to relate only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that ratification of Additional Protocol II by the United States Government could not be regarded as implying recognition, for the purpose of this treaty and its protocols, or for any other purpose, of any legislation which did not, in the view of the United States, comply with the relevant rules of international law.

That the United States Government takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the contracting parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny non-contracting parties transit and transport privileges.

That as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States Government would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article 1 of the treaty.

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[2]May 8, 1971. TAIS 7137; 22 USED 760.

II. That the United States Government considers that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons, and that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore the United States Government understands the definition contained in Article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It also understood that Articles 1 and 5 restrict accordingly the activities of the contracting parties under paragraph 1 of Article 18.

That the United States Government understands that paragraph 4 of Article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with contracting parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with a policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States Government notes Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear-weapons states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

III. That the United States Government also declares that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of contracting parties.

Additional Protocol I

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America,[3] negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

ARTICLE 1. To undertake to apply the status of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, *de jure or de facto*, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.

[3]Done Feb. 14, 1967. TAIS 7137; 22 USED 762.

ARTICLE 2. The duration of this protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the provisions regarding ratification and denunciation contained in the Treaty shall be applicable to it.

ARTICLE 3. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Protocol on behalf of their respective Governments.

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
N.J.A. Cheetham

FOR THE KINGDOM OF THE NETHERLANDS:
S. Van Heemstra

FOR THE UNITED STATES OF AMERICA:
Jimmy Carter

NUCLEAR FREE ZONE–LATIN AMERICA[4]

NOTE:
Additional protocol I to the treaty of February 14, 1967 for the prohibition of nuclear weapons in Latin America. Done at Mexico February 14, 1967; entered into force December 11, 1969; for the United States November 23, 1981. 33 USED 1792; TAIS 10147; 634 UNTS 362. States which are parties: Netherlands,[5] United Kingdom,[6] United States[7]

Additional protocol II to the treaty of February 14, 1967 for the prohibition of nuclear weapons in Latin America. Done at Mexico February 14, 1967; entered into force December 11, 1969; for the United States May 12, 1971. 22 USED 754; TAIS 7137; 634 UNTS 364. States which are parties: China,[8] France,[9] Union of Soviet Socialist Reps.,[10] United Kingdom[11] [12], United States[13]

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[4]The United States is not a party to the treaty for the prohibition of nuclear weapon in Latin America (the Treaty of Tlatelolco). For the English text of the treaty, see 22 USC 762; TIAS 7137; for the text in other languages, see 634 UNTS 281.
[5]With statement(s).
[6]Applicable to Anguilla, British Virgin Is., Cayman Is., Falkland Is., Montserrat, Turks and Caicos Is.
[7]With understanding and declarations.
[8]With statement(s).
[9]With statement(s).
[10]With statement(s).
[11]With declaration.
[12]Applicable to Anguilla, British Virgin Is., Cayman Is., Falkland Is., Montserrat, Turks and Caicos Is.
[13]With understanding and declarations.

ADDITIONAL PROTOCOL II TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

Signed by the United States at Mexico April 1, 1968
Underlying Treaty signed by others at Mexico February 14, 1967
U.S. ratification with understandings and declarations deposited May 12, 1971
Entered into force for the United States May 12, 1971[14]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:
Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, done at the City of Mexico on February 14, 1967, was signed on behalf of the United States of America on April 1, 1968, the text of which Protocol is word for word as follows:

Additional Protocol II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons.

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace, based on mutual respect and sovereign equality of States.

Have agreed as follows:

Article 1. The statute of denuclearization of Latin America in respect of warlike purposes, as defined, delineated and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin American of which this instrument is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

Article 2. The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

Article 3. The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

Article 4. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin American of which this protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to this Protocol, as well as the provisions regarding ratification,

[14]The United Kingdom, France, and the People's Republic of China are also parties of Protocol II.

reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

Article 5. The Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof the undersigned, Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Additional Protocol on behalf of their respective Governments.

The Senate of the United States of America by its resolution of April 19, 1971, two-thirds of the Senators present concurring, gave it advice and consent to the ratification of Additional Protocol II, with the following understandings and declarations:

I

That the United States Government understands the reference in Article 3 of the treaty to "its own legislation" to relate only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that ratification of Additional Protocol II by the United States Government could not be regarded as implying recognition, for the purposes of this treaty and its protocols or for any other purpose, of any legislation which did not, in the view of the United States, comply with the relevant rules of international law.

That the United States Government takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny non-Contracting Parties transit and transport privileges.

That as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting parties, the United States Government would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article I of the Treaty.

II

That the United States Government considers that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons, and that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore, the United States Government understands the definition contained in Article 5 of treaty as necessarily encompassing all nuclear explosive devices. It is also understood that Articles 1 and 5 restrict accordingly the activities of the Contracting Parties under paragraph 1 of Article 18.

That the United States Government understands that paragraph 4 of Article 18 of the treaty permits, and the United States adherence to Protocol II will not prevent, collaboration by the United States with Contracting Parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with a policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection,

the United States Government notes Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear-weapon states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

III

That the United States Government also declares that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of Contracting Parties.

The President ratified Additional Protocol II on May 8, 1971, with the above-recited understandings and declarations, in pursuance of the advice and consent of the Senate. It is provided in Article 5 of Additional Protocol II that the Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland was deposited on December 11, 1969 with understandings and a declaration, and the instrument of ratification of the United States of America was deposited on May 12, 1971 with the above-recited understandings and declarations.

In accordance with Article 5 of Additional Protocol II, the Protocol entered into force for the United States of America on May 12, 1971, subject to the above recited understandings and declarations.

Now, *therefore*, I, Richard Nixon, President of the United States of America, proclaim and make public Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America to the end that it shall be observed and fulfilled with good faith, subject to the above-recited understandings and declarations, on and after May 12, 1971 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdictions thereof.

In testimony whereof, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this eleventh day of June in the year of our Lord one thousand nine hundred seventy-one and of the Independence of the United States of America the one-hundred ninety-fifth.

(Seal)

H. TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

Preamble

In the name of their peoples and faithfully interpreting their desires and aspirations, the Governments of the States which sign the Treaty for the Prohibition of Nuclear Weapons in Latin America.

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on the sovereign equality of States, mutual respect and good neighbourliness,

Recalling that the United Nations General Assembly, in its Resolution 808 (XI), adopted unanimously as one of the three points of a coordinated programme of disarmament "the total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type",

Recalling that militarily denuclearized zones are not an end in themselves but rather a means of achieving general and complete disarmament at a later stage,

Recalling United Nations General Assembly Resolution 1911 (XVIII), which established that the measures that should be agreed upon for the denuclearization of Latin America should be taken "in the light of the principles of the Charter of the United Nations and of regional agreements",

Recalling United Nations General Assembly Resolution 2028 (XX), which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear non-nuclear powers, and

Recalling that the Charter of the Organization of American States proclaims that it is an essential purpose of the Organization to strengthen the peace and security of the hemisphere,

Convinced:

That the incalculable destructive power of nuclear weapons has made it imperative that the legal prohibition of war should be strictly observed in practice if the survival of civilization and of mankind itself is to be assured,

That nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radioactivity they release, and attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable.

That the general and complete disarmament under effective international control is a vital matter which all the peoples of the world equally demand,

That the proliferation of nuclear weapons, which seems inevitable unless States, in the exercise of their sovereign rights, impose restrictions on themselves in order to prevent it, would make an agreement of disarmament enormously difficult and would increase the danger of the outbreak of a nuclear conflagration,

That the establishment of militarily denuclearized zones is closely linked with the maintenance of peace and security in the respective regions,

That the military denuclearization of vast geographical zones, adopted by the sovereign decision of the States comprised therein, will exercise a beneficial influence on other regions where similar conditions exist,

That the privileged situation of the signatory States, whose territories are wholly free from nuclear weapons, imposes upon them the inescapable duty of preserving that situation both in their own interests and for the good of mankind,

That the existence of nuclear weapons in any country of Latin America would make it a target for possible nuclear attacks and would inevitable set off, throughout the region, a ruinous race in nuclear weapons which would involve the unjustifiable diversion, for warlike purposes, of the limited resources required for economic and social development,

That the foregoing reasons, together with the traditional peace-loving outlook of Latin America, give rise to an inescapable necessity that nuclear energy should be used in that region exclusively for peaceful purposes, and that the Latin American countries should use their right to the greatest and most equitable access to this new source of energy in order to expedite the economic and social development of their peoples.

Convinced finally:

That the military denuclearization of Latin America–being understood to mean the undertaking entered into internationally in this Treaty to keep their territories forever free from nuclear weapons–will constitute a measure which will spare their peoples from the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, and will also constitute a significant contribution towards preventing the proliferation of nuclear weapons and a powerful factor of general and complete disarmaments, and

That Latin America, faithful to its tradition of universality, must not only endeavor to banish from its homelands the scourge of a nuclear war, but must also strive to promote the well-being and advancement of its peoples, at the same time co-operating in the fulfillment of the ideals of mankind, that is to say, in the consolidation of a permanent peace based on equal rights, economic fairness and social justice for all, in accordance with the principles and purposes set forth in the Charter of the United Nations and in the Charter of the Organization of American States,

Have agreed as follows:

Article 1 – Obligations

1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under this jurisdiction, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

Article 2 – Definition of the Contracting Parties

For the purposes of this Treaty, the Contracting Parties are those for whom the Treaty is in force.

Article 3 – Definition of Territory

For the purposes of this Treaty, the term "territory" shall include the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation.

Article 4 – Zone of Application

1. The zone of application of this Treaty is the whole of the territories for which the Treaty is in force.

2. Upon fulfillment of the requirements of Article 28, paragraph 1, the zone of application of the Treaty shall also be that which is situated in the western hemisphere with the following limits (except the continental part of the territory of the United States of America and its territorial waters): starting at a point located 35□ north latitude, 75□ west longitude; from this point directly southward to a point at 30□ north latitude, 75□ west longitude; from there, directly eastward to a point at 30□ north latitude, 50□ west longitude; from there along a loxodromic line to a point at 5□ north latitude, 20□ west longitude; from there directly southward to a point at 60□ south latitude, 20□ west longitude; from there directly westward to a point at 60□ south latitude, 115□ west longitude; from there directly northward to a point at 0□ latitude, 115□ west longitude; from there, along a loxodromic line to a point at 35□ north latitude, 150□ west longitude; from there, directly eastward to a point at 35□ north latitude, 75□ west longitude.

Article 5 – Definition of Nuclear Weapons

For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

Article 6 – Meeting of Signatories

At the request of any of the signatory States or if the Agency established by article 7 should so decide, a meeting of all the signatories may be convoked to consider in common questions which may affect the very essence of this instrument, including possible amendments to it. In either case, the meeting will be convoked by the General Secretary.

Article 7 – Organization

1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean"[1] hereinafter referred to as "the Agency." Only the Contracting Parties shall be affected by its decisions.

[1] Agency for the Prohibition of Nuclear Weapons in Latin America [OPANAL], Gen.Conf. Res. 267 (E-V), OPANAL Doc. CG/E/Res.267 (E-V) (July 3, 1990), amended treaty to include "and the Caribbean".

2. The Agency shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to the supervision of compliance with the obligations arising therefrom.

3. The Contracting Parties agree to extend to the Agency full and prompt cooperation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency may conclude with any other international organization or body.

4. The headquarters of the Agency shall be in Mexico City.

Article 8 – Organs

1. There are hereby established as principal organs of the Agency a General Conference, a Council and a Secretariat.

2. Such subsidiary organs as are considered necessary by the General Conference may be established within the purview of this Treaty.

Article 9 – The General Conference

1. The General Conference; the supreme organ of the Agency, shall be composed of all the Contracting Parties; it shall hold regular sessions every two years and may also hold special sessions whenever this Treaty so provides or, in the opinion of the Council, the circumstances so require.

2. The General Conference:

(a) May consider and decide on any matters or questions covered by this Treaty, within the limits thereof, including those referring to powers and functions of any organ provided for in this Treaty.

(b) Shall establish procedures for the control system to ensure observance of this Treaty in accordance with its provisions.

(c) Shall elect the Members of the Council and the General Secretary.

(d) May remove the General Secretary from office if the proper functioning of the Agency so requires.

(e) Shall receive and consider the biennial and special reports submitted by the Council and the General Secretary.

(f) Shall initiate and consider studies designed to facilitate the optimum fulfillment of the aims of this Treaty, without prejudice to the power of the General Secretary independently to carry out similar studies for submission to and consideration by the Conference.

(g) Shall be the organ competent to authorize the conclusion of agreements with Governments and other international organizations and bodies.

3. The General Conference shall adopt the Agency's budget and fix the scale of financial contributions to be paid by Member States, taking into account the systems and criteria used for the same purpose by the United Nations.

4. The General Conference shall elect its officers for each session and may establish such subsidiary organs as it deems necessary for the performance of its functions.

5. Each Member of the Agency shall have one vote. The decisions of the General Conference shall be taken by a two-thirds majority of the Members present and voting in the case of matters relating to the control system and measures referred to in article 20,

the admission of new Members, the election or removal of the General Secretary, adoption of the budget and matters related thereto. Decisions on other matters, as well as procedural questions and also determination of which questions must be decided by a two-thirds majority, shall be taken by a simple majority of the Members present and voting.

6. The General Conference shall adopt its own rules of procedure.

Article 10 – The Council

1. The Council shall be composed of five Members of the Agency elected by the General Conference from among the Contracting Parties, due account being taken equitable geographic distribution.

2. The Members of the Council shall be elected for a term of four years. However, in the first election three will be elected for two years. Outgoing Members may not be re-elected for the following period unless the limited number of States for which the Treaty is in force so requires.

3. Each Member of the Council shall have one representative.

4. The Council shall be so organized as to be able to function continuously.

5. In addition to the functions conferred upon it by this Treaty and to those which may be assigned to it by the General Conference, the Council shall, through the General Secretary, ensure the proper operation of the control system in accordance with the provisions of this Treaty and with the decisions adopted by the General Conference.

6. The Council shall submit an annual report on its work to the General Conference as well as such special reports as it deems necessary or which the General Conference requests of it.

7. The Council shall elect its officers for each session.

8. The decisions of the Council shall be taken by a simple majority of its Members present and voting.

9. The Council shall adopt its own rules of procedure.

Article 11 – The Secretariat

1. The Secretariat shall consist of a General Secretary, who shall be the chief administrative officer of the Agency, and of such staff as the Agency may require. The term of office of the General Secretary shall be four years and he may be re-elected for a single additional term. The General Secretary may not be a national of the country in which the Agency has its headquarters. In case the office of General Secretary becomes vacant, a new election shall be held to fill the office for the remainder of the term.

2. The staff of the Secretariat shall be appointed by the General Secretary, in accordance with rules laid down by the General Conference.

3. In addition to the functions conferred upon him by this Treaty and to those which may be assigned to him by the General Conference–the General Secretary shall ensure, as provided by article 10, paragraph 5, the proper operation of the control system established by this Treaty, in accordance with the provisions of the Treaty and the decisions taken by the General Conference.

4. The General Secretary shall act in that capacity in all meetings of the General Conference and of the Council and shall make an annual report to both bodies on the

work of the Agency and any special reports requested by the General Conference or the Council or which the General Secretary may deem desirable.

5. The General Secretary shall establish the procedures for distributing to all Contracting Parties information received by the Agency from governmental sources and such information from non-governmental sources as may be of interest to the Agency.

6. In the performance of their duties the General Secretary and the staff shall not seek or receive instructions from any Government or from any other authority external to the Agency and shall refrain from any action which might reflect on their position as international officials responsible only to the Agency; subject to their responsibility to the Agency, they shall not disclose any industrial secrets or other confidential information coming to their knowledge by reason of their official duties in the Agency.

7. Each of the Contracting Parties undertakes to respect the exclusively international character of the responsibilities of the General Secretary and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 12 – Control System

1. For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with article 1, a control system shall be established which shall be put into effect in accordance with the provisions of articles 13-18 of this Treaty.

2. The control system shall be used in particular for the purpose of verifying:

(a) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons.

(b) That none of the activities prohibited in article 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad, and

(c) That explosions for peaceful purposes are compatible with article 18 of this Treaty.

Article 13 – IAEA Safeguards

Each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities. Each Contracting Party shall initiate negotiations within a period of 180 days after the date of the deposit of its instrument of ratification of this Treaty. These agreements shall enter into force, for each Party, not later than eighteen months after the date of the initiation of such negotiations except in case of unforeseen circumstances or force majeure.

Article 14 – Reports of the Parties

1. The Contracting Parties shall submit to the Agency and to the International Atomic Energy Agency, for their information, semi-annual reports stating that no activity prohibited under this Treaty has occurred in their respective territories.

2. The Contracting Parties to the Treaty shall simultaneously transmit to the Agency a copy of the reports submitted to the International Atomic Energy Agency which relate to matters subject of this Treaty that are relevant to the work of the Agency.

3. The information furnished by the Contracting Parties shall not be, totally or partially, disclosed or transmitted to third parties, by the addresses of the reports, except when the Contracting Parties give their express consent.[2]

Article 15 – Special Reports Requested by the General Secretary

1. At the request of any of the Contracting Parties and with the authorization of the Council, the General Secretary may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any extraordinary event or circumstance which affects the compliance with this Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the General Secretary.

2. The General Secretary shall inform the Council and the Contracting Parties forthwith of such requests and of the respective replies.[3]

Article 16 – Special Inspections

1. The International Atomic Energy Agency has the power of carrying out special inspections in accordance with Article 12 and with the agreements referred to in Article 13 of this Treaty.

2. At the request of any of the Contracting Parties and in accordance with the procedures established in Article 15 of this Treaty, the Council may submit for the consideration of the International Atomic Energy Agency a request that the necessary mechanisms be put into operation to carry out a special inspection.

3. The General Secretary shall request the Director General of the International Atomic Energy Agency to transmit to him in a timely manner the information forwarded to the Board of Governors of the IAEA relating to the conclusion of the special inspection. The General Secretary shall make this information available to the Council promptly.

4. The Council, through the General Secretary, shall transmit this information to all the Contracting Parties.

Article 17 – Use of Nuclear Energy for Peaceful Purposes

Nothing in the provisions of this Treaty shall prejudice the rights of the Contracting Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress.

Article 18 – Explosions for Peaceful Purposes

1. Contracting Parties may carry out explosions of nuclear devices for peaceful purposes–including explosions which involve devices similar to those used in nuclear weapons–or collaborate with third parties for the same purpose, provide that they do so in accordance with the provisions of this article and the other articles of the Treaty, particularly Articles 1 and 5.

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[2] Paragraph's 2 and 3 were amended by OPANAL, Gen.Conf. Res. 290 (VII), OPANAL Doc. CG/E/Res.290 (August 26, 1992).

[3] Section amended by OPANAL, Gen.Conf. Res. 290 (VII), OPANAL Doc. CG/E/Res.290 (August 26, 1992).

2. Contracting Parties intending to carry out, or to cooperate in carrying out, such an explosion shall notify the Agency and the International Atomic Energy Agency, as far in advance as the circumstances require, of the date of the explosion and shall at the same time provide the following information:

(a) The nature of the nuclear device and the source from which it was obtained.

(b) The place and purpose of the planned explosion,

(c) The procedures which will be followed in order to comply with paragraph 3 of this article.

(d) The expected force of the device, and

(e) The fullest possible information on any possible radioactive fall-out that may result from the explosion or explosions, and measures which will be taken to avoid danger to the population, flora, fauna and territories of any other Party or Parties.

3. The General Secretary and the technical personnel designated by the Council and the International Atomic Energy Agency may observe all the preparations, including the explosion of the device, and shall have unrestricted access to any area in the vicinity of the site of the explosion in order to ascertain whether the device and the procedures followed during the explosion are in conformity with the information supplied under paragraph 2 of this article and the other provisions of this Treaty.

4. The Contracting Parties may accept the collaboration of third parties for the purpose set forth in paragraph 1 of the present article, in accordance with paragraphs 2 and 3 thereof.

Article 19 – Relations with International Atomic Energy Agency

1. The Agency may conclude such agreements with the International Atomic Energy Agency, as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the Control System established by this Treaty.[4]

Article 20 – Relations with Other International Agencies

1. The Agency may also enter into relations with any international organization or body, especially any which may be established in the future to supervise disarmament or measures for the control of armaments in any part of the world.

2. The Contracting Parties may, if they see fit, request the advice of the Inter-American Nuclear Energy Commission on all technical matters connected with the application of this Treaty with which the Commission is competent to deal under its Statute.[5]

Article 21 – Measures in the Event of Violation of the Treaty

1. The General Conference shall take note of all cases in which, in its opinion, any Contracting Party is not complying fully with its obligations under this Treaty and shall draw the matter to the attention to the Party concerned, making such recommendations as it deems appropriate.

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[4] Article inserted by OPANAL, Gen.Conf. Res. 290 (VII), OPANAL Doc. CG/E/Res.290 (August 26, 1992).

[5] Article renumbered and amended by OPANAL, Gen.Conf. Res. 290 (VII), OPANAL Doc. CG/E/Res.290 (August 26, 1992).

2. If, in its opinion, such non-compliance constitutes a violation of this Treaty which might endanger peace and security, the General Conference shall report thereon simultaneously to the United Nations Security Council and the General Assembly through the Secretary-General of the United Nations and to the Council of the Organization of American States. The General Conference shall likewise report to the International Atomic Energy Agency for such purposes as are relevant in accordance with its Statute.

Article 22 – United Nations and Organizations of American States

None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the Parties under the Charter of the United Nations or, in the case of States Members of the Organization of American States, under existing regional treaties.

Article 23 – Privileges and Immunities

1. The Agency shall enjoy in the territory of each of the Contracting Parties such legal capacity and such privileges and immunities as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. Representatives of the Contracting Parties accredited to the Agency and officials of the Agency shall similarly enjoy such privileges and immunities as are necessary for the performance of their functions.

3. The Agency may conclude agreements with the Contracting Parties with a view to determining the details of the application of paragraphs 1 and 2 of this article.

Article 24 – Notification of Other Agreements

Once this Treaty has entered into force, the Secretariat shall be notified immediately of any international agreement concluded by any of the Contracting Parties on matters with which this Treaty is concerned; the Secretariat shall register it and notify the other Contracting Parties.

Article 25 – Settlement of Disputes

Unless the Parties concerned agree on another mode of peaceful settlement, any question or dispute concerning the interpretation or application of this Treaty which is not settled shall be referred to the International Court of Justice with the prior consent of the Parties to the controversy.

Article 26 – Signature

1. This Treaty shall be open indefinitely for signature by:

(a) All the Latin American Republics, and

(b) All other sovereign States situated in their entirety south of latitude 35x north in the western hemisphere; and, except as provided in paragraph 2 of this article, all such States which become sovereign, when they have admitted by the General Conference.

2. The condition of State Party to the Treaty of Tlatelolco shall be restricted to Independent States which are situated within the Zone of application of the Treaty in accordance with Article 4 of same, and with paragraph I of the present Article, and which were Members of the United Nations as of December 10, 1985 as well as to the non-

autonomous territories mentioned in document OEA/CER.P, AG/doc. 1939/85 of November 5, 1985, once they attain their independence.[6]

Article 27 – Ratification and Deposit

1. This Treaty shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. This Treaty and the instruments of ratification shall be deposited with the Government of the Mexican United States, which is hereby designated the Depositary Government.

3. The Depositary Government shall send certified copies of this Treaty to the Governments of signatory States and shall notify them of the deposit of each instrument of ratification.

Article 28 – Reservations

This Treaty shall not be subject to reservations.

Article 29 – Entry into Force

1. Subject to the provisions of paragraph 2 of this article, this Treaty shall enter into force among the States that have ratified it as soon as the following requirements have been met:

(a) Deposit of the instruments of ratification of this Treaty with the Depositary Government by the Governments of the States mentioned in article 25 which are in existence on the date when this Treaty is opened for signature and which are not affected by the provisions of article 25, paragraph 2;

(b) Signature and ratification of Additional Protocol 1 annexed to this Treaty by all extra-continental or continental States have *de jure* or *de facto* international responsibility for territories situated in the zone of application of the Treaty;

(c) Signature and ratification of the Additional Protocol II annexed to this Treaty by all powers possessing nuclear weapons;

(d) Conclusion of bilateral or multilateral agreements on the agreements on the application of the Safeguards System of the International Atomic Energy Agency in accordance with article 13 of this Treaty.

2. All signatory States shall have the imprescriptible right to waive, wholly or in part, the requirements laid down in the preceding paragraph. They may do so by means of a declaration which shall be annexed to their respective instrument of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those States which exercise this right, this Treaty shall enter into force upon deposit of the declaration, or as soon as those requirements have been met which have not been expressly waived.

3. As soon as this Treaty has entered into force in accordance with the provisions of paragraph 2 for eleven States, the Depositary Government shall convene a preliminary meeting of those States in order that the Agency may be set up and commence its work.

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[6] Paragraph 2 was amended by OPANAL, Gen.Conf. Res. 268 (XII), OPANAL Doc. CG/Res.268 (May 9, 1991).

4. After the entry into force of this treaty for all the countries of the zone, the rise of a new power possessing nuclear weapons shall have the effect of suspending the execution of this Treaty for those countries which have ratified it without waiving requirements of paragraph 1, sub-paragraph (c) of this article, and which request such suspension; the Treaty shall remain suspended until the new power, on its own initiative or upon request by the General Conference ratifies the annexed Additional Protocol II.

Article 30 – Amendments

1. Any Contracting Party may propose amendments to this Treaty and shall submit its proposals to the Council through the General Secretary, who shall transmit them to all the other Contracting Parties and, in addition, to all other signatories in accordance with article 6. The Council, through the General Secretary, shall immediately following the meeting of signatories convene a special session of the General Conference to examine the proposals made, for the adoption of which a two-thirds majority of the Contracting Parties present and voting shall be required.

2. Amendments adopted shall enter into force as soon as the requirements set forth in article 28 of this Treaty have been complied with.

Article 31 – Duration and Denunciation

1. This Treaty shall be of a permanent nature and shall remain in force indefinitely, but any Party may denounce it by notifying the General Secretary of the Agency if, in the opinion of the denouncing State, there have arisen or may arise circumstances connected with the content of this Treaty or of the annexed Additional Protocols I and II which affect its supreme interests or the peace and security of one or more Contracting Parties.

2. The denunciation shall take effect three months after the delivery to the General Secretary of the Agency of the notification by the Government of the signatory State concerned. The General Secretary shall immediately communicate such notification to the other Contracting Parties and to the Secretary-General of the United Nations for the information of the United Nations Security Council and the General Assembly. He shall also communicate it to the Secretary-General of the Organization of American States.

Article 32 – Authentic Texts and Registration

This Treaty, of which the Spanish, Chinese, English, French, Portuguese and Russian texts are equally authentic, shall be registered by the Depositary Government in accordance with article 102 of the United Nations Charter. The Depositary Government shall notify the Secretary-General of the United Nations of the signatures, ratifications and amendments relating to this Treaty and shall communicate them to the Secretary-General of the Organization of American States for its information.

Transitional Article

Denunciation of the declaration referred to in article 28, paragraph 2, shall be subject to the same procedures as the denunciation of this Treaty, except that it will take effect on the date of delivery of the respective notification.

In Witness Whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

Done at Mexico, Distrito Federal, on the Fourteenth day of February, one thousand nine hundred and sixty-seven.

Additional Protocol

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments.[7]

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons.

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the filed of nuclear weapons, and towards strengthening a world at peace, based on mutual respect and sovereign equality of States.

Have agreed as follows:

Article 1. To undertake to apply the statute of denuclearization in respect of warlike purposes as defined in articles 2, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, *de jure* or *de facto*, they are internationally responsible and which lie within the limits of the geographical zone established in that treaty.

Article 2. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the provisions regarding ratification and denunciation contained in the Treaty shall be applicable to it.

Article 3. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification. In Witness Whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Protocol on behalf of their respective Governments.

[7]The United Kingdom and the Netherlands are parties to this Protocol. The United States has signed.

Table: Treaty For The Prohibition Of Nuclear Weapons In Latin America

Signature and Ratification by States or Organizations

Country	Signature	Ratification	Amendment to Art. 7 Res. 267 (E-V)		Amendment to Art. 25 Res. 268 (XII)		Amendments to Art. 14, 15, 16, 19, 20 Res. 290 (VII)	
			Signature	Ratification	Signature	Ratification	Signature	Ratification
Antigua & Barbuda	10/11/83	10/11/83 [1]						
Argentina	9/27/67	1/18/94	12/10/90	1/18/94	10/14/91	1/18/94	8/26/92	1/18/94
Bahamas, The	11/29/76	4/26/77	3/18/92					
Barbados	10/18/68	4/25/69	2/14/97	2/14/97	2/14/97	2/14/97	2/14/97	2/14/97
Belize	2/14/92	11/9/94	11/23/95	11/23/95			11/23/95	11/23/95
Bolivia	2/14/67	2/18/69	12/10/90		9/10/91		8/31/92	
Brazil	5/9/67	1/29/68	12/5/90	5/30/94	1/23/92	5/30/94	8/26/92	5/30/94
Chile	2/14/67	10/9/74	1/16/91	1/18/94	9/3/91	1/18/94	8/26/92	1/20/99
Colombia	2/14/67	8/4/72	12/5/90	1/18/99	8/10/91	1/18/99	12/14/92	1/18/99
Costa Rica	2/14/67	8/25/69	12/10/90	1/20/99	9/3/91	1/20/99	8/26/92	1/20/99
Cuba	3/25/95	10/23/02	12/5/95	10/23/02	12/5/95	10/23/02	12/5/95	10/23/02
Dominica	5/2/89	6/4/93						
Dominican Republic	7/29/67	6/14/68	1/16/91		9/10/91		8/26/92	3/27/98
Ecuador	2/14/67	2/11/69	12/5/90	10/18/95	9/13/91	8/30/00	8/26/92	8/30/00
El Salvador	2/14/67	4/22/68	2/21/91	5/22/92	9/10/91	1/14/02	9/8/92	6/19/06
Grenada	4/29/75	6/20/75	9/17/91	9/17/91	9/17/91			
Guatemala	2/14/67	2/6/70	12/10/90	8/21/98	10/23/97	11/26/03	8/26/92	11/26/03
Guyana	1/16/95	1/16/95	1/16/95	1/16/95	1/16/95	1/16/95	1/16/95	1/16/95

Country	Signature	Ratification	Amendment to Art. 7 Res. 267 (E-V)		Amendment to Art. 25 Res. 268 (XII)		Amendments to Art. 14, 15, 16, 19, 20 Res. 290 (VII)	
			Signature	Ratification	Signature	Ratification	Signature	Ratification
Haiti	2/14/67	5/23/69	1/16/91		1/21/92		10/22/92	
Honduras	2/14/67	9/23/68	1/16/91		3/4/92		8/26/92	
Jamaica	10/26/67	6/26/69	2/21/91	3/13/92	9/17/91	5/17/91	6/8/93	4/17/95
Mexico	2/14/67	9/20/67	11/5/90	10/24/91	9/2/91	4/10/92	8/26/92	9/1/93
Nicaragua	2/15/67	10/24/68	12/10/90		1/28/92		8/26/92	11/8/99
Panama	2/14/67	6/11/71		8/8/00		8/8/00		8/8/00
Paraguay	4/26/67	3/19/69	2/19/91	10/22/96	1/21/92	10/22/96	8/26/92	10/22/96
Peru	2/14/67	3/4/69	12/5/90	7/14/95	1/21/92	7/14/95	2/9/93	7/14/95
St. Lucia	8/25/92	6/2/95						
Saint Kitts and Nevis	2/18/94	4/18/95	2/18/94		2/18/94		2/18/94	
St. Vincent/Grenadines	2/14/92	2/14/92						
Suriname	2/13/76	6/10/77		Accession 6/13/94		Accession 6/13/94		Accession 6/13/94
Trinidad & Tobago	6/27/67	12/3/70 [a]						
Uruguay	2/14/67	8/20/68	11/16/90	8/30/94	9/17/91	8/30/94	8/29/92	2/20/95
Venezuela	2/14/67	3/23/70	2/16/91	2/14/97	9/10/91	2/14/97	8/26/92	2/20/95
TOTAL	**33**	**33**	**26**	**21**	**24**	**19**	**24**	**22**

[1] Dates give are the earliest dates on which countries signed the agreements or deposited their ratifications or accessions – whether in Washington, London, Moscow, or New York. In the case of a country that was a dependent territory which became a party through succession, the date given is the date on which the country gave notice that it would continue to be bound by the terms of the agreement.

[a] The declaration of waiver was deposited 6/27/75, which is date of entry into force for Trinidad and Tobago.

Table: Additional Protocol I To The Treaty For The Prohibition Of Nuclear Weapons In Latin America
Signature and Ratification by States or Organizations

Country	Date of Signature	Date of Deposit of Ratification
France	3/2/79	8/24/92
Netherlands	4/1/68	7/26/71
United Kingdom	12/20/67	12/11/69
United States	5/26/77	11/23/81

Table: Additional Protocol II To The Treaty For The Prohibition Of Nuclear Weapons In Latin America
Signature and Ratification by States or Organizations

Country	Date of Signature	Date of Deposit of Ratification
China, Peoples Republic of	8/21/73	6/12/74
France	7/18/73	3/22/74
USSR	5/18/78	1/8/79
United Kingdom	12/20/67	12/11/69
United States	4/1/68	5/12/71

I. INTERNATIONAL ATOMIC ENERGY AGENCY PARTICIPATION ACT OF 1957

Public Law 85-177 **71 Stat. 5899**

August 28, 1957
An Act

To provide for the appointment of representatives of the United States of the organs of the International Atomic Energy Agency, and to make other provisions with respect to the participation of the United States in that Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

That this Act may be cited as the "International Atomic Energy Agency Participation Act of 1957."

Sec. 2. Representatives

(a) The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the International Atomic Energy Agency (hereinafter referred to as the "Agency"), who shall hold office at the pleasure of the President. Such representative and deputy representative shall represent the United States on the Board of Governors of the Agency, may represent the United States at the General Conference, and may serve exofficio as United States representative on any organ of that Agency, and shall perform such other functions in connection with the participation of the United States in the Agency as the President may from time to time direct.

(b) The President, by and with the advice and consent of the Senate, may appoint or designate from time to time to attend a specified session or specified sessions of the General Conference of the Agency a representative of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Conference.

(c) The President may also appoint or designate from time to time such other persons as he may deem necessary to represent the United States in the organs of the Agency. The President may designate any officer of the United States Government, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States on the Board of Governors or to the General Conference of the Agency in the absence or disability of the representative and deputy representative appointed under section 2(a) or in lieu of such representative in connection with a specified subject matter.

(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 USC 866, 867), for Chiefs of Mission and Foreign Service officers occupying positions of equivalent importance, except that

no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not the exceed those received by Chiefs of Mission and Foreign Service officers occupying positions of equivalent importance.

Sec. 3. Participation

The participation of the United States in the International Atomic Energy Agency shall be consistent with and in furtherance of the purposes of the Agency set forth in its Statute and the policy concerning the development, use, and control of atomic energy set forth in the Atomic Energy Act of 1954, as amended. [The President shall, from time to time as occasion may require, but not less that once each year, make reports to the Congress on the activities of the International Atomic Energy Agency and on the participation of the United States therein.][1] In addition to any other requirements of law the Department of State and the Atomic Energy Commission shall keep the Joint Committee on Atomic Energy, the House Committee on Foreign Affairs, and the Senate Committee on Foreign Relations, as appropriate, currently informed with respect to the activities of the Agency and the participation of the United States therein.

Sec. 4. Voting

The representatives provided for in section 2 hereof, when representing the United States in the organs of the Agency, shall, at all times, act in accordance with the instructions of the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Statute of the International Atomic Energy Agency.

Sec. 5. Salaries and Expenses

There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the Statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended, travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of 1946, as amended, or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of 1946, as amended; services as authorized by section 15 of the Act of August 2, 1946 (5 USC 55a);[2] translating and other services, by contract; hire of passenger motor

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[1]Public Law 89-348 (79 Stat. 1310), section 1(20), amended Public Law 85-177 by repealing the requirement of a report to the Congress by the President not less than once each year on the activities of the International Atomic Energy Agency and on the participation of the United States therein.

[2]Public Law 89-554 (80 Stat. 416) codified section 15 of the Act of August 2, 1946, as 5 USC 3109.

vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 USC 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the Statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

Sec. 6. CSR/FEGLI Status

5 USC 8301.
5 USC 8701.

(a) Notwithstanding any other provision of law, Executive order or regulation, a Federal employee who, with the approval of the Federal agency or the head of the department by which he is employed, leaves his position to enter the employ of the Agency shall not be considered for the purposes of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, as separated from his Federal position during such employment with the Agency but not to extend beyond the first three consecutive years of his entering the employ of the Agency: *Provided;* (1) That he shall pay to the Civil Service Commission within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency, and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group life Insurance Act of 1954, as amended, shall be made during the term of his employment with the International Atomic Energy Agency. If such employee, within three years from the date of his employment with the Agency, and within ninety days from the date he is separated without prejudice from the Agency, applies to be restored to his Federal position, he shall within thirty days of such application be restored to such position or to a position of like seniority, status and pay.[3]

(b) Notwithstanding any other provision of law, Executive order or regulation, and Presidential appointee or elected officer who leaves his position to enter, or who within ninety days after the termination of his position enters, the employ of the Agency, shall be entitled to the coverage and benefits of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life insurance Act of 1954, as amended, but not beyond the earlier of either the termination of his employment with the Agency or the expiration of three years from the date he entered employment with the Agency: *Provided,* (1) That he shall pay to the Civil Service Commission within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as amended, shall be made during the term of his employment with the Agency.

(c) The President is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section and to protect the

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[3]Section 7 of Public Law 85-795 (72 Stat. 959), approved Aug. 28, 1958, repealed section 6(a), "except that it shall be considered to remain in effect with respect to any employee subject thereto who is serving as an employee of the International Atomic Energy Agency on the date of enactment of this Act and who does not make the election referred to in section 6 and for the purposes of any rights and benefits vested thereunder prior to such date."

retirement, insurance and such other civil service rights and privileges as the President may find appropriate.

Sec. 7. (Special Nuclear Material Compensation)

Section 54 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new sentences: "Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such periods of time as are authorized by Congress: *Provided, however,* That, notwithstanding this provision, the Commission is hereby authorized subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium 235, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to July 1, 1960."

Sec. 8. (Authority Termination)

In the event of an amendment to the Statute of the Agency being adopted in accordance with article XVIII-C of the Statute to which the Senate by formal vote shall refuse its advice and consent, upon notification by the Senate to the President of such refusal to advise and consent, all further authority under sections 2, 3, 4, and 5 of this Act, as amended, shall terminate: *Provided, however,* That the Secretary of State, under such regulations as the President shall promulgate, shall have the necessary authority to complete the prompt and orderly settlement of obligations and commitments to the Agency already incurred and pay salaries, allowances, travel expenses, and other expenses required for a prompt and orderly termination of United States participation in the Agency: *And provided further,* That the representative and the deputy representative of the United States to the Agency, and such other officers or employees representing the United States in the Agency, under such regulations as the President shall promulgate, shall retain their authority under this Act for such time as may be necessary to complete the settlement of matters arising out of the United States participation in the Agency.

J. STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

Article I–Establishment Of The Agency

The Parties hereto establish an International Atomic Energy Agency (hereinafter referred to as "the Agency" upon the terms and conditions hereinafter set forth.

Article II–Objectives

The Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

Article III–Function

A. The Agency is authorized:

1. To encourage and assist research on, and development and practical applications of, atomic energy for peaceful uses throughout the world; and, if requested to do so, to act as an intermediary for the purposes of securing the performance of services or the supplying of materials, equipment, or facilities by one member of the Agency for another; and to perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes.

2. To make provision, in accordance with this Statute, for materials. services, equipment, and facilities to meet the needs of research on, and development and practical application of, atomic energy for peaceful purposes, including the production of electric power, with due consideration for the needs of the underdeveloped areas of the world.;

3. To foster the exchange of scientific and technical information on peaceful use of atomic energy;

4. To encourage the exchange of scientific and training of scientists and experts in the field of peaceful uses of atomic energy;

5. To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in a way as to further any military purposes; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy;

6. To establish or adopt, in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions), and to provide for the applications of these standards to its own operations as well as to the operations making use of materials, services, equipment, facilities, and information made available by the Agency or at its request or under its control or supervision; and to provide for the application of these standards, at the

request of the parties, to operations under any bilateral or multilateral arrangement, or, at the request of a State, to any of that State's activities in the field of atomic energy;

7. To acquire or establish any facilities, plant and equipment useful in carrying out its authorized functions, whenever the facilities, plant, and equipment otherwise available to it in the area concerned are inadequate or available only on terms it deems unsatisfactory.

B. In carrying out its functions, the Agency shall:

1. Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international cooperation, and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies;

2. Establish control over the use of special fissionable materials received by the Agency, in order to ensure that these materials are used only for peaceful purposes;

3. Allocate its resources in such a manner as to secure efficient utilization and the greatest possible general benefit in all areas of the world, bearing in mind the special needs of the underdeveloped areas of the world;

4. Submit reports on the activities annually to the General Assembly of the United Nations and, when appropriate, to the Security Council, if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security, and may also take the measures open to it under this Statute, including those provided in paragraph C of Article XII;

5. Submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of these organs.

C. In carrying out its functions, the Agency shall not make assistance to members subject to any political, economic, military, or other conditions incompatible with the provisions of this Statute.

D. Subject to the provisions of this Statute and to the terms of agreement concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States.

Article IV–Membership

A. The initial members of the agency shall be those States Members of the Untied Nations or of any of the specialized agencies which shall have signed this Statute within ninety days after it is opened for signature and shall have deposited an instrument or ratification.

B. Other members of the Agency shall be those States, whether or not Members of the United Nations or of any of the specialized agencies, which deposit an instrument of acceptance of this Statute after their membership has been approved by the General Conference upon the recommendation of the Board of Governors. In recommending and

approving a State for membership, the Board of Governors and the General Conference shall determine that the State is able and willing to carry out the obligations of membership in the Agency, giving due consideration to its ability and willingness to act in accordance with the purposes and principles of the Charter of the United Nations.

C. The Agency is based on the principle of the sovereign equality of all its members, and all members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with this Statute.

Article V–General Conference

A. A General Conference consisting of representatives of all members shall meet in regular annual session and in such special sessions as shall be convened by the District General at the request of the Board of Governors or of a majority of members. The sessions shall take place at the headquarters of the Agency unless otherwise determined by the General Conference.

B. At such sessions, each member shall be represented by one delegate who may be accompanied by alternates and by advisers. The cost of attendance of any delegation shall be borne by the member concerned.

C. The General Conference shall elect a President and such other officers as may be required at the beginning of each session. They shall hold office for the duration of the session. The General Conference, subject to the provisions of this Statute, shall adopt its own rules of procedure. Each member shall have one vote. Decisions pursuant to paragraph H of Article XIV, paragraph C of article XVIII, and paragraph B of Article XIX shall be made by a two-thirds majority of the members present and voting. Decisions on other questions, including the determination of additional questions or categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting. A majority of members shall constitute a quorum.

D. The General Conference may discuss any questions or any matters within the scope of this Statute or relating to the powers and functions of any organs provided for in this Statute, and may make recommendations to the membership of the Agency or to the Board of Governors or to both on any such questions or matters.

E. The General Conference shall:

1. Elect members of the Board of Governors in accordance with article VI;

2. Approve States for membership in accordance with article IV;

3. Suspend a member from the privileges and rights of membership in accordance with Article XIX;

4. Consider the annual report of the Board;

5. In accordance with Article XIV, approve the budget of the Agency recommended by the Board or return it with recommendations as to its entirety or parts to the Board, for resubmission to the General Conference;

6. Approve reports to be submitted to the United Nations as required by the relationship agreement between the Agency and the United

Nations, except report referred to in paragraph C of Article XII, or return them to the Board with its recommendations;

7. Approve any agreement or agreements between the Agency and the United Nations and other organizations as provided in Article XVI or return such agreements with its recommendations to the Board, for resubmission to the General Conference;

8. Approve rules and limitations regarding the exercise of borrowing powers by the Board, in accordance with paragraph G of Article XIV; approve rules regarding the acceptance of voluntary contributions to the Agency; and approve, in accordance with paragraph F of Article XIV, the manner in which the general fund referred to in that paragraph may be used;

9. Approve amendments to this Statute in accordance with paragraph C of Article XVIII.

10. Approve the appointment of the Director General in accordance with paragraph A of Article VII.

F. The General Conference shall have the authority:

1. To take decisions on any matter specifically referred to the General Conference for this purpose by the Board;

2. To propose matters for consideration by the Board and request from the Board reports on any matter relating to the functions of the Agency.

Article VI–Board Of Governors

A. The Board of Governors shall be composed as follows:

1. The outgoing Board of Governors shall designate for membership on the Board the ten members most advanced in the technology of atomic energy including the production of source materials, and the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas in which none of the aforesaid ten is located:

(1) North America
(2) Latin America
(3) Western Europe
(4) Eastern Europe
(5) Africa
(6) Middle East and South Asia
(7) South East Asia and the Pacific
(8) Far East

2. The outgoing Board of Governors (or in the case of the first Board, the Preparatory Commission referred to in Annex I) shall designate for membership on the Board two members from among the following other producers of source materials: Belgium, Czechoslovakia, Poland, and Portugal; and shall also designate for membership on the Board one other member as a supplier of technical assistance. No member in this category in any one year will be eligible for redesignation in the same category for the following year.

3. The General Conference shall elect ten members to membership on the Board of Governors, with due regard to equitable representation on the Board as a whole of the members in the areas listed in subparagraph A-1 of this article, so that the Board shall at all times include in this category a

representative of each of those areas except North America. Except for the five members chosen for a term of one year in accordance with paragraph D of this article, no member in this category in any one term of office will be eligible for reelection in this same category for the following term of office.

B. The designations provided for in subparagraphs A-1 and A-2 of this article shall take place not less that sixty days before each regular annual session of the General Conference. The elections provided for in subparagraph A-3 of this article shall take place at regular annual sessions of the General Conference.

C. Members represented on the Board of Governors in accordance with subparagraph A-1 and A-2 of this article shall hold office from the end of the next regular annual session of the General Conference after their designation until the end of the following regular annual session for the General Conference.

D. Members represented on the Board of Governors in accordance with subparagraph A-3 of this Article shall hold office from the end of the regular annual session of the General Conference at which they are elected until the end of the second regular annual session of the General Conference thereafter. In the election of these members for the first Board, however, five shall be chosen for a term of one year.

E. Each member of the Board of Governors shall have one vote. Decisions on the amount of the Agency's budget shall be made by a two-thirds majority of those present and voting, as provided in paragraph H of Article XIV. Decisions on other questions, including the determination of additional questions or categories of questions to be decided by a two-thirds majority, shall be made by a majority of those present and voting. Two-thirds of all members of the Board shall constitute a quorum.

F. The Board of Governors shall have authority to carry out the functions of the Agency in accordance with this Statute, subject to its responsibilities to the General Conference as provided in the Statute.

G. The Board of Governors shall meet at such times as it may determine. The meetings shall take place at the headquarters of the Agency unless otherwise determined by the Board.

H. The Board of Governors shall elect a Chairman and other officers from among its members and, subject to the provisions of this Statute, shall adopt its own rules of procedure.

I. The Board of Governors may establish such committees as it deems advisable. The Board may appoint persons to represent it in its relations with other organizations.

J. The Board of Governors shall prepare an annual report to the General Conference concerning the affairs of the Agency and any projects approved by the Agency. The Board shall also prepare for submission to the General Conference such reports as the Agency is or may be required to make to the United Nations or to any other organization the work of which is related to that of the Agency. These reports, along with the annual reports, shall be submitted to members of the Agency at least one month before the regular annual session of the General Conference.

Article VII–Staff

A. The staff of the Agency shall be headed by a Director General. The Director General shall be appointed by the Board of Governors with the approval of the General Conference for a term of four years. He shall be the chief administrative officer of the Agency.

B. The Director General shall be responsible for the appointment, organization, and functioning of the staff and shall be under the authority of and subject to the control of the Board of Governors. He shall perform his duties in accordance with regulations adopted by the Board.

C. The staff shall include such qualified scientific and technical and other personnel as may be required to fulfill the objectives and functions of the Agency. The Agency shall be guided by the principal that its permanent staff shall be kept to a minimum.

D. The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be to secure employees of the highest standards of efficiency, technical competence, and integrity. Subject to this consideration, due regard shall be paid to the contributions of members of the Agency and to the importance of recruiting the staff on as wide a geographical basis as possible.

E. The terms and conditions on which the staff shall be appointed, renumerated, and dismissed shall be in accordance with regulations made by the Board of Governors, subject to provisions of this Statute and to general rules approved by the General Conference on the recommendation of the Board.

F. In the performance of their duties, the Director General and the staff shall not seek or receive instruction from any source external to the Agency. They shall refrain from any action which might reflect on their position as officials of the Agency; subject to their responsibilities to the Agency, they shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency. Each member undertakes to respect the international character of the responsibilities of the Director General and the staff shall not seek to influence them in the discharge of their duties.

G. In this article the term "staff" includes guards.

Article VIII–Exchange Of Information

A. Each member should make available such information as would, in the judgment of the member, be helpful to the Agency.

B. Each member shall make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to article XI.

C. The Agency shall assemble and make available in an accessible form the information made available to it under paragraphs A and B of this article. It shall take positive steps to encourage the exchange among its members of information relating to the nature and peaceful uses of atomic energy and shall serve as an intermediary among its members for this purpose.

Article IX–Supplying Of Materials

A. Members may make available to the Agency such quantities of special fissionable materials, as they deem advisable and on such terms as shall be agreed with the Agency. The materials made available to the Agency may, at the discretion of the member making them available, be stored either by the member concerned or, with the agreement of the Agency, in the Agency's depots.

B. Members may also make available to the Agency source materials as defined in article XX and other materials. The Board of Governors shall determine the quantities of such materials which the Agency will accept under agreements provided for in article XIII.

C. Each member shall notify the Agency of the quantities, form, and composition of special fissionable materials, source materials, and other materials which that member is prepared, in conformity with its laws, to make available immediately or during a period specified by the Board of Governors.

D. On request of the Agency a member shall, from the materials which it has made available, without delay deliver to another member or group of members such quantities of such materials as the Agency may specify, and shall without delay deliver to the Agency itself such quantities of such materials as are really necessary for operations and scientific research in the facilities of the Agency.

E. The quantities, form and composition of materials made available by any member may be changed at any time by the member with the approval of the Board of Governors.

F. An initial notification in accordance with paragraph C of this article shall be made within three months of the entry into force of this Statute with respect to the member concerned. In the absence of a contrary decision of the Board of Governors, the materials initially made available shall be for the period of the calendar year succeeding the year when this Statute takes effect with respect to the member concerned. Subsequent notifications shall likewise, in the absence of a contrary action by the Board, relate to the period of the calendar year following the notification and shall be made no later than the first day of November of each year.

G. The Agency shall specify the place and method of delivery and, where appropriate, the form and composition, of materials which it has requested a member to deliver from the amounts which that member has notified the Agency it is prepared to make available. The Agency shall also verify the quantities of materials delivered and shall report those quantities periodically to the members.

The Agency shall be responsible for storing and protecting materials in its possession. The Agency shall ensure that these materials shall be safeguarded against (1) hazards of the weather, (2) unauthorized removal or diversion, (3) damage or destruction, including sabotage, and (4) forcible seizure. In storing special fissionable materials in its possession, the Agency shall ensure the geographical distribution of these materials in any one country or region of the world.

I. The Agency shall as soon as practicable establish or acquire such of the following as may be necessary:

1. Plant, equipment, and facilities for the receipt, storage, and issue of materials;

2. Physical safeguards;
3. Adequate health and safety measures;
4. Control laboratories for the analysis and verification of materials received;
5. Housing and administrative facilities for any staff required for the foregoing.

J. The materials made available pursuant to this article shall be used as determined by the Board of Governors in accordance with the provisions of this Statute. No member shall have the right to require that the materials it makes available to the Agency be kept separately by the Agency or to designate the specific project in which they must be used.

Article X–Services, Equipment, And Facilities

Members may make available to the Agency services, equipment, and facilities which may be of assistance in fulfilling the Agency's objectives and functions.

Article XI–Agency Projects

A. Any member or group of members of the Agency desiring to set up any project for research on, or development or practical application of atomic energy for peaceful purposes may request the assistance of the Agency in securing special fissionable and other materials, services, equipment, and facilities necessary for this purpose. Any such request shall be accompanied by an explanation of the purpose and extent of the project and shall be considered by the Board of Governors.

B. Upon request, the Agency may also assist any member or group of members to make arrangements to secure necessary financing from outside sources to carry out such projects. In extending this assistance, the Agency will not be required to provide any guarantees or to assume any financial responsibility for the project.

C. The Agency may arrange for the supplying of any materials, services, equipment, and facilities necessary for the project by one or more members or may itself undertake to provide any or all of these directly, taking into consideration the wishes of the member or members making the request.

D. For the purpose of considering the request, the Agency may send into the territory of the member or group of members making the request a person or persons qualified to examine the project. For this purpose the Agency may, with the approval of the member or group of members making the request, use members of its own staff or employ suitably qualified nationals of any member.

E. Before approving a project under this article, the Board of Governors shall give due consideration to:

1. The usefulness of the project, including its scientific and technical feasibility;
2. The adequacy of plans, funds, and technical personnel to assure the effective execution of the project;
3. The adequacy of proposed health and safety standards for handling and storing materials and for operating facilities;

4. The inability of the member or group of members making the request to secure the necessary finances, materials, facilities, equipment, and services;

5. The equitable distribution of materials and other resources available to the Agency;

6. The special needs of the underdeveloped areas of the world;

7. Such other matters as may be relevant.

F. Upon approving a project, the Agency shall enter into an agreement with the member or group of members submitting the project, which agreement shall:

1. Provide for allocation to the project of any required special fissionable or other materials;

2. Provide for transfer of special fissionable materials from their then place of custody, whether the materials be in the custody of the Agency or of the member making them available for use in Agency projects, to the member or group of members submitting the project, under conditions which ensure the safety of any shipment required and meet applicable health and safety standards;

3. Set forth the terms and conditions, including charges, on which any materials, services, equipment, and facilities are to be provided by the Agency itself, and, if any such materials, services, equipment, and facilities are to be provided by a member, the terms and conditions as arranged for by the member or group of members submitting the project and the supplying member;

4. Include undertakings by the member or group of members submitting the project: (a) that the assistance provided shall not be used in such a way as to further any military purpose; and (b) that the project shall be subject to the safeguards provided for in article XII, the relevant safeguards being specified in the agreement;

5. Make appropriate provisions regarding the rights and interests of the Agency and the member or members concerned in any inventions or discoveries, or any patents therein, arising from the project;

6. Make appropriate provision regarding settlement of disputes;

7. Include such other provisions as may be appropriate.

G. The provisions of this article shall also apply where appropriate to a request for materials, services, facilities, or equipment in connection with an existing project.

Article XII–Agency Safeguards

A. With respect to any Agency project, or other arrangement where the Agency is requested by the parties concerned to apply safeguards, the Agency shall have the following rights and responsibilities to the extent relevant to the project or arrangement:

1. To examine the design of specialized equipment and facilities, including nuclear reactors, and to approve it only from the viewpoint of assuring that it will not further any military purpose, that it complies with applicable health and safety standards, and that it will permit effective application of the safeguards provided for in this article;

2. To require the observance of any health and safety measures prescribed by the Agency;

3. To require the maintenance and production of operating records to assist in ensuring accountability for source and special fissionable materials used or produced in the project or arrangement;

4. To call for and receive progress reports;

5. To approve the means to be used for the chemical processing of irradiated materials solely to ensure that this chemical processing will not lend itself to diversion of materials for military purposes and will comply with applicable health and safety standards; to require that special fissionable materials recovered or produced as a by-product be used for peaceful purposes under, continuing Agency safeguards for research or in reactors, existing or under construction, specified by the member or members concerned; and to require deposit with the Agency of any excess of any special fissionable materials recovered or produced as a by-product over what is needed for the above-stated uses in order to prevent stockpiling of these materials, provided that thereafter at the request of the member or members concerned special fissionable materials so deposited with the Agency shall be returned promptly to the member or members concerned for use under the same provisions as stated as above;

6. To send into the territory of the recipient State or States inspectors, designated by the Agency after consultation with the State or States concerned, who shall have access at all times to all places and data and to any person who by reason of his occupation deals with materials, equipment, or facilities which are required by this Statute to be safeguarded, as necessary to account for source and special fissionable materials supplied and fissionable products and to determine whether there is a compliance with the undertaking against use in furtherance of any military purpose referred to in subparagraph F-4 of article XI, with the health and safety measures referred to in subparagraph A-2 of this article, and with any other conditions prescribed in the agreement between the Agency and the State or States concerned. Inspectors designated by the Agency shall be accompanied by representatives of the authorities of the State concerned, if that State so requests, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

7. In the event of noncompliance and failure by the recipient State or States to take requested corrective steps within a reasonable time, to suspend or terminate assistance and withdraw any materials and equipment made available by the Agency or a member in furtherance of the project.

B. The Agency shall, as necessary, establish a staff of inspectors. The staff of inspectors shall have the responsibility of examining all operations conducted by the Agency itself to determine whether the Agency is complying with the health and safety measures prescribed by it for application to projects subject to its approval, supervision or control, and whether the Agency is taking adequate measures to prevent the source and special fissionable materials in its custody or used or produced in its own operations from being used in furtherance of any military purpose. The Agency shall take remedial action forthwith to correct any noncompliance or failure to take adequate measures.

C. The staff of inspectors shall also have the responsibility of obtaining and verifying the accounting referred to in subparagraph A-6 of this article and of determining whether there is compliance with the

undertaking referred to in subparagraph A-2 of this article, and with all other conditions of the project prescribed in the agreement between the Agency and the State or States concerned. The inspectors shall report any noncompliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any noncompliance which it finds to have occurred. The Board shall report the noncompliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient members or groups of members. The Agency may also, in accordance with article XIX, suspend any noncomplying member from the exercise of the privileges and rights of membership.

Article XIII–Reimbursement Of Members

Unless otherwise agreed upon between the Board of Governors and the members furnishing to the Agency materials, services, equipment, or facilities, the Board shall enter into an agreement with such member providing for reimbursement for the items furnished.

Article XIV–Finance

A. The Board of Governors shall submit to the General Conference the annual budget estimates for the expenses of the Agency. To facilitate the work of the Board in this regard, the Director General shall initially prepare the budget estimates. If the General Conference does not approve the estimates, it shall return them together with its recommendations to the Board. The Board shall then submit further estimates to the General Conference for its approval.

B. Expenditures of the Agency shall be classified under the following categories:

1. Administrative expenses: These shall include:

(a) Costs of the staff of the Agency other than the staff employed in connection with materials, services, equipment, and facilities referred to in subparagraph B-2 below; costs of meetings; and expenditures required for the preparation of Agency projects and for the distribution of information;

(b) Costs of implementing the safeguards referred to in Article XII in relation to agency projects or, under subparagraph A-5 of article III, in relation to any bilateral or multilateral arrangement, together with the costs of handling and storage of special fissionable material by the Agency other than the storage and handling charges referred to in paragraph E below;

2. Expenses, other than those included in subparagraph 1 of this paragraph in connection with any materials, facilities, plant, and equipment acquired or established by the Agency in carrying out its authorized functions, and the costs of materials, services, equipment, and facilities provided by it under agreements with one or more members.

C. In fixing the expenditures under subparagraph B-1(b) above, the Board of Governors shall deduct such amounts as are recoverable under agreements regarding the application of safeguards between the Agency and parties to bilateral or multilateral arrangements.

D. The Board of Governors shall apportion the expenses referred to in subparagraph B-1 above, among members in accordance with a scale to be fixed by the General Conference. In fixing the scale the General Conference shall be guided by the principles adopted by the United Nations in assessing contributions of Member States to the regular budget of the United Nations.

E. The Board of Governors shall establish periodically a scale of charges, including reasonable uniform storage and handling charges, for materials, services, equipment, and facilities furnished to members by the Agency. The scale shall be designed to produce revenues for the Agency adequate to meet the expenses and costs referred to in subparagraph B-2 above, less any voluntary contributions which the Board of Governors may, in accordance with paragraph F, apply for this purpose. The proceeds of such charges shall be placed in a separate fund which shall be used to pay members for any materials, services, equipment, or facilities furnished by them and to meet other expenses referred to in subparagraph B-2 above, which may be incurred by the Agency itself.

F. Any excess of revenues referred to in paragraph E over the expenses and costs there referred to, and any voluntary contributions to the Agency, shall be placed in a general fund which may be used as the Board of Governors, with the approval of the General Conference, may determine.

G. Subject to rules and limitations approved by the General Conference, the Board of Governors shall have the authority to exercise borrowing powers on behalf of the Agency without, however, imposing on members of the Agency any liability in respect of loans entered into pursuant to this authority, and to accept voluntary contributions made to the Agency.

H. Decisions of the General Conference on financial questions and of the Board of Governors on the amount of the Agency's budget shall require a two-thirds majority of those present and voting.

Article XV–Privileges And Immunities

A. The Agency shall enjoy in the territory of each member such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

B. Delegates of members together with their alternates and advisers, Governors appointed to the Board together with their alternates and advisers, and the Director General and the staff of the Agency, shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Agency.

C. The legal capacity, privileges and immunities referred to in this article shall be defined in a separate agreement or agreements between the Agency, represented for this purpose by the Director General acting under instructions of the Board of Governors, and the members.

Article XVI–Relationship With Other Organizations

A. The Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between the Agency and the United Nations and any other organizations the work of which is related to that of the Agency.

B. The agreement or agreements establishing the relationship of the Agency and the United Nations shall provide for:

1. Submission by the Agency of reports as provided for in subparagraphs B-4 and B-5 of Article III;

2. Consideration by the Agency of resolutions relating to it adopted by the General Assembly or any of the Councils of the United Nations and the submission of reports, when requested, to the appropriate organ of the United Nations on the action taken by the Agency or by its members in accordance with this Statute as a result of such consideration.

Article XVII–Settlement Of Disputes

A. Any question or dispute concerning the interpretation or application of this Statute which is not settled by negotiation shall be referred to the International Court of Justice in conformity with the Statute of the Court unless the parties concerned agree on another mode of settlement.

B. The General Conference and the Board of Governors are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities.

Article XVIII–Amendments And Withdrawals

A. Amendments to this Statute may be proposed by any member. Certified copies of the text of any amendment proposed shall be prepared by the Director General and communicated by him to all members at least ninety days in advance of its consideration by the General Conference.

B. At the fifth annual session of the General Conference following the coming into force of this Statute, the question of a general review of the provisions of this Statute shall be placed on the agenda of that session. On approval by a majority of the members present and voting, the review will take place at the following General Conference. Thereafter, proposals on the question of a general review of this Statute may be submitted for decision by the General Conference under the same procedure.

C. Amendments shall come into force for all members when:

(i) Approved by the General Conference by a two-thirds majority of those present and voting after consideration of observations submitted by the Board of Governors on each proposed amendment, and

(ii) Accepted by two-thirds of all the members in accordance with their respective constitutional processes. Acceptance by a member shall be effected by the deposit of an

instrument of acceptance with the depository Government referred to in paragraph C of Article XXI.

D. At any time after five years from the date when this Statute shall take effect in accordance with paragraph E of Article XXI or whenever a member is unwilling to accept an amendment to this Statute, it may withdraw from the Agency by notice in writing to that effect given to the depository Government referred to in paragraph C of Article XXI, which shall promptly inform the Board of Governors and all members.

E. Withdrawal by a member from the Agency shall not affect its contractual obligations entered into pursuant to Article XI or its budgetary obligations for the year in which it withdraws.

Article XIX–Suspension Of Privileges

A. A member of the Agency which is in arrears in the payment of its financial contributions to the agency shall have no vote in the Agency if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years. The General Conference may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

B. A member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference acting by a two-thirds majority of the members present and voting upon recommendation by the Board of Governors.

Article XX–Definitions

As used in this Statute:

1. The term "special fissionable materials" means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term "special fissionable material" does not include source material.

2. The term "uranium enriched in the isotopes 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such as the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. The term "source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one of more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other materials as the Board of Governors shall from time to time determine.

Article XXI–Signature, Acceptance, And Entry Into Force

5 USC 5101.
5 USC 5701.
5 USC 5731.

A. This Statute shall be open for signature on 26 October 1956 by all States Members of the United Nations or of any of the specialized

agencies and shall remain open for signature by those States for a period of ninety days.

B. The signatory States shall become parties to this Statute by deposit of an instrument of ratification.

C. Instruments of ratification by signatory States and instruments of acceptance by States whose membership has been approved under paragraph B of article IV of this Statute shall be deposited with the Government of the United States of America, hereby designated as depository Government.

D. Ratification or acceptance of this Statute shall be effected by States in accordance with their respective constitutional processes.

E. This Statute, apart from the Annex, shall come into force when eighteen States have deposited instruments of ratification in accordance with paragraph B of this article, provided that such eighteen States shall include at least three of the following States: Canada, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Instruments of ratification and instruments of acceptance deposited thereafter shall take effect on the date of their receipt.

F. The depository Government shall promptly inform all States signatory to this Statute of the date of each deposit of ratification and the date of entry into force of the Statute. The depository Government shall promptly inform all signatories and members of the dates on which States subsequently become parties thereto.

G. The Annex to this Statute shall come into force on the first day this Statute is open for signature.

Article XXII–Registration With The United Nations

A. This Statute shall be registered by the depository Government pursuant to Article 102 of the Charter of the United Nations.

B. Agreements between the Agency and any member or members, agreements between the Agency and any organization or other organizations, and agreements between members subject to approval of the Agency, shall be registered with the Agency. Such agreements shall be registered by the Agency with the United Nations if registration is required under Article 102 of the Charter of the United Nations.

Article XXIII–Authentic Texts And Certified Copies

This Statute, done in the Chinese, English, French, Russian and Spanish languages, each being equally authentic, shall be deposited in the archives of the depository Government. Duly certified copies of this Statute shall be transmitted by the depository Government to the Governments of the other signatory States and to the Governments of States admitted to membership under paragraph B of Article IV.

In witness whereof the undersigned, duly authorized, have signed this Statute.

Done at the Headquarters of the United Nations, this twenty-sixth day of October, one thousand nine hundred and fifty-six.

Annex I–Preparatory Commission

A. A Preparatory Commission shall come into existence on the first day this Statute is open for signature. It shall be composed of one representative each of Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Portugal, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and United States of America, and one representative each of six other States to be chosen by the International Conference on the Statute of the International Atomic Energy Agency. The Preparatory commission shall remain in existence until this Statute comes into force and thereafter until the general Conference has convened and a Board of Governors has been selected in accordance with Article VI.

B. The expenses of the Preparatory Commission may be met by a loan provided by the United Nations and for this purpose the Preparatory Commission shall make the necessary arrangements with the appropriate authorities of the United Nations, including arrangements for repayment of the loan by the Agency. Should these funds be insufficient, the Preparatory Commission may accept advances from Governments. Such advances may be set off against the contributions of the Governments concerned to the Agency.

C. Preparatory commission shall–

1. Elect its own officers, adopt its own rules of procedure, meet as often as necessary, determine its own place of meeting and establish such committees as it deems necessary.

2. Appoint an executive secretary and staff as shall be necessary, who shall exercise such powers and performs such duties as the Commission may determine;

3. Make arrangements for the first session of the General Conference, including the preparation of a provisional agenda and draft rules of procedure, such session to be held as soon as possible after the entry into force of this Statute;

4. Make designations for membership on the first Board of Governors in accordance with subparagraph A-1 and A-2 and paragraph B of Article VI;

5. Make studies, reports, and recommendations for the first session of the General conference and for the first meeting of the Board of Governors on subjects of concern to the Agency requiring immediate attention, including (a) the financing of the Agency; (b) the programs and budget for the first year of the Agency; (c) technical problems relevant to advance planning of Agency operations; (d) the establishment of a permanent Agency staff; and (e) the location of the permanent headquarters of the Agency;

6. Make recommendations for the first meeting of the Board of Governors concerning the provisions of a headquarters agreement defining the status of the Agency and the rights and obligations which will exist in the relationship between the Agency and the host Government;

7. (a) Enter into negotiations with the United Nations with a view to the preparation of a draft agreement in accordance with Article XVI of this Statute, such draft agreement to be submitted to the first session of the general Conference and to the first meeting of the Board of Governors; and (b) make recommendations to the first session of the General

Conference and to the first meeting of the Board of Governors concerning the relationship of the Agency to other international organizations as contemplated in article XVI of this Statute.

Summary Of The Statute Of The International Atomic Energy Agency

ARTICLES I AND II

The statute upon its entry into force will establish the International Atomic Energy Agency, the basic objective of which is to seek to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world without at the same time furthering any military purpose.

ARTICLE III

The functions of the Agency set forth in article III of the statute are (a) to encourage and assist research on, and development and practical application of, atomic energy for peaceful purposes throughout the world; (b) to make provisions for materials, services, equipment, and facilities needed to carry out the foregoing purposes; (c) to foster the exchange of scientific and technical information on, and the exchange and training of scientist and experts in, the peaceful uses of atomic energy; (d) to establish and administer safeguards to ensure that fissionable or other materials, services, equipment, facilities, and information with which the Agency deals are not uses to further any military purpose; (e) to participate in the establishment, adoption, and application of standards of safety for the protection of health and the minimization of danger to life and property from activities in the field of atomic energy; and (f) to acquire or establish any facilities, plant, and equipment useful in carrying out its authorized functions.

In carrying out its functions, the Agency is required by the statute (a) to conduct its activities in accordance with the purposes and principals of the United Nations and, in particular in conformity with United Nations policies furthering the establishment of a safeguarded worldwide disarmament; (b) to control the use of such fissionable materials as are received by the Agency so as to ensure that they are used only for peaceful purposes; (c) to allocate its resources so as to secure efficient utilization and wide distribution of their benefits throughout the world, bearing in mind the special needs of the underdeveloped areas; (d) to submit annual reports on its activities to the General Assembly of the United Nations; (e) when appropriate, to submit reports and information to the Security Council, Economic and Social Council, and other organs of the United Nations; (f) to refuse to give assistance to member countries under political economic, military, or other conditions that are inconsistent with the statute; and (g) subject to the terms of any agreements that may be made between a state or group of states and the Agency, to give due observance to the sovereign rights of states.

ARTICLE IV

Initial members of the Agency are to be states members of the United Nations or of any of the specialized agencies which signed the statute within 90 days after it was opened for signature and which deposit instruments of ratification. The following 30 states signed the statute during the period it was open for signature: (From Oct. 26, 1956 for a period of 90 days.)

NOTE:
While the list of 30 initial member states is not provided here, eighteen ratifications were required to bring the IAEA's Statute into force. By July 29, 1957, the States in *italics*–as well as the former Czechoslovakia– had ratified the Statute. By the end of 1957, the following states had signed the Statute: (Names of States are not necessarily their historical designations.)

Afghanistan
Albania
Argentina
Australia
Austria
Belarus
Brazil
Bulgaria
Canada
Cuba
Denmark
Dominican Republic
Egypt
El Salvador
Ethiopia
France
Germany
Greece
Guatemala
Haiti
Holy See
Hungary
Iceland
India
Indonesia
Israel
Italy
Japan
Republic of Korea
Monaco
Morocco
Myanmar
Netherlands
New Zealand
Norway
Pakistan
Paraguay
Peru
Poland
Portugal
Romania
Russian Federation
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Tunisia
Turkey
Ukraine
United Kingdom
United States
Venezuela
Viet Nam
Yugoslavia

K. AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN THE UNITED STATES OF AMERICA

Whereas the United States of America (hereinafter referred to as the "United States") is a Party to the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as the "Treaty") which was opened for signature at London, Moscow and Washington on 1 July 1968 and which entered into force on 5 March 1970;

Whereas States Parties to the Treaty undertake to co-operate in facilitating the application of International Atomic Energy Agency (hereinafter referred to as the "Agency") safeguards on peaceful nuclear activities;

Whereas non-nuclear-weapon States Parties to the Treaty undertake to accept safeguards, as set forth in an agreement to be negotiated and concluded with the Agency, on all source or special fissionable material in all their peaceful nuclear activities for the exclusive purpose of verification of the fulfillment of their obligations under the Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices;

Whereas the United States, a nuclear-weapon State as defined by the Treaty, has indicated that at such time as safeguards are being generally applied in accordance with paragraph 1 of Article III of the Treaty, the United States will permit the Agency to apply its safeguards to all nuclear activities in the United States–excluding only those with direct national security significance–by concluding a safeguards agreement with the Agency for that purpose;

Whereas the United States has made this offer and has entered into this agreement for the purpose of encouraging widespread adherence to the Treaty by demonstrating to non-nuclear-weapon States that they would not be placed at a commercial disadvantage by reason of the application of safeguards pursuant to the Treaty;

Whereas the purpose of a safeguard agreement giving effect to this offer by the United States would thus differ necessarily from the purposes of safeguards agreements concluded between the Agency and non-nuclear-weapon States Party to the Treaty;

Whereas it is in the interest of Members of the Agency, that, without prejudice to the principles and integrity of the Agency's safeguards system, the expenditure of the Agency's financial and other resources for implementation of such an agreement not exceed that necessary to accomplish the purpose of the Agreement;

Whereas the Agency is authorized, pursuant to Article III of the Statute of the International Atomic Energy Agency (hereinafter referred to as the "Statute"), to conclude such a safeguards agreement;

Now, therefore, the United States and the Agency have agreed as follows:

PART I
ARTICLE 1

(a) The United States undertakes to permit the Agency to apply safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all facilities within the United States, excluding only those facilities associated with

activities with direct national security significance to the United States, which a view to enabling the Agency to verify that such material is not withdrawn, except as provided for in this Agreement, from activities in facilities while such material is being safeguarded under this Agreement.

(b) The United States shall, upon entry in force of this Agreement, provide the Agency with a list of facilities within the United States not associated with activities with direct national security significance to the United States and may, in accordance with the procedures set forth in Part II of this Agreement, add facilities to or remove facilities from that list as it deems appropriate.

(c) The United States may, in accordance with the procedures set forth in this Agreement, withdraw nuclear material from activities in facilities included in the list referred to in Article 1(b).

ARTICLE 2

(a) The Agency shall have the right to apply safeguards in accordance with the terms of this Agreement on all source or special fissionable material in all facilities within the United States, excluding only those facilities associated with activities with direct national security significance to the United States, with a view to enable the Agency to verify that such material is not withdrawn, except as provided for in this Agreement, from activities in facilities while such material is being safeguarded under this Agreement.

(b) The Agency shall, from time to time, identify to the United States those facilities, selected from the then current list provided by the United States in accordance with Article 1(b) in which the Agency wishes to apply safeguards, in accordance with the terms of this Agreement.

(c) In identifying facilities and in applying safeguards thereafter on source or special fissionable material in such facilities, the Agency shall proceed in a manner which the Agency and the United States mutually agrees takes into account the requirement on the United States to avoid discriminatory treatment as between United States commercial firms similarly situated.

ARTICLE 3

(a) The United States and the Agency shall co-operate to facilitate the implementation of the safeguards provided for in this Agreement.

(b) The source or special fissionable material subject to safeguards under this Agreement shall be that material in those facilities which shall have been identified by the Agency at any given time pursuant to Article 2(b).

(c) The safeguards to be applied by the Agency under this agreement on source or special fissionable materials in facilities in the United States shall be implemented by the same procedures followed by the Agency in applying its safeguards on similar material in similar facilities in non-nuclear-weapon States under agreement pursuant to paragraph 1 of Article III of the Treaty.

ARTICLE 4

The safeguards provided for in this Agreement shall be implemented in a manner designed:

(a) To avoid hampering the economic and technological development of the United States or international co-operation in the field of peaceful nuclear activities, including international exchange of nuclear material;

(b) To avoid undue interference in peaceful nuclear activities of the United States and in particular in the operation of the facilities; and

(c) To be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

ARTICLE 5

(a) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement.

(b)(i) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board of Governors of the Agency (hereinafter referred to as "the Board") and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfill its responsibilities in implementing this Agreement.

(ii) Summarized information on nuclear material subject to safeguards under this Agreement may be published upon the decision of the Board if the United States agrees thereto.

ARTICLE 6

(a) The Agency shall, in implementing safeguards pursuant to this Agreement, take full account of technological developments in the field of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the application of the principle of safeguarding effectively the flow of nuclear material subject to safeguards under this Agreement by use of instruments and other techniques at certain strategic points to the extent that present or future technology permits.

(b) In order to ensure optimum cost-effectiveness, use shall be made, for example, of such means as:

(i) Containment as a means of defining material balance areas for accounting purposes;

(ii) Statistical techniques and random sampling in evaluating the flow of nuclear material; and

(iii) Concentration of verification procedures on those stages in the nuclear fuel cycle involving the production, processing, use or storage of nuclear material from which nuclear weapons or other nuclear explosive devices could readily be made, and minimization of verification procedures in respect of other nuclear material, on

condition that this does not hamper the Agency in applying safeguards under this Agreement.

ARTICLE 7

(a) The United States shall establish and maintain a system of accounting for and control of all nuclear material subject to safeguards under this Agreement.

(b) The Agency shall apply safeguards in accordance with Article 3(c) in such a manner as to enable the Agency to verify, in ascertaining that there has been no withdrawal of nuclear material, except as provided for in this Agreement, from activities in facilities while such material is being safeguarded under this Agreement, findings of the accounting and control system of the United States. The Agency's verification shall include, inter alia, independent measurements and observations conducted by the Agency in accordance with the procedures specified in Part II. The Agency, in its verification, shall take due account of the technical effectiveness of the system of the United States.

ARTICLE 8

(a) In order to ensure the effective implementation of safeguards under this Agreement, the United States shall, in accordance with the provisions set out in Part II, provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material.

(b)(i) The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under this Agreement.

(ii) Information pertaining to facilities shall be the minimum necessary for safeguarding nuclear material subject to safeguards under this Agreement.

(c) If the United States so requests, the Agency shall be prepared to examine on premises of the United States design information which the United States regards as being of particular sensitivity. Such information need not be physically transmitted to the Agency provided that it remains readily available for further examination by the Agency on premises of the United States.

ARTICLE 9

(a)(i) The Agency shall secure the consent of the United States to the designation of Agency inspectors to the United States.

(ii) If the United States, either upon proposal of a designation or at any other time after designation has been made, objects to the designation, the Agency shall propose to the United States and alternative designation or designations.

(iii) If, as a result of the repeated refusal of the United States to accept the designation of the Agency inspectors, inspections to be conducted under this Agreement would be impeded, such refusal shall be considered by the Board, upon referral by the Director General of the Agency (hereinafter referred to as "the Director General") with a view to its taking appropriate action.

(b) The United States shall take the necessary steps to ensure that Agency inspectors can effectively discharge their functions under this Agreement.

(c) The visits and activities of Agency inspectors shall be so arranged as:

(i) To reduce to a minimum the possible inconvenience and disturbance to the United States and to the peaceful nuclear activities inspected; and

(ii) To ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge.

ARTICLE 10

The Provisions of the International Organizations Immunities Act of the United States of America shall apply to Agency inspectors performing functions in the United States under this Agreement and to any property of the Agency used by them.

ARTICLE 11

Safeguards shall terminate on nuclear material upon determination by the Agency that the material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

ARTICLE 12

(a) If the United States intends to exercise its right to withdraw nuclear material from activities in facilities identified by the Agency pursuant to Article 2(b) and 39(b) (other than those facilities removed, pursuant to Article 34(b)(i) from the list provided for by Article 1(b)) and to transfer such material to a destination in the United States other than to a facility included in the list established and maintained pursuant to Article 1(b) and 34, the United States shall notify the Agency in advance of such withdrawal. Nuclear material in respect of which such notification has been given shall cease to be subject to safeguards under this Agreement as from the time of its withdrawal.

(b) Nothing in this Agreement shall effect the right of the United States to transfer material subject to safeguards under this Agreement to destinations not within or under the jurisdiction of the United States. The United States shall provide the Agency with information with respect to such transfers in accordance with Article 89. The Agency shall keep records of each such transfer and, where applicable, of the re-application of safeguards to the transferred nuclear material.

ARTICLE 13

Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities, such as the production of alloys or ceramics, the United States shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards on such material may be terminated.

ARTICLE 14

The United States and the Agency will bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However if, the United States or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case the Agency shall bear the cost of any additional measuring or sampling which inspectors may request.

ARTICLE 15

In carrying out its functions under this Agreement within the United States, the Agency and its personnel shall be covered to the same extent as nationals of the United States by any protection against third-party liability provided under the Price-Anderson Act, including insurance or other indemnity coverage that may be required by the Price-Anderson Act with respect to nuclear incidents.

ARTICLE 16

Any claim by the United States against the Agency or by the Agency against the United States in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

ARTICLE 17

If the Board, upon report of the Director General, decides that an action by the United States is essential and urgent in order to ensure compliance with this Agreement, the Board may call upon the United States to take the required action without delay, irrespective of whether procedures have been invoked pursuant to Article 21 for the settlement of a dispute.

ARTICLE 18

If the Board, upon examination of relevant information reported to it by the Director General, determines there has been any non-compliance with this Agreement, the Board may call upon the United States to remedy forthwith such non-compliance. In the event there is a failure to take fully corrective action within a reasonable time, the Board may make the reports provided for in paragraph C of Article XII of the Statute and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford the United States every reasonable opportunity to furnish the Board with any necessary reassurance.

ARTICLE 19

The United States and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

ARTICLE 20

The United States shall have the right to request that any question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite the United States to participate in the discussion of any such question by the Board.

ARTICLE 21

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a determination by the Board under Article 18 or an action taken by the Board pursuant to such a determination which is not settled by negotiation or another procedure agreed to by the United States and the Agency shall, at the request of either, be submitted to an arbitral tribunal composed as follows: The United States and the Agency shall each designate one arbitrators, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either the United States or the Agency has not designated an arbitrator, either the United States or the Agency may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the United States and the Agency.

ARTICLE 22

The Parties shall institute steps to suspend the applications of Agency safeguards in the United States under other safeguards agreements with the Agency while this Agreement is in force. However, the United States and the Agency shall ensure that nuclear material being safeguarded under this Agreement shall be at all times at least equivalent in amount and composition to that which would be subject to safeguards in the United States under the agreements in question. The detailed arrangements for the implementation of this provision shall be specified in the subsidiary arrangements provided for in Article 39, and shall reflect the nature of any undertaking given under such other safeguards agreement.

ARTICLE 23

(a) The United States and the Agency shall, at the request of either, consult each other on amendments to this Agreement.

(b) All amendments shall require the agreement of the United States and the Agency.

ARTICLE 24

This Agreement or any amendment thereto shall enter into force on the date on which the Agency receives from the United States written notification that statutory and constitutional requirements of the United States for entry into force have been met.

ARTICLE 25

The Director General shall promptly inform all Member States of the Agency of the entry into force of this Agreement, or of any amendments thereto.

ARTICLE 26

The Agreement shall remain in force as long as the United States is a party to the Treaty except that the Parties to this Agreement shall, upon the request of either of them, consult and, to the extent mutually agreed, modify this Agreement in order to ensure that it continues to serve the purpose for which it was originally intended. If the Parties are unable after such consultation to agree upon necessary modifications, either Party may, upon six months' notice, terminate this Agreement.

PART II
ARTICLE 27

The purpose of this part of the Agreement is to specify the procedures to be applied in the implementation of the safeguards provisions of Part I.

ARTICLE 28

The objective of the safeguards procedures set forth in this part of the Agreement is the timely detection of withdrawal, other than in accordance with the terms of this Agreement, of significant quantities of nuclear material from activities in facilities while such material is being safeguarded under this Agreement.

ARTICLE 29

For the purpose of achieving the objective set forth in Article 28, material accountancy shall be used as a safeguards measure of fundamental importance, with containment and surveillance as important complementary measures.

ARTICLE 30

The technical conclusion of the Agency's verification activities shall be a statement, in respect of each material balance area, of the amount of material unaccounted for over a specific period, and giving the limits of accuracy of the amounts stated.

ARTICLE 31

Pursuant to Article 7, the Agency, in carrying out its verification activities, shall make full use of the United States' system of accounting for and control of all nuclear material subject to safeguards under this Agreement and shall avoid unnecessary duplication of the United States' accounting and control activities.

ARTICLE 32

The United States' system of accounting for and control of all nuclear material subject to safeguards under this Agreement shall be based on a structure of material balance areas, and shall make provision, as appropriate and specified in the Subsidiary Arrangements, for the establishment of such measures as :

(a) A measurement system for the determination of the quantities of nuclear material received, produced, shipped, lost or otherwise removed from inventory, and the quantities on inventory;

(b) The evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty;

(c) Procedure for identifying, reviewing and evaluating differences in shipper/receiver measurements;

(d) Procedure for taking a physical inventory;

(e) Procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses;

(f) A system of records and reports showing, for each material balance area, the inventory of nuclear material and the changes in that inventory including receipts into and transfers out of the material balance area;

(g) Provisions to ensure that the accounting procedures and arrangements are being operated correctly; and

(h) Procedures for the provision of reports to the Agency in accordance with Article 57 through 63 and 65 through 67.

ARTICLE 33

Safeguards under this Agreement shall not apply to material in mining or ore processing activities.

ARTICLE 34

The United States may, at any time, notify the Agency of any facility or facilities to be added to or removed from the list provided for in Article 1(b):

(a) In case of addition to the list, the notification shall specify the facility or facilities to be added to the list and the date upon which the addition is to take effect;

(b) In the case of removal from the list of a facility or facilities then currently identified pursuant to Article 2(b) or 39(b):

(i) The Agency shall be notified in advance and the notification shall specify: the facility or facilities being removed, the date of removal, and the quantity and composition of the nuclear material contained therein at the time of notification. In exceptional circumstances, the United States may remove facilities without giving advance notification;

(ii) Any facility in respect of which notification has been given in accordance with sub-paragraph (i) shall be removed from the list and nuclear material contained therein shall cease to be subject to safeguards under this Agreement in accordance with and at the time specified in the notification by the United States.

(c) In the case of removal from the list of a facility or facilities not then currently identified pursuant to Article 2(b) or 39(b), the notification shall specify the facility or facilities being removed and the date of removal. Such facility or facilities shall be removed from the list at the time specified in the notification by the United States.

ARTICLE 35

(a) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in Article 11. Where the conditions of the Article are not met, but the United States considers that the recovery of safeguarded nuclear material from residues is not for the time being practicable or desirable, the United States and the Agency shall consult on the appropriate safeguards measures to be applied.

(b) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in Article 13, provided that the United States and the Agency agree that such nuclear material is practicably irrecoverable.

ARTICLE 36

At the request of the United States, the Agency shall exempt from the safeguards nuclear material, which would otherwise be subject to safeguards under this Agreement, as follows:

(a) Special fissionable material, when it is used in gram quantities or less as a sensing component in instruments;

(b) Nuclear material, when it is used in non-nuclear activities in accordance with Article 13, if such nuclear material is recoverable; and

(c) Plutonium with an isotopic concentration of plutonium-238 exceeding 80%.

ARTICLE 37

At the request of the United States, the Agency shall exempt from safeguards nuclear material that would otherwise be subject to safeguards under this Agreement, provided that the total quantity of nuclear material which has been exempt in the United States in accordance with this Article may not at any time exceed:

(a) One kilogram in total of special fissionable material, which may consist of one or more of the following:

(i) Plutonium;

(ii) Uranium with an enrichment of 0.2 (20%) and above, taken account of by multiplying its weight by its enrichment; and

(iii) Uranium with an enrichment below 0.2 (20%) and above that of natural uranium, taken account of by multiplying its weight by five times the square of its enrichment;

(b) Ten metric tons in total of natural uranium and depleted uranium with an enrichment above 0.005 (0.5%);

(c) Twenty metric tons of depleted uranium with and enrichment of 0.005 (0.5%) or below; and

(d) Twenty metric tons of thorium;

or such greater amounts as may be specified by the Board for uniform application.

ARTICLE 38

If exempted nuclear material is to be processed or stored together with nuclear material subject to safeguards under this Agreement, provision shall be made for the re-application of safeguards thereto.

ARTICLE 39

(a) The United States and the Agency shall make Subsidiary Arrangements which shall:

(i) contain a current listing of those facilities identified by the Agency pursuant to Article 2(b) and thus containing nuclear material subject to safeguards under this Agreement; and

(ii) specify in detail, to the extent necessary to permit the Agency to fulfill its responsibilities under this Agreement in an effective and efficient manner, how the procedures laid down in this Agreement are to be applied.

(b)(i) After entry into force of this Agreement, the Agency shall identify to the United States, from the list provided in accordance with Article 1(b), those facilities to be included in the initial Subsidiary Arrangements listing;

(ii) The Agency may thereafter identify for inclusion in the Subsidiary Arrangements listing additional facilities from the list provided in accordance with Article 1(b) as that list may have been modified in accordance with Article 34.

(c) The Agency shall also designate to the United States those facilities to be removed from the Subsidiary Arrangements listing which have not otherwise been removed pursuant to notification by the by the United States in accordance with Article 34. Such facility or facilities shall be removed from the Subsidiary Arrangements listing upon such designation to the United States.

(d) The Subsidiary Arrangements may be extended or charged by agreement between the Agency and the United States without amendment of this Agreement.

ARTICLE 40

(a) With respect to those facilities which shall have been identified by the Agency in accordance with Article 39(b)(i), such Subsidiary Arrangement shall enter into force at

the same time as, or as soon as possible after, entry into force of this Agreement. The United States and the Agency shall make every effort to achieve their entry into force within 90 days after entry into force of this Agreement; an extension of that period shall require agreement between the United States and the Agency.

(b) With respect to facilities which, after the entry into force of this Agreement, have been identified by the Agency in accordance with Article 39(b)(ii) for inclusion in the Subsidiary Arrangements listing, the United States and the Agency shall make every effort to achieve the entry into force of such Subsidiary Arrangements within ninety days following such identification to the United States; an extension of that period shall require agreement between the Agency and the United States.

(c) Upon identification of a facility by the Agency in accordance with Article 39(b), the United States shall provide the Agency promptly with the information required for completing the Subsidiary Arrangements, and the Agency shall have the right to apply the procedures set forth in this Agreement to the nuclear material listed in the inventory provided for in Article 41, even if the Subsidiary Arrangements have not yet entered into force.

ARTICLE 41

The Agency shall establish, on the basis of the initial reports referred to in Article 60(a) below, a unified inventory of all nuclear material in the United States subject to safeguards under this Agreement, irrespective of its origin, and shall maintain this inventory on the basis of subsequent reports concerning those facilities, of the initial reports referred to in Article 60(b), of subsequent reports concerning the facilities listed pursuant to Article 39(b)(ii), and of the results of its verification activities. Copies of the inventory shall be made available to the United States at intervals to be agreed.

ARTICLE 42

Pursuant to Article 8, design information in respect of facilities identified by the Agency in accordance with Article 39(b)(i) shall be provided to the Agency during the discussion of the Subsidiary Arrangements. The time limits for the provision of design information in respect of any facility which is identified by the Agency in accordance with Article 39(b)(ii) shall be specified in the Subsidiary Arrangements and such information shall be provided as early as possible after such identification.

ARTICLE 43

The design information to be provided to the Agency shall include, in respect of each facility identified by the Agency in accordance with Article 39(b), when applicable:

(a) The identification of the facility, stating its general character, purpose, nominal capacity and geographic location, and the name and address to be used for routine business purposes;

(b) A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material and to the general layout of important items of equipment which use, produce or process nuclear material;

(c) A description of features of the facilities relating to material accountancy, containment and surveillance; and

(d) A description of the existing and proposed procedures at the facility for nuclear material accountancy and control, with special reference to material balance areas established by the operator, measurements of flow and procedures for physical inventory taking.

ARTICLE 44

Other information relevant to the application of safeguards shall also be provided to the Agency in respect of each facility identified by the Agency in accordance with Article 39(b), in particular on organizational responsibility for material accountancy and control. The United States shall provide the Agency with supplementary information on the health and safety procedures which the Agency shall observe and with which the inspectors shall comply at the facility.

ARTICLE 45

The Agency shall be provided with design information in respect of a modification relevant for safeguards purposes, for examination, and shall be informed of any change in the information provided to it under Article 44, sufficiently in advance for the safeguards procedures to be adjusted when necessary.

ARTICLE 46

The design information provided to the Agency shall be used for the following purposes:

(a) To identify the features of facilities and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;

(b) To determine material balance areas to be used for Agency accounting purposes and to select those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material; in determining such material balance areas the Agency shall, inter alia, use the following criteria:

(i) The size of the material balance area shall be related to the accuracy with which the material balance can be established;

(ii) In determining the material balance area, advantage shall be taken of any opportunity to use containment and surveillance to help ensure the completeness of flow measurements and thereby to simplify the application of safeguards and to concentrate measurement efforts at key measurement points;

(iii) A number if material balance areas in use at a facility or at distinct sites may be combined in one material balance area to be used for Agency accounting purposes when the Agency determines that this is consistent with its verification requirements; and

(iv) A special material balance area may be established at the request of the United States around a process step involving commercially sensitive information;

(c) To establish the nominal timing and procedure for taking of physical inventory of nuclear material for the Agency accounting purposes;

(d) To establish the records and reports requirements and records evaluation procedures;

(e) To establish requirements and procedures for verification of the quality and location of nuclear material; and

(f) To select appropriate combinations of containment and surveillance methods and techniques at the strategic points at which they are to be applied.

The results of the examination of the design information shall be included in the Subsidiary Arrangements.

ARTICLE 47

Design information shall be re-examined in the light of changes in operating conditions, of developments in safeguards technology or of experience in the application of verification procedures, with a view to modifying the action the Agency has taken pursuant to Article 46.

ARTICLE 48

The Agency in co-operation with the United States, may send inspectors to facilities to verify the design information provided to the Agency pursuant to Article 42 through 45, for the purposes stated in Article 46.

ARTICLE 49

In establishing a national system of materials control as referred to in Article 7, the United States shall arrange that records are kept in respect of each material balance area determined in accordance with Article 46(b). The records to be kept shall be described in the Subsidiary Arrangements.

ARTICLE 50

The United States shall make arrangements to facilitate the examination of records referred to in Article 49 by inspectors.

ARTICLE 51

Records referred to in Article 49 shall be retained for at least five years.

ARTICLE 52

Records referred to in Article 49 shall consist, as appropriate, of

(a) Accounting records of all nuclear material subject to safeguards under this Agreement; and

(b) Operating records for facilities containing such nuclear material.

ARTICLE 53

The system of measurements on which the record used for the preparation of reports are based shall either conform to the latest international standards or be equivalent in quality to such standards.

ARTICLE 54

The accounting records referred to in Article 52(a) shall set forth the following in respect of each material balance area determined in accordance with Article 46(b):

(a) All inventory changes, so as to permit a determination of the book inventory at any time;

(b) All measurement results that are used for determination of the physical inventory; and

(c) All adjustments and corrections that have been made in respect of inventory changes, book inventories and physical inventories.

ARTICLE 55

For all inventory changes and physical inventories the records referred to in Article 52(a) shall show, in respect of each batch of nuclear material: material identification, batch data and source data. The records shall account for uranium, thorium and plutonium separately in each batch of nuclear material. For each inventory change, the data of the inventory change and, when appropriate, the originating material balance area and the receiving material balance area of the recipient shall be indicated.

ARTICLE 56

The operating records referred to in Article 52(b) shall set forth, as appropriate, in respect of each material balance area determined in accordance with Article 46(b):

(a) Those operating data which are used to establish changes in the quantities and composition of nuclear material;

(b) The data obtained from the calibration of tanks and instruments and from sampling and analyses, the procedures to control the quality of measurements and the derived estimates of random and systematic error;

(c) A description of the sequence of the actions taken in preparing for, and in taking a physical inventory, in order to ensure that it is correct and complete; and

(d) A description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might occur.

ARTICLE 57

The United States shall provide the Agency with reports as detailed in Article 58 through 67 in respect of nuclear material subject to safeguards under this Agreement.

ARTICLE 58

Reports shall be made in English.

ARTICLE 59

Reports shall be based on the records kept in accordance with Article 49 through 56 and shall consist, as appropriate, of accounting reports and special reports.

ARTICLE 60

The United States shall provide the Agency with an initial report on all nuclear material contained in each facility which becomes listed in the Subsidiary Arrangements in accordance with Article 39(b):

(a) With respect to those facilities listed pursuant to Article 39(b)(i), such reports shall be dispatched to the Agency within thirty days of the last day of the calendar month in which this Agreement enters into force, and shall reflect the situations as of the last day of that month.

(b) With respect to each facility listed pursuant to Article 39(b)(ii), an initial report shall be dispatched to the Agency within thirty days of the last day of the calendar month in which the Agency identifies the facility of the United States and shall reflect the situation as of the last day of the month.

ARTICLE 61

The United States shall provide the Agency with the following accounting reports for each material balance area determined in accordance with Article 46(b):

(a) Inventory change reports showing all charges in the inventory of nuclear material. The reports shall be dispatched as soon as possible and in any event within thirty days after the end of the month in which the inventory changes occurred or were established; and

(b) Material balance reports showing the material balance based on a physical inventory of nuclear material actually present in the material balance area. The reports shall be dispatched as soon as possible and in any event within thirty days after the physical inventory has been taken.

The reports shall be based on data available as of the date of reporting and may be corrected at a later date, as required.

ARTICLE 62

Inventory change reports submitted in accordance with Article 61(a) shall specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate, the originating material balance area and the receiving material balance area or the recipient. These reports shall be accompanied by concise notes:

(a) Explaining the inventory changes, on the basis of the operating data contained in the operating records provided for under Article 56(a); and

(b) Describing, as specified in the Subsidiary Arrangements, the anticipated operational programme, particularly the taking of a physical inventory.

ARTICLE 63

The United States shall report each inventory change, adjustment and correction, either periodically in a consolidated list or individually. Inventory changes shall be reported in terms of batches. As specified in the Subsidiary Arrangements, small changes in inventory of nuclear material, such as transfers of analytical samples, may be combined in one batch and reported as one inventory change.

ARTICLE 64

The Agency shall provide the United States with semi-annual statements of book inventory of nuclear material subject to safeguards under this Agreement, for each material balance area, as based on the inventory change reports for the period covered by each such statement.

ARTICLE 65

Material balance reports submitted in accordance with Article 61(b) shall include the following entries, unless otherwise agreed by the United States and the Agency:

(a) Beginning physical inventory;
(b) Inventory changes(first increases, then decreases);
(c) Ending book inventory;
(d) Shipper/receiver differences;
(e) Adjusted ending book inventory;
(f) Ending physical inventory; and
(g) Material unaccounted for.

A statement of the physical inventory, listing all batches separately and specifying material identification and batch data for each batch, shall be attached to each material balance report.

ARTICLE 66

The United States shall make special reports without delay:

(a) If any unusual incident or circumstances lead the United States to believe that there is or may have been loss of nuclear material subject to safeguards under this Agreement that exceeds the limits specified for this purpose in the Subsidiary Arrangement; or

(b) If the containment has unexpectedly changed from that specified in the Subsidiary Arrangement to the extent that unauthorized removal of nuclear material subject to safeguards under this Agreement has become possible.

ARTICLE 67

If the Agency so requests, the United States shall provide it with amplifications or clarifications of any report submitted in accordance with Article 57 through 63, 65 and 66, in so far as relevant for the purpose of safeguards.

ARTICLE 68

The Agency shall have the right to make inspections as provided for in Article 69 through 82.

ARTICLE 69

The Agency may make ad hoc inspections in order to:

(a) Verify the information contained in the initial reports submitted in accordance with Article 60;

(b) Identify and verify changes in the situation which have occurred since the date of the relevant initial report; and

(c) Identify and if possible verify the quality and composition of the nuclear material subject to safeguards under this Agreement in respect of which the information referred to in Article 89(a) has been provided to the Agency.

ARTICLE 70

The Agency may make routine inspections in order to:

(a) Verify that reports submitted pursuant to Articles 57 through 63, 65 and 66 are consistent with records kept pursuant to Articles 49 through 56;

(b) Verify the location, identify, quantity and composition of all nuclear material subject to safeguards under this Agreement; and

(c) Verify information on the possible causes of material unaccounted for, shipper/receiver differences and uncertainties in the book inventory.

ARTICLE 71

Subject to the procedures laid down in Article 75, the Agency may make special inspections:

(a) In order to verify the information contained in special reports submitted in accordance with Article 66; or

(b) If the Agency considers that information made available by the United States, including explanations from the United States and information obtained from routine inspections, is not adequate for the Agency to fulfill its responsibilities under this Agreement.

An inspection shall be deemed to be special when it is either additional to the routine inspection effort provided for in Article 76 through 80, or involves access to information or locations in addition to the access specified in Article 74 for ad hoc and routine inspections, or both.

ARTICLE 72

For the purposes specified in Article 69 through 71, the Agency may:

(a) Examine the records kept pursuant to Articles 49 through 56;

(b) Make independent measurements of all nuclear material subject to safeguards under this Agreement;

(c) Verify the functioning and calibration of instruments and other measuring and control equipment;

(d) Apply and make use of surveillance and containment measures; and

(e) Use other objective methods which have been demonstrated to be technically feasible.

ARTICLE 73

Within the scope of Article 72, the Agency shall be enabled:

(a) To observe that samples at key measurement points for material balance accountancy are taken in accordance with procedures which produce representative samples, to observe the treatment and analysis of the samples and to obtain duplicates of such samples;

(b) To observe that the measurements of nuclear material at key measurement points for material balance accountancy are representative, and to observe the calibration of the instruments and equipment involved;

(c) To make arrangements with the United States that, if necessary:

(i) Additional measurements are made and additional samples taken for the Agency's use;

(ii) The Agency's standard analytical samples are analyzed;

(iii) Appropriate absolute standards are used in calibrating instruments and other equipment; and

(iv) Other calibrations are carried out;

(d) To arrange to use its own equipment for independent measurement and surveillance, and if so agreed and specified in the Subsidiary Arrangements to arrange to install such equipment;

(e) To apply its seals and other identifying tamper-indicating devices to containments, if so agreed and specified in the Subsidiary Arrangements; and

(f) To make arrangements with the United States for the shipping of samples taken for the Agency's use.

ARTICLE 74

(a) For the purposes specified in Article 69(a) and (b) and until such time as the strategic points have been specified in the Subsidiary Arrangements, Agency inspectors shall have access to any location where the initial report or any inspections carried out therewith indicate that nuclear material subject to safeguards under this Agreement is present.

(b) For the purposes specified in Article 69(c), the inspectors shall have access to any facility identified pursuant to Article 2(b) or 39(b) in which nuclear material referred to in Article 69(c) is located.

(c) For the purposes specified in Article 70 the inspectors shall have access only to the strategic points specified in the Subsidiary Arrangements and to the records maintained pursuant to Articles 49 through 56; and

(d) In the event of the United States concluding that any unusual circumstances require extended limitations on access by the Agency, the United States and the Agency shall promptly make arrangements with a view to enabling the Agency to discharge its safeguards responsibilities in the light of these limitations. The Director General shall report each such arrangement to the Board.

ARTICLE 75

In circumstances which may lead to special inspections for purposes specified in Article 71 the United States and the Agency shall consult forthwith. As a result of such consultations the Agency may:

(a) Make inspections in addition to the routine inspection effort provided for in Article 76 through 80; and

(b) Obtain access, in agreement with the United States, to information or locations in addition to those specified in Article 74. Any disagreement concerning the need for additional access shall be resolved in accordance with Articles 20 and 21; in case action by the United States is essential and urgent, Article 17 shall apply.

ARTICLE 76

The Agency shall keep the number, intensity and duration of routine inspections, applying optimum timing, to the minimum consistent with the effective implementation of the safeguards procedures set forth in this Agreement, and shall make the optimum and most economical use of inspection resources available to it.

ARTICLE 77

The Agency may carry out one routine inspection per year in respect of facilities listed in the Subsidiary Arrangements pursuant to Article 39 with a content or annual throughput, whichever is greater, of nuclear material not exceeding five effective kilograms.

ARTICLE 78

The number, intensity, duration, timing and mode of routine inspections in respect of facilities listed in the Subsidiary Arrangements pursuant to Article 39 with a content or annual throughput of nuclear material exceeding five effective kilograms shall be determined on the basis that in the maximum or limiting case the inspection regime shall be no more intensive than is necessary and sufficient to maintain continuity of knowledge

of the flow and inventory of nuclear material, and the maximum routine inspection effort in respect of such facilities shall be determined as follows:

(a) For reactors and sealed storage installations the maximum total of routine inspection per year shall be determined by allowing one sixth of a man-year of inspection for each such facility.

(b) For facilities, other than reactors or sealed storage installations, involving plutonium or uranium enriched to more than 5 percent, the maximum total of routine inspection per year shall be determined by allowing for each facility 30 x E mandays of inspection per year, where E is the inventory or annual throughput of nuclear material, whichever is greater, expressed in effective kilograms. The maximum established for any such facility shall not, however, be less than 1.5 man-years of inspection; and

(c) For facilities not covered by paragraphs (a) or (b), the maximum total of routine inspection per year shall be determined by allowing for each such facility one third of a man-year of inspection plus 0.4 x E man-days of inspection per year, where E is the inventory or annual throughput of nuclear material, whichever is greater, expressed in effective kilograms.

The United States and the Agency may agree to amend the figures for the maximum inspection effort specified in this Article, upon determination by the Board that such amendment is reasonable.

ARTICLE 79

Subject to Articles 76 through 78 the criteria to be used for determining the actual number, intensity, duration, timing and mode of routine inspections in respect of any facility listed in the Subsidiary Arrangements pursuant to Article 39 shall include:

(a) The form of the nuclear material, in particular, whether the nuclear material is in bulk form or contained in a number of separate items; its chemical composition and, in the case of uranium, whether it is of low or high enrichment; and its accessibility;

(b) The effectiveness of the United States' accounting and control system, including the extent to which the operators of facilities are functionally independent of the United States' accounting and control system; the extent to which the measures specified in Article 32 have been implemented by the United States; the promptness of reports provided to the Agency; their consistency with the Agency's independent verification; and the amount and accuracy of the material unaccounted for, as verified by the Agency;

(c) Characteristics of that part of the United States fuel cycle in which safeguards are applied under this Agreement, in particular, the number and types of facilities containing nuclear material subject to safeguards under this Agreement, the characteristics of such facilities relevant to safeguards, notably the degree of containment; the extent to which the design of such facilities facilitates verification of the flow and inventory of nuclear material; and the extent to which information from different material balance areas can be correlated;

(d) International interdependence; in particular the extent to which nuclear material, safeguarded under this Agreement, is received from or sent to other States for use or processing; any verification activities by the Agency in connection therewith; and the extent to which activities in facilities in which safeguards are applied under this Agreement are interrelated with those of other States; and

(e) Technical developments in the field of safeguards, including the use of statistical techniques and random sampling in evaluating the flow of nuclear material.

ARTICLE 80

The United States and the Agency shall consult if the United States considers that the inspection effort is being deployed with undue concentration on particular facilities.

ARTICLE 81

The Agency shall give advance notice to the United States of the arrival of inspectors at facilities listed in the Subsidiary Arrangements pursuant to Article 39, as follows:

(a) For ad hoc inspections pursuant to Article 69(c), at least 24 hours; for those pursuant to Article 69 (a) and (b), as well as the activities provided for in Article 48, at least one week;

(b) For special inspections pursuant to Article 71, as promptly as possible after the United States and the Agency have consulted as provided for in Article 75, it being understood that notification of arrival normally will constitute part of the consultations; and

(c) For routine inspections pursuant to Article 70 at least twenty-four hours in respect of the facilities referred to in Article 78(b) and sealed storage installations containing plutonium or uranium enriched to more than 5 percent and one week in all other cases.

Such notice of inspections shall include the names of the inspectors and shall indicate the facilities to be visited and the periods during which they will be visited. If the inspectors are to arrive from outside the United States the Agency shall also give advance notice of the place and time of their arrival in the United States.

ARTICLE 82

Notwithstanding the provisions of Article 81, the Agency may, as a supplementary measure, carry out without advance notification a portion of the routine inspections pursuant to Article 78 in accordance with the principle of random sampling. In performing any unannounced inspections, the Agency shall fully take into account any operational programme provided by the United States pursuant to Article 62(b). Moreover, whenever practicable, and on the basis of the operational programme, it shall advise the United States periodically of its general programme of announced and unannounced inspections, specifying the general periods when inspections are foreseen. In carrying out any unannounced inspections, the Agency shall make every effort to minimize any practical difficulties for the United States and facilities operators bearing in mind the relevant provisions of Articles 44 and 87. Similarly the United States shall make every effort to facilitate the task of the inspectors.

ARTICLE 83

The following procedures shall apply to the designation of inspectors:

(a) The Director General shall inform the United States in writing of the name, qualifications, nationality, grade and such other particulars as may be relevant, of each Agency official he proposes for designation as an inspector for the United States;

(b) The United States shall inform the District General within thirty days of the receipt of such a proposal whether it accepts the proposal;

(c) The Director General may designate each official who has been accepted by the United States as one of the inspectors for the United States as one of the inspectors for the United States, and shall inform the United States of such designations; and

(d) The Director General, acting in response to a request by the United States or on his own initiative, shall immediately inform the United States of the withdrawal of the designation of any official as an inspector for the United States.

However, in respect of inspectors needed for the activities provided for in Article 48 and to carry out ad hoc inspections pursuant to Article 69 (a) and (b) the designation procedures shall be completed if possible within thirty days after the entry into force of this Agreement. If such designation appears impossible within this time limit, inspectors for such purposes shall be designated on a temporary basis.

ARTICLE 84

The United States shall grant or renew a quickly as possible appropriate visas, where required, for each inspector designated for the United States.

ARTICLE 85

Inspectors, in exercising their functions under Articles 48 and 69 to 73, shall carry out their activities in a manner designed to avoid hampering or delaying the construction, commissioning or operation of facilities, or affecting their safety. In particular inspectors shall not operate any facility themselves or direct the staff of a facility to carry out any operation. If inspectors consider that in pursuance of paragraph 72 and 73, particular operations in a facility should be carried out by the operator, then shall make a request therefor.

ARTICLE 86

When inspectors require services available in the United States, including the use of equipment, in connection with the performance of inspections, the United States shall facilitate the procurement of such services and the use of such equipment by inspectors.

ARTICLE 87

The United States shall have the right to have inspectors accompanied during their inspections by its representatives, provided that inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

ARTICLE 88

The Agency shall inform the United States of:

(a) The results of inspections, at intervals to be specified in the Subsidiary Arrangements; and

(b) The conclusions it has drawn from its verification activities in the United States, in particular by means of statements in respect of each material balance area determined in accordance with Article 46(b) which shall be made as soon as possible after a physical inventory has been taken and verified by the Agency and a material balance has been stuck.

ARTICLE 89

(a) Information concerning nuclear material exported from and imported into the United States shall be provided to the Agency in accordance with arrangements made with the Agency as, for example, those set forth in INFCIRC/207.

(b) In the case of international transfers to or from facilities identified by the Agency pursuant to Articles 2(b) and 39(b) with respect to which information has been provided to the Agency in accordance with arrangements referred to in paragraph(a), a special report, as envisaged in Article 66, shall be made if any unusual incidents or circumstances lead the United States to believe that there is or may have been loss of nuclear material, including the occurrence of significant delay, during the transfer.

DEFINITIONS
ARTICLE 90

For the purpose of this Agreement:

A Adjustment means an entry into and accounting record or a report showing a shipper/receiver difference of material unaccounted for.

B Annual throughput means, for the purposes of Article 77 and 78, the amount of nuclear material transferred annually out of a facility working at nominal capacity.

C Batch means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of separate items.

D Batch data means the total weight of each element of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. The units of account shall be as follows:

(a) Grams of contained plutonium;

(b) Grams of total uranium and grams of contained uranium-235 plus uranium-233 for uranium enriched in these isotopes; and

(c) Kilograms of contained thorium, natural uranium or deleted uranium.

For reporting purposes the weight of individual items in the batch shall be added together before rounding to the nearest unit.

E Book inventory of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area and of all inventory changes that have occurred since that physical inventory was taken.

F Correction means an entry into an accounting record or a report to rectify an identified mistake or to reflect an improved measurement of a quantity previously entered into the record or report. Each corrections must identify the entry to which it pertains.

G Effective kilogram means a special unit used in safeguarding nuclear material. The quantity in effective kilograms is obtained by taking :

(a) For plutonium, its weight in kilograms;

(b) For uranium with an enrichment of 0.01 (1 percent) and above, its weight in kilograms multiplied by the square of its enrichment;

(c) For uranium with an enrichment below 0.01 (1 percent) and above 0.005 (0.5 percent), its weight in kilograms multiplied by 0.0001; and

(d) For depleted uranium with an enrichment of 0.005 (0.5 percent) or below, and for thorium, its weight in kilograms multiplied by 0.00005.

H Enrichment means the ratio of the combined weight of the isotopes uranium-233 and uranium-235 to that of the total uranium in question.

I Facility means;

(a) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or

(b) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.

J Inventory change means an increase or decrease, in terms of batches, of nuclear material in a material balance area; such a change shall involve one of the following:

(a) Increases:

(i) Import;

(ii) Domestic receipt: receipts from other material balance areas, receipts from a non-safeguarded activity or receipts at the starting point of safeguards;

(iii) Nuclear production: production of special fissionable material in a rector; and

(iv) De-exemption: replication of safeguards on nuclear material previously exempted therefrom on account of its use or quantity.

(b) Decreases:

(i) Export;

(ii) Domestic shipments: shipments to other material balance areas or shipments for a non-safeguarded activity;

(iii) Nuclear loss: loss of nuclear material due to its transformation into other element(s) or isotope(s) as a result of nuclear reactions;

(iv) Measured discard: nuclear material which has been measured, or estimated on the basis of measurement, and disposed of in such a way that it is not suitable for further nuclear use;

(v) Retained waste: nuclear material generated from processing or from an operational accident, which is deemed to be unrecoverable for the time being but which is stored;

(vi) Exemption: exemption of nuclear material from safeguards on account of its use or quantity; and

(vii) Other loss: for example, accidental loss (that is, irretrievable and inadvertent loss of nuclear material as the result of an operational accident) or theft.

K Key measurement point means a location where nuclear material appears in such a form that it may be measured to determined material flow or inventory. Key measurement points thus include, but are not limited to, the inputs and outputs (including measured discards) and storages in material balance areas.

L Man-year of inspection means, for the purposes of Article 78, 300 man-days of inspection, a man-day being a day during which a single inspector has access to a facility at any time for a total of not more than eight hours.

M Material balance area means an area in our outside of a facility such that:

(a) The quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

(b) The physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures, in order that the material balance for Agency safeguards purposes can be established.

N Material unaccounted for means the difference between book inventory and physical inventory.

O Nuclear material means any source or any special fissionable material as defined in Article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under Article XX of the Statute after the entry into force of this Agreement which adds to the materials considered to be source material or special fissionable material shall have effect under this Agreement only upon acceptance by the United States.

P Physical inventory means the sum of all the measured or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures.

Q Shipper/receiver difference means the difference between the quantity of nuclear material in a batch as stated by the shipping material balance area and as measured at the receiving balance area.

R Source data means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data. Source data may include, for example, weight of compounds, conversion factors to determine weight of element, specific gravity, element concentration, isotopic ratios, relationship between volume and manometer readings and relationships between plutonium produced and power generated.

S Strategic point means a location selected during examination of design information where, under normal conditions and when combined with the information from all strategic points taken together, the information necessary and sufficient for the implementation of safeguards measures is obtained and verified; a strategic point may include any location where key measurements related to material balance accountancy are made where containment and surveillance measures are executed.

PROTOCOL
ARTICLE 1

This Protocol specifies the procedures to be followed with respect to facilities identified by the Agency pursuant to Article 2 of this Protocol.

ARTICLE 2

(a) The Agency may from time to time identify to the United States those facilities included in the list, established and maintained pursuant to Article 1(b) and 34 of the Agreement, of facilities not associated with activities having direct national security significance to the United States, other than those which are then currently identified by the Agency pursuant to Article 2(b) and 39(b) of the Agreement, to which the provisions of this Protocol shall apply.

(b) the Agency may also include among the facilities identified to the United States pursuant to the foregoing paragraph, any facility which had previously been identified by the Agency pursuant to Article 2(b) and 39(b) of the Agreement but which had subsequently been designated by the Agency pursuant to Article 39(c) of the Agreement for removal from the Subsidiary Arrangements listing.

(c) In identifying facilities pursuant to the forgoing paragraphs and in the preparation of Transitional Subsidiary Arrangements pursuant to Article 3 of this Protocol, the Agency shall proceed in a manner which the Agency and the United States mutually agree takes into account the requirement on the United States to avoid discriminatory treatment as between United States commercial firms similarly situated.

ARTICLE 3

The United States and the Agency shall make Transitional Subsidiary Arrangements which shall:

(a) contain a current listing of those facilities identified by the Agency pursuant to Article 2 of this Protocol;

(b) specify in detail how the procedures set forth in this Protocol are to be applied.

ARTICLE 4

(a) The United States and the Agency shall make every effort to complete the Transitional Subsidiary Arrangements with respect to each facility identified by the Agency pursuant to Article 2 of this Protocol within ninety days following such identification to the United States.

(b) With respect to any facility identified pursuant to Article 2(b) of this Protocol, the information previously submitted to the Agency in accordance with Article 42 through 45 of the Agreement, the results of the examination of the design information and other provisions of the Subsidiary Arrangements relative to such facilities, to the extent that such information, results and provisions satisfy the provisions of this Protocol relating to the submission and examination of information and the preparation of Transitional Subsidiary Arrangements, shall constitute the Transitional Subsidiary Arrangements for such facility, until and unless the United States and the Agency shall otherwise complete Transitional Subsidiary Arrangements for such facility in accordance with the provisions of this Protocol.

ARTICLE 5

In the event that a facility currently identified by the Agency pursuant to Article 2(a) of this Protocol is identified by the Agency pursuant to Articles 2(b) and 39(b) of the Agreement, the Transitional Subsidiary Arrangements relevant to such facility shall, to the extent that such Transitional Subsidiary Arrangements satisfy the provisions of the Agreement, be deemed to have been made part of the Subsidiary Arrangements to the Agreement.

ARTICLE 6

Design information in respect of each facility identified by the Agency pursuant to Article 2 of this Protocol shall be provided to the Agency during the discussion of the relevant Transitional Subsidiary Arrangements. The information shall include, when applicable:

(a) The identification of the facility, stating its general character, purpose, nominal capacity and geographic location, and the name and address to be used for routine business purpose;

(b) A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material and to the general layout of important items of equipment which use, produce or process nuclear material;

(c) A description of features of the facility relating to material accountancy, containment and surveillance; and

(d) A description of the existing and proposed procedures at the facility for nuclear material accountancy and control, with special reference to material balance areas established by the operator, measurements of flow and procedures for physical inventory taking.

ARTICLE 7

Other information relevant to the application of the provisions of this Protocol shall also be provided to the Agency in respect of each facility identified by the Agency in accordance with Article 2 of this Protocol in particular on organizational responsibility for material accountancy and control. The United States shall provide the Agency with supplementary information on the health and safety procedures which the Agency shall observe and with which inspectors shall comply when visiting the facility in accordance with Article II of this Protocol.

ARTICLE 8

The Agency shall be provided with design information in respect of a modification relevant to the application of the provisions of this Protocol, for examination, and shall be informed of any change in the information provided to it under Article 7 of this Protocol, sufficiently in advance for the procedures under this Protocol to be adjusted when necessary.

ARTICLE 9

The design information provided to the Agency in accordance with the provisions of this Protocol, in anticipation of the application of safeguards under the Agreement, shall be used for the following purposes:

(a) To identity the features of facilities and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;

(b) To determine material balance areas to be used for Agency accounting purposes and to select those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material; in determining such material balance areas the Agency shall, inter alia, use the following criteria:

(i) The size of the material balance area shall be related to the accuracy with which the material balance can be established;

(ii) In determining the material balance area, advantage shall be taken of any opportunity to use containment and surveillance to help ensure the completeness of flow measurements and thereby to simplify the application of safeguards and to concentrate measurement efforts at key measurement points;

(iii) A number of material balance areas in use at a facility or at distinct sites may be combined in one material balance area to be used for Agency accounting purposes when the Agency determines that this is consistent with its verification requirements; and

(iv) A special material balance area may be established at the request of the United States around a process step involving commercially sensitive information;

(c) To establish the nominal timing and procedures for taking of physical inventory of nuclear material for Agency accounting purposes;

(d) To establish the records and reports requirements and records evaluation procedures;

(e) To establish requirements and procedures for verification of the quantity and location of nuclear material; and

(f) To select appropriate combinations of containment and surveillance methods and techniques and the strategic points at which they are to be applied.

The results of the examination of the design information shall be included in the relevant Transitional Subsidiary Arrangements.

ARTICLE 10

Design information provided in accordance with the provisions of this Protocol shall be re-examined in the light of changes in operating conditions, of developments in safeguards technology or of experience in the application of verification procedures, with a view to modifying the action taken pursuant to Article 9 of this Protocol.

ARTICLE 11

(a) The Agency, in co-operation with the United States, may send inspectors to facilities identified by the Agency pursuant to Article 2 of this Protocol to verify the design information provided to the Agency in accordance with the provisions of this

Protocol, for the purposes stated in Article 9 of this Protocol or for such other purposes as may be agreed between the United States and the Agency.

(b) The Agency shall give notice to the United States with respect to each such visit at least one week prior to the arrival of inspectors at the facility to be visited.

ARTICLE 12

In establishing a national system of materials control as referred to in Article 7(a) of the Agreement, the United States shall arrange that records are kept in respect of each material balance area determined in accordance with Article 9(b) of this Protocol. The records to be kept shall be described in the relevant Transitional Subsidiary Arrangements.

ARTICLE 13

Records referred to in Article 12 of this Protocol shall be retained for at least five years.

ARTICLE 14

Records referred to in Article 12 of this Protocol shall consist, as appropriate, of:

(a) Accounting records of all nuclear material stored, processed, used or produced in each facility; and

(b) Operating records for activities within each facility.

ARTICLE 15

The system of measurements on which the records used for the preparation of reports are based shall either conform to the latest international standards or be equivalent in quality to such standards.

ARTICLE 16

The accounting records referred to in Article 14(a) of this Protocol shall set forth the following in respect of each material balance area determined in accordance with Article 9(b) of this Protocol:

(a) All inventory changes, so as to permit a determination of the book inventory at any time;

(b) All measurement results that are used for determination of the physical inventory; and

(c) All adjustments and corrections that have been made in respect of inventory changes, book inventories and physical inventories.

ARTICLE 17

For all inventory changes and physical inventories the records referred to in Article 14(a) of this Protocol shall show, in respect of each batch of nuclear material: material

identification, batch data and source data. The records shall account for uranium, thorium and plutonium separately in each batch of nuclear material. For each inventory change, the date of the inventory change and, when appropriate, the originating material balance area and the receiving material balance area or the recipient, shall be indicated.

ARTICLE 18

The operating records referred to in Article 14(b) of this Protocol shall set forth, as appropriate, in respect of each material balance area determined in accordance with Article 9(b) of this Protocol:

(a) Those operating data which are used to establish changes in the quantities and composition of nuclear material;

(b) The data obtained from the calibration of tanks and instruments and from sampling and analyses, the procedures to control the quality of measurements and the derived estimates of random and systematic error;

(c) A description of the sequence of the actions taken in preparing for, and in taking, a physical inventory, in order to ensure that it is correct and complete; and

(d) A description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might occur.

ARTICLE 19

The United States shall provide the Agency with accounting reports as detailed in Article 20 through 25 of this Protocol in respect of nuclear material in each facility identified by the Agency pursuant to Article 2 of this Protocol.

ARTICLE 20

The accounting reports shall be based on the records kept in accordance with Articles 12 to 18 to this Protocol. They shall be made in English.

ARTICLE 21

The United States shall provide the Agency with an initial report on all nuclear material in each facility identified by the Agency pursuant to Article 2 of this Protocol. Such report shall be dispatched to the Agency within thirty days of the last day of the Calendar month in which the facility is identified by the Agency and shall reflect the situation as of the last day of that month.

ARTICLE 22

The United States shall provide the Agency with the following accounting reports for each material balance areas determined in accordance with Article 9(b) of this Protocol:

(a) Inventory change reports showing all changes in the inventory of nuclear material. The reports shall be dispatched as soon as possible and in any event within thirty days

after the end of the month in which the inventory changes occurred or were established; and

(b) Material balance reports showing the material balance based on a physical inventory of nuclear material actually present in the material balance area. The reports shall be dispatched as soon as possible and in any event within thirty days after the physical inventory has been taken.

The reports shall be based on data available as of the date of reporting and may be corrected at a later date, as required.

ARTICLE 23

Inventory change reports submitted in accordance with Article 22(a) of this Protocol shall specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate, the originating material balance area and the receiving material balance area or the recipient. These reports shall be accompanied by concise notes:

(a) Explaining the inventory changes, on the basis of the operating data contained in the operating records provided for in Article 18(a) of this Protocol; and

(b) Describing, as specified in the relevant Transitional Subsidiary Arrangements, the anticipated operational programme, particularly the taking of a physical inventory.

ARTICLE 24

The United States shall report each inventory change, adjustment and correction, either periodically in a consolidated list or individually. Inventory changes shall be reported in terms of batches. As specified in the relevant Transitional Subsidiary Arrangements, small changes in inventory of nuclear material, such as transfers of analytical samples, may be combined in one batch and reported as one inventory change.

ARTICLE 25

Material balance reports submitted in accordance with Article 22(b) of this Protocol shall include the following entries, unless otherwise agreed by the United States and the Agency:

(a) Beginning physical inventory;
(b) Inventory changes (first increases, then decreases);
(c) Ending book inventory;
(d) Shipper/receiver differences;
(e) Adjusted ending book inventory;
(f) Ending physical inventory; and
(g) Material unaccounted for.

A statement of the physical inventory, listing all batches separately and specifying material identification and batch data for each batch, shall be attached to each material balance report.

ARTICLE 26

The Agency shall provide the United States with semi-annual statements of book inventory of nuclear material in facilities identified pursuant to Article 2 of this Protocol, for each material balance area, as based on the inventory change reports for the period covered by each such statement.

ARTICLE 27

(a) If the Agency so requests, the United States shall provide it with amplifications or clarifications of any report submitted in accordance with Article 19 of this Protocol, insofar as consistent with the purpose of the Protocol.

(b) The Agency shall inform the United States of any significant observations resulting from its examination of reports received pursuant to Article 19 of this Protocol and from visits of inspectors made pursuant to Article 11 of this Protocol.

(c) The United States and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Protocol, including corrective action which, in the opinion of the Agency, should be taken by the United States to ensure compliance with its terms, as indicated by the Agency in its observations pursuant to paragraph (b) of this Article.

ARTICLE 28

The definition set forth in Article 90 of the Agreement shall apply, to the extent relevant, to this Protocol.

Done in Vienna on the 18th day of November, 1977, in duplicate, in the English language.

FOR THE UNITED STATES OF AMERICA:

FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY:

L. U.S. SENATE RESOLUTION CONSENTING TO THE RATIFICATION OF THE AGREEMENT BETWEEN THE U.S. AND THE IAEA FOR THE APPLICATION OF SAFEGUARDS

Senate of the United States

IN EXECUTIVE SESSION
July 2, 1980

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advised and consent to the ratification of the Agreement between the United States of America and the International Atomic Energy Agency for the Application of the Safeguards in the United States of America, with attached Protocol, signed at Vienna on November 18, 1977 (Ex. B, Ninety-fifth Congress, second session, hereinafter referred to as "the Agreement"), subject to the following understandings:

1. That the President shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any proposed addition to the list, to be provided to the International Atomic Energy Agency pursuant to Article 1(b) of the Agreement, of nuclear facilities within the United States eligible for International Atomic Energy Agency inspections, together with an explanation of the basis upon which the determination was made that any such facility did not have a direct national security significance, not less than 60 day prior to such proposed addition being provided to the International Atomic Energy Agency, during which period the Congress may disapprove such addition by joint resolution by reason of direct national security significance, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of the Atomic Energy Act of 1954 as amended.
2. That the President shall assure that concerned licensees within the United States are consulted in advance of, and that their views and interests are considered in, any negotiations with the International Atomic Energy Agency concerning the application to a particular facility of Subsidiary Arrangements made pursuant to Article 39 of the Agreement.
3. That the President shall establish and maintain an appropriate interagency mechanism, comprised of the relevant Executive Branch agencies, and with the participation of the Nuclear Regulatory Commission, under the chairmanship of the Department of State, for the purpose of coordinating policy, and of resolving disputes, relating to the implementation of International Atomic Energy Agency safeguards under the Agreement, and, further, that the Congress shall be kept informed of the functions and procedures of such interagency mechanism.
4. That in the event of any question of interpretation of the Agreement, the Nuclear Regulatory Commission shall seek and be bound by guidance from the President. Neither this understanding nor any other in this resolution shall in any way alter the responsibilities of the Nuclear Regulatory Commission under the Agreement or in any way limit the existing authority and responsibility of the Nuclear Regulatory Commission.
5. That the Agreement shall not be constructed to require the communication to the International Atomic Energy Agency of "Restricted Data" controlled by the provisions of the Atomic Energy Act of 1954, as amended, including data concerning the design, manufacture, or utilization of atomic weapons.

Attest:

Secretary

M. PROTOCOL ADDITIONAL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN THE UNITED STATES OF AMERICA

WHEREAS the United States of America (hereinafter referred to as "the United States") and the International Atomic Energy Agency (hereinafter referred to as the "Agency") are parties to an Agreement for the Application of Safeguards in the United States of America done at Vienna on November 18, 1977 (hereinafter referred to as the "Safeguards Agreement"), which entered into force on December 9, 1980;

AWARE OF the desire of the international community to further enhance nuclear nonproliferation by strengthening the effectiveness and improving the efficiency of the Agency's safeguards system;

RECALLING that the Agency must take into account in the implementation of safeguards the need to: avoid hampering the economic and technological development of the United States or international co-operation in the field of peaceful nuclear activities; respect health, safety, physical protection and other security provisions in force and the rights of individuals; and take every precaution to protect commercial, technological and industrial secrets as well as other confidential information coming to its knowledge;

WHEREAS the frequency and intensity of activities described in this Protocol shall be kept to the minimum consistent with the objective of strengthening the effectiveness and improving the efficiency of Agency safeguards;

NOW THEREFORE the United States and the Agency have agreed as follows:

Article I - RELATIONSHIP BETWEEN THE PROTOCOL AND THE SAFEGUARDS

a. The provisions of the Safeguards Agreement shall apply to this Protocol to the extent that they are relevant to and compatible with the provisions of this Protocol. In case of conflict between the provisions of the Safeguards Agreement and those of this Protocol, the provisions of this Protocol shall apply.

b. The United States shall apply, and permit the Agency to apply, this Protocol, excluding only instances where its application would result in access by the Agency to activities with direct national security significance to the United States or to locations or information associated with such activities.

c. Without prejudice to paragraph b. above, the United States shall have the right to use managed access in connection with activities with direct national security significance to the United States or in connection with locations or information associated with such activities.

Article 2 - PROVISION OF INFORMATION

a. The United States shall provide the Agency with a declaration containing.

(i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material carried out anywhere that are funded, specifically authorized or controlled by, or carried out on behalf of, the United States.

(ii) Information identified by the Agency on the basis of expected gains in effectiveness or efficiency, and agreed to by the United States, on operational activities of safeguards relevance at facilities and locations outside facilities where nuclear material is customarily used.

(iii) A general description of each building on each site, including its use and, if not apparent from that description, its contents. The description shall include a map of the site.

(iv) A description of the scale of operations for each location engaged in the activities specified in Annex I to this Protocol.

(v) Information specifying the location, operational status and the estimated annual production capacity of uranium mines and concentration plants and thorium concentration plants, and the current annual production of such mines and concentration plants for the United States as a whole. The United States shall provide, upon request by the Agency, the current annual production of an individual mine or concentration plant. The provision of this information does not require detailed nuclear material accountancy.

(vi) Information regarding source material which has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched, as follows:

(a) The quantities, the chemical composition, the use or intended use of such material, whether in nuclear or non-nuclear use, for each location in the United States at which the material is present in quantities exceeding ten metric tons of uranium and/or twenty metric tons of thorium, and for other locations with quantities of more than one metric ton, the aggregate for the United States as a whole if the aggregate exceeds ten metric tons of uranium or twenty metric tons of thorium. The provision of this information does not require detailed nuclear material accountancy;

(b) The quantities, the chemical composition and the destination of each export out of the United States, of such material for specifically nonnuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive exports of uranium from the United States to the same State, each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive exports of thorium from the United States to the same State,

each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year,

(c) The quantities, chemical composition, current location and use or intended use of each import into the United States of such material for specifically non-nuclear purposes in quantities exceeding;

(1) Ten metric tons of uranium, or for successive imports of uranium into the United States each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive imports of thorium into the United States each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year;

it being understood that there is no requirement to provide information on such material intended for a non-nuclear use once it is in its non-nuclear end-use form.

(vii) (a) Information regarding the quantities, uses and locations of nuclear material exempted from safeguards pursuant to Article 37 of the Safeguards Agreement;

(b) Information regarding the quantities (which may be in the form of estimates) and uses at each location, of nuclear material exempted from safeguards pursuant to Article 36(b) of the Safeguards Agreement but not yet in a non-nuclear end-use form, in quantities exceeding those set out in Article 37 of the Safeguards Agreement. The provision of this information does not require detailed nuclear material accountancy.

(viii) Information regarding the location or further processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 on which safeguards have been terminated pursuant to Article 11 of the Safeguards Agreement. For the purpose of this paragraph, "further processing" does not include repackaging of the waste or its further conditioning not involving the separation of elements, for storage or disposal.

(ix) The following information regarding specified equipment and non-nuclear material listed in Annex II:

(a) For each export out of the United States of such equipment and material: the identity, quantity, location of intended use in the receiving State and date or, as appropriate, expected date, of export;

(b) Upon specific request by the Agency, confirmation by the United States, as importing State, of information provided to the Agency by another State concerning the identity, quantity and location of intended use in the United States, and date of import or, as appropriate, expected date of the import, of such equipment and material into the United States.

(x) General plans for the succeeding ten-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle-related research and development activities) when approved by the appropriate authorities in the United States.

b. The United States shall make every reasonable effort to provide the Agency with the following information:

(i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material which are specifically related to enrichment, reprocessing of nuclear fuel or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 that are carried out anywhere in the United States but which are not funded, specifically authorized or controlled by, or carried out on behalf of, the United States. For the purpose of this paragraph, "processing" of intermediate or high-level waste does not include repackaging of the waste or its conditioning not involving the separation of elements, for storage or disposal.

(ii) A general description of activities and the identity of the person or entity carrying out such activities, at locations identified by the Agency outside a site which the Agency considers might be functionally related to the activities of that site. The provision of this information is subject to a specific request by the Agency. It shall be provided in consultation with the Agency and in a timely fashion.

c. Upon request by the Agency, the United States shall provide amplifications or clarifications of any information it has provided under this Article, in so far as relevant for the purpose of safeguards.

Article 3

a. The United States shall provide to the Agency the information identified in Article 2.a.(i), (iii), (iv), (v), (vi)(a), (vii) and (x) and Article 2.b.(i) within 180 days of the entry into force of this Protocol.

b. The United States shall provide to the Agency, by 15 May of each year, updates of the information referred to in paragraph a. above for the period covering the previous calendar year. If there has been no change to the information previously provided, the United States shall so indicate.

c. The United States shall provide to the Agency, by 15 May of each year, the information identified in Article 2.a.(vi)(b) and (c) for the period covering the previous calendar year.

d. The United States shall provide to the Agency on a quarterly basis the information identified in Article 2.a.(ix)(a). This information shall be provided within sixty days of the end of each quarter.

e. The United States shall provide to the Agency the information identified in Article 2.a.(viii) 180 days before further processing is carried out and, by 15 May of each year, information on changes in location for the period covering the previous calendar year.

f. The United States and the Agency shall agree on the timing and frequency of the provision of the information identified in Article 2.a.(ii).

g. The United States shall provide to the Agency the information in Article 2.a.(ix)(b) within sixty days of the Agency's request.

Article 4 - COMPLEMENTARY ACCESS

The following shall apply in connection with the implementation of complementary access under Article 5 of this Protocol:

a. The Agency shall not mechanistically or systematically seek to verify the information referred to in Article 2; however, the Agency shall have access to:

(i) Any location referred to in Article 5.a.(i) or (ii) on a selective basis in order to assure the absence of undeclared nuclear material and activities;

(ii) Any location referred to in Article 5.b. or c. to resolve a question relating to the correctness and completeness of the information provided pursuant to Article 2 or to resolve an inconsistency relating to that information;

(iii) Any location referred to in Article 5.a.(iii) to the extent necessary for the Agency to confirm, for safeguards purposes, the United States' declaration of the decommissioned status of a facility or location outside facilities where nuclear material was customarily used.

b. (i) Except as provided in paragraph (ii) below, the Agency shall give the United States advance notice of access of at least 24 hours;

(ii) For access to any place on a site that is sought in conjunction with design information verification visits or ad hoc or routine inspections on that site, the period of advance notice shall, if the Agency so requests, be at least two hours but, in exceptional circumstances, it may be less than two hours.

c. Advance notice shall be in writing and shall specify the reasons for access and the activities to be carried out during such access.

d. In the case of a question or inconsistency, the Agency shall provide the United States with an opportunity to clarify and facilitate the resolution of the question or inconsistency. Such an opportunity will be provided before a request for access, unless the Agency considers that delay in access would prejudice the purpose for which the access is sought. In any event, the Agency shall not draw any conclusions about the question or inconsistency until the United States has been provided with such an opportunity.

e. Unless otherwise agreed to by the United States, access shall only take place during regular working hours.

f. The United States shall have the right to have Agency inspectors accompanied during their access by representatives of the United States, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Article 5

The United States shall provide the Agency with access to:

a. (i) Any place on a site;

(ii) Any location identified by the United States under Article 2.a.(v)-(viii);

(iii) Any decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used.

b. Any location identified by the United States under Article 2.a.(i), Article 2.a.(iv), Article 2.a.(ix)(b) or Article 2.b., other than those referred to in paragraph a.(i) above, provided that if the United States is unable to provide such access, the United States shall make every reasonable effort to satisfy Agency requirements, without delay, through other means.

c. Any location specified by the Agency, other than locations referred to in paragraphs a. and b. above, to carry out location-specific environmental sampling, provided that if the United States is unable to provide such access, the United States shall make every reasonable effort to satisfy Agency requirements, without delay, at adjacent locations or through other means.

Article 6

When implementing Article 5, the Agency may carry out the following activities:

a. For access in accordance with Article 5.a.(i) or (iii): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; application of seals and other identifying and tamper indicating devices specified in Subsidiary Arrangements; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board of Governors (hereinafter referred to as the "Board") and following consultations between the Agency and the United States.

b. For access in accordance with Article 5.a.(ii): visual observation; item counting of nuclear material; non-destructive measurements and sampling; utilization of radiation detection and measurement devices; examination of records relevant to the quantities, origin and disposition of the material; collection of environmental samples; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and the United States.

c. For access in accordance with Article 5.b.: visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; examination of safeguards relevant production and shipping records; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and the United States.

d. For access in accordance with Article 5.c.: collection of environmental samples and, in the event the results do not resolve the question or inconsistency at the location specified by the Agency pursuant to Article 5.c., utilization at that location of visual observation, radiation detection and measurement devices, and, as agreed by the United States and the Agency, other objective measures.

Article 7

a. Upon request by the United States, the Agency and the United States shall make arrangements for managed access under this Protocol in order to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection

requirements, or to protect proprietary or commercially sensitive information. Such arrangements shall not preclude the Agency from conducting activities necessary to provide credible assurance of the absence of undeclared nuclear material and activities at the location in question, including the resolution of a question relating to the correctness and completeness of the information referred to in Article 2 or of an inconsistency relating to that information.

b. The United States may, when providing the information referred to in Article 2, inform the Agency of the places at a site or location at which managed access may be applicable.

c. Pending the entry into force of any necessary Subsidiary Arrangements, the United States may have recourse to managed access consistent with the provisions of paragraph a. above.

Article 8

Nothing in this Protocol shall preclude the United States from offering the Agency access to locations in addition to those referred to in Articles 5 and 9 or from requesting the Agency to conduct verification activities at a particular location. The Agency shall, without delay, make every reasonable effort to act upon such a request.

Article 9

The United States shall provide the Agency with access to locations specified by the Agency to carry out wide-area environmental sampling, provided that if the United States is unable to provide such access it shall make every reasonable effort to satisfy Agency requirements at alternative locations. The Agency shall not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefore have been approved by the Board and following consultations between the Agency and the United States.

Article 10

The Agency shall inform the United States of:

a. The activities carried out under this Protocol, including those in respect of any questions or inconsistencies the Agency had brought to the attention of the United States, within sixty days of the activities being carried out by the Agency.

b. The results of activities in respect of any questions or inconsistencies the Agency had brought to the attention of the United States, as soon as possible but in any case within thirty days of the results being established by the Agency.

c. The conclusions it has drawn from its activities under this Protocol. The conclusions shall be provided annually.

Article 11 - DESIGNATION OF AGENCY INSPECTORS

a. (i) The Director General shall notify the United States of the Board's approval of any Agency official as a safeguards inspector. Unless the United States advises the Director General of its rejection of such an official as an inspector for the United States within three months of receipt of notification of the Board's approval, the inspector so notified to the United States shall be considered designated to the United States.

(ii) The Director General, acting in response to a request by the United States or on his own initiative, shall immediately inform the United States of the withdrawal of the designation of any official as an inspector for the United States.

b. A notification referred to in paragraph a. above shall be deemed to be received by the United States seven days after the date of the transmission by registered mail of the notification by the Agency to the United States.

Article 12 - VISAS

The United States shall, within one month of the receipt of a request therefor, provide the designated inspector specified in the request with appropriate multiple entry/exit and/or transit visas, where required, to enable the inspector to enter and remain on the territory of the United States for the purpose of carrying out his/her functions. Any visas required shall be valid for at least one year and shall be renewed, as required, to cover the duration of the inspector's designation to the United States.

Article 13 - SUBSIDIARY ARRANGEMETS

a. Where the United States or the Agency indicates that it is necessary to specify in Subsidiary Arrangements how measures laid down in this Protocol are to be applied, the United States and the Agency shall agree on such Subsidiary Arrangements within ninety days of the entry into force of this Protocol or, where the indication of the need for such Subsidiary Arrangements is made after the entry into force of this Protocol, within ninety days of the date of such indication.

b. Pending the entry into force of any necessary Subsidiary Arrangements, the Agency shall be entitled to apply the measures laid down in this Protocol.

Article 14 - COMMUNICATIONS SYSTEMS

a. The United States shall permit and protect free communications by the Agency for official purposes between Agency inspectors in the United States and Agency Headquarters and/or Regional Offices, including attended and unattended transmission of information generated by Agency containment and/or surveillance or measurement devices. The Agency shall have, in consultation with the United States, the right to make use of internationally established systems of direct communications, including satellite systems and other forms of telecommunication, not in use in the United States. At the request of the United States or the Agency, details of the implementation of this paragraph with respect to the attended or unattended transmission of information generated by Agency containment and/or surveillance or measurement devices shall be specified in the Subsidiary Arrangements.

b. Communication and transmission of information as provided for in paragraph a. above shall take due account of the need to protect proprietary or commercially sensitive information or design information which the United States regards as being of particular sensitivity.

Article 15 - PROTECTION OF CONFIDENTIAL INFORMATION

a. The Agency shall maintain a stringent regime to ensure effective protection against disclosure of commercial, technological and industrial secrets and other confidential

information coming to its knowledge, including such information coming to the Agency's knowledge in the implementation of this Protocol.
b. The regime referred to in paragraph a. above shall include, among others, provisions relating to:

(i) General principles and associated measures for the handling of confidential information;

(ii) Conditions of staff employment relating to the protection of confidential information;

(iii) Procedures in cases of breaches or alleged breaches of confidentiality.

c. The regime referred to in paragraph a. above shall be approved and periodically reviewed by the Board.

Article 16 - ANNEXES

a. The Annexes to this Protocol shall be an integral part thereof. Except for the purposes of amendment of the Annexes, the term "Protocol" as used in this instrument means the Protocol and the Annexes together.[1]
b. The list of activities specified in Annex I, and the list of equipment and material specified in Annex II, may be amended by the Board upon the advice of an open-ended working group of experts established by the Board. Any such amendment shall take effect four months after its adoption by the Board.

Article 17 - ENTRY INTO FORCE

a. This Protocol shall enter into force on the date on which the Agency receives from the United States written notification that the United States' statutory and constitutional requirements for entry into force have been met.
b. The United States may, at any date before this Protocol enters into force, declare that it will apply this Protocol provisionally.
c. The Director General shall promptly inform all Member States of the Agency of any declaration of provisional application of, and of the entry into force of, this Protocol.

Article 18 - DEFINITIONS

For the purpose of this Protocol:
a. Nuclear fuel cycle-related research and development activities means those activities which are specifically related to any process or system development aspect of any of the following:

- conversion of nuclear material,
- enrichment of nuclear material,
- nuclear fuel fabrication,
- reactors, critical facilities,
- reprocessing of nuclear fuel,

[1] To view the Annexes see the Model Additional Protocol at the International Atomic Energy Agency website: http://www.iaea.org/Publications/Documents/Infcircs/1997/infcirc540c.pdf. The Model Additional Protocol is the basis of this agreement, with the one exception being the National Security Exclusion.

- processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate or high level waste containing plutonium, high enriched uranium or uranium-233,

but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance.

b. Site means that area delimited by the United States in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities where nuclear material is customarily used, including a closed-down location outside facilities where nuclear material was customarily used (this is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out). It shall also include all installations, co-located with the facility or location, for the provision or use of essential services, including hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste; and buildings associated with specified activities identified by the United States under Article 2.a.(iv) above.

c. Decommissioned facility or decommissioned location outside facilities means an installation or location at which residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilize nuclear material.

d. Closed-down facility or closed-down location outside facilities means an installation or location where operations have been stopped and the nuclear material removed but which has not been decommissioned.

e. High enriched uranium means uranium containing 20 percent or more of the isotope uraniumr-235.

f. Location-specific environmental sampling means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the Agency for the purpose of assisting the Agency to draw conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location.

g. Wide-area environmental sampling, means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the Agency for the purpose of assisting the Agency to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.

h. Nuclear material means any source or any special fissionable material as defined in Article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under Article XX of the Statute of the Agency after the entry into force of this Protocol which adds to the materials considered to be source material or special fissionable material shall have effect under this Protocol only upon acceptance by the United States.

i. Facility means:

(i) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or

(ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.

j. Location outside facilities means any installation or location, which is not a facility, where nuclear material is customarily used in amounts of one effective kilogram or less.

DONE at Vienna on the ____ day of 19___ in duplicate in the English language.

FOR THE UNITED STATES OF AMERICA	FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY

N. UNITED STATES ADDITIONAL PROTOCOL IMPLEMENTATION ACT

Public Law 109-401
110th Congress

Title II-- United States Additional Protocol Implementation

Sec. 201. Short Title.

This title may be cited as the "United States Additional Protocol Implementation Act".

Sec. 202. Findings.

Congress makes the following findings:

(1) The proliferation of nuclear weapons and other nuclear explosive devices poses a grave threat to the national security of the United States and its vital national interests.

(2) The Nuclear Non-Proliferation Treaty has proven critical to limiting such proliferation.

(3) For the Nuclear Non-Proliferation Treaty to be effective, each of the non-nuclear-weapon State Parties must conclude a comprehensive safeguards agreement with the IAEA, and such agreements must be honored and enforced.

(4) Recent events emphasize the urgency of strengthening the effectiveness and improving the efficiency of the safeguards system. This can best be accomplished by providing IAEA inspectors with more information about, and broader access to, nuclear activities within the territory of non-nuclear-weapon State Parties.

(5) The proposed scope of such expanded information and access has been negotiated by the member states of the IAEA in the form of a Model Additional Protocol to its existing safeguards agreements, and universal acceptance of Additional Protocols by non-nuclear weapons states is essential to enhancing the effectiveness of the Nuclear Non-Proliferation Treaty.

(6) On June 12, 1998, the United States, as a nuclear-weapon State Party, signed an Additional Protocol that is based on the Model Additional Protocol, but which also contains measures, consistent with its existing safeguards agreements with its members, that protect the right of the United States to exclude the application of IAEA safeguards to locations and activities with direct national security significance or to locations or information associated with such activities.

(7) Implementation of the Additional Protocol in the United States in a manner consistent with United States obligations under the Nuclear Non-Proliferation Treaty may encourage other parties to the Nuclear Non-Proliferation Treaty, especially non- nuclear-weapon State Parties, to conclude Additional Protocols and thereby strengthen

the Nuclear Non-Proliferation Treaty safeguards system and help reduce the threat of nuclear proliferation, which is of direct and substantial benefit to the United States.

(8) Implementation of the Additional Protocol by the United States is not required and is completely voluntary given its status as a nuclear-weapon State Party, but the United States has acceded to the Additional Protocol to demonstrate its commitment to the nuclear nonproliferation regime and to make United States civil nuclear activities available to the same IAEA inspections as are applied in the case of non-nuclear- weapon State Parties.

(9) In accordance with the national security exclusion contained in Article 1.b of its Additional Protocol, the United States will not allow any inspection activities, nor make any declaration of any information with respect to, locations, information, and activities of direct national security significance to the United States.

(10) Implementation of the Additional Protocol will conform to the principles set forth in the letter of April 30, 2002, from the United States Permanent Representative to the International Atomic Energy Agency and the Vienna Office of the United Nations to the Director General of the International Atomic Energy Agency.

Sec. 203. Definitions.

In this title:

(1) Additional protocol.--The term "Additional Protocol", when used in the singular form, means the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna June 12, 1998 (T. Doc. 107-7).

(2) Appropriate congressional committees.--The term "appropriate congressional committees" means the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate and the Committee on Armed Services, the Committee on International Relations, the Committee on Science, and the Committee on Appropriations of the House of Representatives.

(3) Complementary access.--The term "complementary access" means the exercise of the IAEA's access rights as set forth in Articles 4 to 6 of the Additional Protocol.

(4) Executive agency.--The term "executive agency" has the meaning given such term in section 105 of title 5, United States Code.

(5) Facility.--The term "facility" has the meaning set forth in Article 18i. of the Additional Protocol.

(6) IAEA.--The term "IAEA" means the International Atomic Energy Agency.

(7) Judge of the united states.--The term "judge of the United States" means a United States district judge, or a United States

magistrate judge appointed under the authority of chapter 43 of title 28, United States Code.

(8) Location.--The term "location" means any geographic point or area declared or identified by the United States or specified by the International Atomic Energy Agency.

(9) Nuclear non-proliferation treaty.--The term "Nuclear Non-Proliferation Treaty" means the Treaty on the Non- Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (21 UST 483).

(10) Nuclear-weapon state party and non-nuclear-weapon state party.--The terms "nuclear-weapon State Party" and "non- nuclear-weapon State Party" have the meanings given such terms in the Nuclear Non-Proliferation Treaty.

(11) Person.--The term "person", except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality, or political subdivision of any such government or nation, or other entity located in the United States.

(12) Site.--The term "site" has the meaning set forth in Article 18b. of the Additional Protocol.

(13) United states.--The term "United States", when used as a geographic reference, means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including--

(A) the territorial sea and the overlying airspace;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (41), respectively, of section 40102(a) of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).

(14) Wide-area environmental sampling.--The term "wide-area environmental sampling" has the meaning set forth in Article 18g. of the Additional Protocol.

Sec. 204. Severability.

If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, 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.

Subtitle A--General Provisions

Sec. 211. Authority.

(a) In General.--The President is authorized to implement and carry out the provisions of this title and the Additional Protocol and shall designate through Executive order which executive agency or agencies of the United States, which may include but are not limited to the Department of State, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Energy, and the Nuclear Regulatory Commission, shall issue or amend and enforce regulations in order to implement this title and the provisions of the Additional Protocol.

(b) Included Authority.--For any executive agency designated under subsection (a) that does not currently possess the authority to conduct site vulnerability assessments and related activities, the authority provided in subsection (a) includes such authority.

(c) Exception.--The authority described in subsection (b) does not supersede or otherwise modify any existing authority of any Federal department or agency already having such authority.

Subtitle B--Complementary Access

Sec. 221. Requirement For Authority To Conduct Complementary Access.

(a) Prohibition.--No complementary access to any location in the United States shall take place pursuant to the Additional Protocol without the authorization of the United States Government in accordance with the requirements of this title.

(b) Authority.--

(1) In general.--Complementary access to any location in the United States subject to access under the Additional Protocol is authorized in accordance with this title.

(2) United states representatives.--

(A) Restrictions.--In the event of complementary access to a privately owned or operated location, no employee of the Environmental Protection Agency or of the Mine Safety and Health Administration or the Occupational Safety and Health Administration of the Department of Labor may participate in the access.

(B) Number.--The number of designated United States representatives accompanying IAEA inspectors shall be kept to the minimum necessary.

Sec. 222. Procedures For Complementary Access.

(a) In General.--Each instance of complementary access to a location in the United States under the Additional Protocol shall be conducted in accordance with this subtitle.

(b) Notice.--

(1) In general.--Complementary access referred to in subsection (a) may occur only upon the issuance of an actual written notice by the United States Government to the owner, operator, occupant, or agent in charge of the location to be subject to complementary access.

(2) Time of notification.--The notice under paragraph (1) shall be submitted to such owner, operator, occupant, or agent as soon as possible after the United States Government has received notification that the IAEA seeks complementary access. Notices may be posted prominently at the location if the United States Government is unable to provide actual written notice to such owner, operator, occupant, or agent.

(3) Content of notice.--

(A) In general.--The notice required by paragraph (1) shall specify--

(i) the purpose for the complementary access;

(ii) the basis for the selection of the facility, site, or other location for the complementary access sought;

(iii) the activities that will be carried out during the complementary access;

(iv) the time and date that the complementary access is expected to begin, and the anticipated period covered by the complementary access; and

(v) the names and titles of the inspectors.

(4) Separate notices required.--A separate notice shall be provided each time that complementary access is sought by the IAEA.

(c) Credentials.--The complementary access team of the IAEA and representatives or designees of the United States Government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the location before gaining entry in connection with complementary access.

(d) Scope.--

(1) In general.--Except as provided in a warrant issued under section 223, and subject to the rights of the United States Government under the Additional Protocol to limit complementary access, complementary access to a location pursuant to this title may extend to all activities specifically permitted for such locations under Article 6 of the Additional Protocol.

(2) Exception.--Unless required by the Additional Protocol, no inspection under this title shall extend to--

(A) financial data (other than production data);

(B) sales and marketing data (other than shipment data);

(C) pricing data;

(D) personnel data;

(E) patent data;

(F) data maintained for compliance with environmental or occupational health and safety regulations; or

(G) research data.

(e) Environment, Health, Safety, and Security.--In carrying out their activities, members of the IAEA complementary access team and representatives or designees of the United States Government shall observe applicable environmental, health, safety, and security regulations established at the location subject to complementary access, including those for protection of controlled environments within a facility and for personal safety.

Sec. 223. Consents, Warrants, And Complementary Access.

(a) In General.--

(1) Procedure.--

(A) Consent.--Except as provided in paragraph (2), an appropriate official of the United States Government shall seek or have the consent of the owner, operator, occupant, or agent in charge of a location prior to entering that location in connection with complementary access pursuant to sections 221 and 222. The owner, operator, occupant, or agent in charge of the location may withhold consent for any reason or no reason.

(B) Administrative search warrant.--In the absence of consent, the United States Government may seek an administrative search warrant from a judge of the United States under subsection (b). Proceedings regarding the issuance of an administrative search warrant shall be conducted ex parte, unless otherwise requested by the United States Government.

(2) Expedited access.--For purposes of obtaining access to a location pursuant to Article 4b.(ii) of the Additional Protocol in order to satisfy United States obligations under the Additional Protocol when notice of two hours or less is required, the United States Government may gain entry to such location in connection with complementary access, to the extent such access is consistent with the Fourth Amendment to the United States Constitution, without obtaining either a warrant or consent.

(b) Administrative Search Warrants for Complementary Access.-

(1) Obtaining administrative search warrants.--For complementary access conducted in the United States pursuant to the Additional Protocol, and for which the acquisition of a warrant is required, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to such judge all appropriate information regarding the basis for the selection of the facility, site, or other location to which complementary access is sought.

(2) Content of affidavits for administrative search warrants.--A judge of the United States shall promptly issue an administrative search warrant authorizing the requested complementary access upon an affidavit submitted by the United States Government--

(A) stating that the Additional Protocol is in force;

(B) stating that the designated facility, site, or other location is subject to complementary access under the Additional Protocol;

(C) stating that the purpose of the complementary access is consistent with Article 4 of the Additional Protocol;

(D) stating that the requested complementary access is in accordance with Article 4 of the Additional Protocol;

(E) containing assurances that the scope of the IAEA's complementary access, as well as what it may collect, shall be limited to the access provided for in Article 6 of the Additional Protocol;

(F) listing the items, documents, and areas to be searched and seized;

(G) stating the earliest commencement and the anticipated duration of the complementary access period, as well as the expected times of day during which such complementary access will take place; and

(H) stating that the location to which entry in connection with complementary access is sought was selected either--

(i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under this title is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or

(ii) pursuant to a reasonable general administrative plan based upon specific neutral criteria.

(3) Content of warrants.--A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition, each warrant shall contain the identities of the representatives of the IAEA on the complementary access team and the identities of the representatives or designees of the United States Government required to display identifying credentials under section 222(c).

Sec. 224. Prohibited Acts Relating To Complementary Access.

It shall be unlawful for any person willfully to fail or refuse to permit, or to disrupt, delay, or otherwise impede, a complementary access authorized by this subtitle or an entry in connection with such access.

Subtitle C--Confidentiality of Information

Sec. 231. Protection Of Confidentiality Of Information.

Information reported to, or otherwise acquired by, the United States Government under this title or under the Additional Protocol shall be exempt from disclosure under section 552 of title 5, United States Code.

Subtitle D--Enforcement

Sec. 241. Recordkeeping Violations.

It shall be unlawful for any person willfully to fail or refuse--

(1) to establish or maintain any record required by any regulation prescribed under this title;

(2) to submit any report, notice, or other information to the United States Government in accordance with any regulation prescribed under this title; or

(3) to permit access to or copying of any record by the United States Government in accordance with any regulation prescribed under this title.

Sec. 242. Penalties.

(a) Civil.--

(1) Penalty amounts.--Any person that is determined, in accordance with paragraph (2), to have violated section 224 or section 241 shall be required by order to pay a civil penalty in an amount not to exceed $ 25,000 for each violation. For the purposes of this paragraph, each day during which a violation of section 224 continues shall constitute a separate violation of that section.

(2) Notice and hearing.--

(A) In general.--Before imposing a penalty against a person under paragraph (1), the head of an executive agency designated under section 211(a) shall provide the person with notice of the order. If, within 15 days after receiving the notice, the person requests a hearing, the head of the designated executive agency shall initiate a hearing on the violation.

(B) Conduct of hearing.--Any hearing so requested shall be conducted before an administrative judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the order imposed by the head of the designated agency shall constitute a final agency action.

(C) Issuance of orders.--If the administrative judge determines, upon the preponderance of the evidence received, that a person named in the complaint has violated section 224 or section 241, the administrative judge shall state the findings of fact and conclusions of law, and issue and serve on such person an order described in paragraph (1).

(D) Factors for determination of penalty amounts.-- In determining the amount of any civil penalty, the administrative judge or the head of the designated agency shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of such violations, the degree of culpability, the existence of an

internal compliance program, and such other matters as justice may require.

(E) Content of notice.--For the purposes of this paragraph, notice shall be in writing and shall be verifiably served upon the person or persons subject to an order described in paragraph (1). In addition, the notice shall--

(i) set forth the time, date, and specific nature of the alleged violation or violations; and

(ii) specify the administrative and judicial remedies available to the person or persons subject to the order, including the availability of a hearing and subsequent appeal.

(3) Administrative appellate review.--The decision and order of an administrative judge shall be the recommended decision and order and shall be referred to the head of the designated executive agency for final decision and order. If, within 60 days, the head of the designated executive agency does not modify or vacate the decision and order, it shall become a final agency action under this subsection.

(4) Judicial review.-- A person adversely affected by a final order may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

(5) Enforcement of final orders.--

(A) In general.--If a person fails to comply with a final order issued against such person under this subsection and--

(i) the person has not filed a petition for judicial review of the order in accordance with paragraph (4), or

(ii) a court in an action brought under paragraph (4) has entered a final judgment in favor of the designated executive agency, the head of the designated executive agency shall commence a civil action to seek compliance with the final order in any appropriate district court of the United States.

(B) No review.--In any such civil action, the validity and appropriateness of the final order shall not be subject to review.

(C) Interest.--Payment of penalties assessed in a final order under this section shall include interest at currently prevailing rates calculated from the date of expiration of the 60-day period referred to in paragraph

(3) or the date of such final order, as the case may be.

(b) Criminal.--Any person who violates section 224 or section 241 may, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, United States Code, imprisoned for not more than five years, or both.

Sec. 243. Specific Enforcement.

(a) Jurisdiction.--The district courts of the United States shall have jurisdiction over civil actions brought by the head of an executive agency designated under section 211(a)--

(1) to restrain any conduct in violation of section 224 or section 241; or

(2) to compel the taking of any action required by or under this title or the Additional Protocol.

(b) Civil Actions.--

(1) In general.--A civil action described in subsection (a) may be brought--

(A) in the case of a civil action described in paragraph (1) of such subsection, in the United States district court for the judicial district in which any act, omission, or transaction constituting a violation of section 224 or section 241 occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in paragraph (2) of such subsection, in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) Service of process.--In any such civil action, process shall be served on a defendant wherever the defendant may reside or may be found.

Subtitle E--Environmental Sampling

Sec. 251. Notification To Congress Of Iaea Board Approval Of Wide-Area Environmental Sampling.

(a) In General.--Not later than 30 days after the date on which the Board of Governors of the IAEA approves wide-area environmental sampling for use as a safeguards verification tool, the President shall notify the appropriate congressional committees.

(b) Content.--The notification under subsection (a) shall contain--

(1) a description of the specific methods and sampling techniques approved by the Board of Governors that are to be employed for purposes of wide-area sampling;

(2) a statement as to whether or not such sampling may be conducted in the United States under the Additional Protocol; and

(3) an assessment of the ability of the approved methods and sampling techniques to detect, identify, and determine the conduct, type, and nature of nuclear activities.

Sec. 252. Application Of National Security Exclusion To Wide-Area Environmental Sampling.

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any wide-area environmental sampling proposed by the IAEA to be conducted at a specified location in the

United States under Article 9 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that--

(1) the proposed use of wide-area environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear- weapon State Party;

(2) the proposed use of wide-area environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) the United States--

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving wide-area environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of wide-area environmental sampling.

Sec. 253. Application Of National Security Exclusion To Location-Specific Environmental Sampling.

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any location-specific environmental sampling in the United States under Article 5 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that--

(1) the proposed use of location-specific environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non- nuclear-weapon State Party;

(2) the proposed use of location-specific environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) with respect to the proposed use of environmental sampling, the United States--

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving location-specific environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of location- specific environmental sampling.

Sec. 254. Rule Of Construction.

As used in this subtitle, the term "necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the

territory of a non-nuclear-weapon State Party" shall not be construed to encompass proposed uses of environmental sampling that might assist the IAEA in detecting undeclared nuclear activities in the territory of a non-nuclear-weapon State Party by--

(1) setting a good example of cooperation in the conduct of such sampling; or

(2) facilitating the formation of a political consensus or political support for such sampling in the territory of a non- nuclear-weapon State Party.

Subtitle F--Protection of National Security Information and Activities

Sec. 261. Protection Of Certain Information.

(a) Locations and Facilities of Direct National Security Significance.--No current or former Department of Defense or Department of Energy location, site, or facility of direct national security significance shall be declared or be subject to IAEA inspection under the Additional Protocol.

(b) Information of Direct National Security Significance.--No information of direct national security significance regarding any location, site, or facility associated with activities of the Department of Defense or the Department of Energy shall be provided under the Additional Protocol.

(c) Restricted Data.--Nothing in this title shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of restricted data controlled by the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), including in particular "Restricted Data" as defined under paragraph (1) of section 11 y. of such Act (42 U.S.C. 2014(y)).

(d) Classified Information.--Nothing in this Act shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of national security information and other classified information.

Sec. 262. IAEA Inspections And Visits.

(a) Certain Individuals Prohibited From Obtaining Access.--No national of a country designated by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a government supporting acts of international terrorism shall be permitted access to the United States to carry out an inspection activity under the Additional Protocol or a related safeguards agreement.

(b) Presence of United States Government Personnel.--IAEA inspectors shall be accompanied at all times by United States Government personnel when inspecting sites, locations, facilities, or activities in the United States under the Additional Protocol.

(c) Vulnerability and Related Assessments.--The President shall conduct vulnerability, counterintelligence, and related assessments not less than every 5 years to ensure that information of direct national

security significance remains protected at all sites, locations, facilities, and activities in the United States that are subject to IAEA inspection under the Additional Protocol.

Subtitle G-- Reports

Sec. 271. Report On Initial United States Declaration.

Not later than 60 days before submitting the initial United States declaration to the IAEA under the Additional Protocol, the President shall submit to Congress a list of the sites, locations, facilities, and activities in the United States that the President intends to declare to the IAEA, and a report thereon.

Sec. 272. Report On Revisions To Initial United States Declaration.

Not later than 60 days before submitting to the IAEA any revisions to the United States declaration submitted under the Additional Protocol, the President shall submit to Congress a list of any sites, locations, facilities, or activities in the United States that the President intends to add to or remove from the declaration, and a report thereon.

Sec. 273. Content Of Reports On United States Declarations.

The reports required under section 271 and section 272 shall present the reasons for each site, location, facility, and activity being declared or being removed from the declaration list and shall certify that--

(1) each site, location, facility, and activity included in the list has been examined by each agency with national security equities with respect to such site, location, facility, or activity; and

(2) appropriate measures have been taken to ensure that information of direct national security significance will not be compromised at any such site, location, facility, or activity in connection with an IAEA inspection.

Sec. 274. Report On Efforts To Promote The Implementation Of Additional Protocols.

Not later than 180 days after the entry into force of the Additional Protocol, the President shall submit to the appropriate congressional committees a report on--

(1) measures that have been or should be taken to achieve the adoption of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties; and

(2) assistance that has been or should be provided by the United States to the IAEA in order to promote the effective implementation of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties and the verification of the compliance of such parties with IAEA obligations, with a plan for providing any needed additional funding.

Sec. 275. Notice Of IAEA Notifications.

The President shall notify Congress of any notifications issued by the IAEA to the United States under Article 10 of the Additional Protocol.

Subtitle H--Authorization of Appropriations

Sec. 281. Authorization Of Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Afghanistan	X	In Force: 20 Feb 1978	257	In Force: 19 July 2005
Albania[1]		In Force: 25 March 1988	359	Signed: 2 December 2004
Algeria		In Force: 07 Jan 1997	531	Approved: 14 Sep 2004
Andorra	*X*	*Signed: 09 Jan 2001*		Signed: 09 Jan 2001
Angola				
Antigua and Barbuda[2]	X	In Force: 09 Sep 1996	528	
Argentina[3]		In Force: 04 Mar 1994	435/Mod.	
Armenia		In Force: 05 May 1994	455	In Force: 28 Jun 2004
Australia		In Force: 10 Jul 1974	217	In Force: 12 Dec 1997
Austria[4]		Accession: 31 Jul 1996	193	In Force: 30 Apr 2004
Azerbaijan	Amended: 20 Nov 2006	In Force: 29 Apr 1999	580	In Force: 29 Nov 2000
Bahamas[2]	Amended: 25 Jul 2007	In Force: 12 Sep 1997	544	
Bahrain	*Signed: 19 Sep 2007*	*Signed: 19 Sep 2007*		
Bangladesh		In Force: 11 Jun 1982	301	In Force: 30 Mar 2001
Barbados[2]	X	In Force: 14 Aug 1996	527	
Belarus		In Force: 02 Aug 1995	495	Signed: 15 Nov 2005
Belgium		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Belize[5]	X	In Force: 21 Jan 1997	532	
Benin	*Amended: 15 Apr 2008*	*Signed: 7 Jun 2005*		*Signed: 7 Jun 2005*
Bhutan	X	In Force: 24 Oct 1989	371	
Bolivia[2]	X	In Force: 06 Feb 1995	465	
Bosnia and Herzegovina[6]		In Force: 28 Dec 1973	204	
Botswana		In Force: 24 Aug 2006	694	In Force: 24 Aug 2006

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Brazil[7]		In Force: 04 Mar 1994	435	
Brunei Darussalam	X	In Force: 04 Nov 1987	365	
Bulgaria		In Force: 29 Feb 1972	178	10 Oct 2000
Burkina Faso	Amended: 18 Feb 2008	In Force: 17 Apr 2003	618	In Force: 17 Apr 2003
Burundi	In Force: 27 Sep 2007	In Force: 27 Sep 2007	719	In Force: 27 Sep 2007
Cambodia	X	In Force: 17 Dec 1999	586	
Cameroon	X	In Force: 17 Dec 2004	641	Signed: 16 Dec 2004
Canada		In Force: 21 Feb 1972	164	In Force: 08 Sep 2000
Cape Verde	*Amended: 27 Mar 2006*	*Signed: 28 Jun 2005*		*Signed: 28 Jun 2005*
Central African Republic	*Approved: 7 Mar 2006*	*Approved: 7 Mar 2006*		*Approved: 7 Mar 2006*
Chad	*Approved: 22 Nov 2007*	*Approved: 22 Nov 2007*		*Approved: 22 Nov 2007*
Chile[8]		In Force: 05 Apr 1995	476	In Force: 03 Nov 2003
China		In Force: 18 Sep 1989	369*	In Force: 28 Mar 2002
Colombia[8]		In Force: 22 Dec 1982	306	Signed: 11 May 2005
Comoros	*Signed: 13 Dec 2005*	*Signed: 13 Dec 2005*		*Signed: 13 Dec 2005*
Congo, Republic of the				
Costa Rica[2]	Amended: 12 Jan 2007	In Force: 22 Nov 1979	278	Signed: 12 Dec 2001
Côte d'Ivoire		In Force: 08 Sep 1983	309	Approved: 22 Nov 2007
Croatia	Amended: 26 May 2008	In Force: 19 Jan 1995	463	In Force: 06 Jul 2000
Cuba[2]		In Force: 03 Jun 2004	633	In Force: 03 Jun 2004
Cyprus[9]		Accession: 1 May 2008	193	Accession: 1 May 2008
Czech Republic[10]		In Force: 11 Sep 1997	541	In Force: 01 Jul 2002
Democratic Peoples Rep. of Korea		In Force: 10 Apr 1992	403	
Democratic Republic of the Congo		In Force: 09 Nov 1972	183	In Force: 09 Apr 2003

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Denmark[11]		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Djibouti				
Dominica[5]	X	In Force: 03 May 1996	513	
Dominican Republic[2]	Amended: 11 Oct 2006	In Force: 11 Oct 1973	201	Signed: 20 Sep 2007
Ecuador[2]	Amended: 7 April 2006	In Force: 10 Mar 1975	231	In Force: 24 Oct 2001
Egypt		In Force: 30 Jun 1982	302	
El Salvador[2]	X	In Force: 22 Apr 1975	232	In Force: 24 May 2004
Equatorial Guinea	*X*	*Approved: 13 Jun 1986*		
Eritrea				
Estonia[12]		Accession: 1 Dec 2005	193	Accession: 1 Dec 2005
Ethiopia	X	In Force: 02 Dec 1977	261	
Fiji	X	In Force: 22 Mar 1973	192	In Force: 14 July 2006
Finland[13]		Accession: 01 Oct 1995	193	In Force: 30 Apr 2004
France		In Force: 12 Sep 1981	290*	In Force: 30 Apr 2004
	X	In Force: 26 Oct 2007[14]	718	
Gabon	*X*	Signed: 03 Dec 1979		Signed: 8 Jun 2005
Gambia	X	In Force: 08 Aug 1978	277	
Georgia		In Force: 03 Jun 2003	617	In Force: 03 Jun 2003
Germany[15]		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Ghana		In Force: 17 Feb 1975	226	In Force: 11 Jun 2004
Greece[16]		Accession: 17 Dec 1981	193	In Force: 30 Apr 2004
Grenada[2]	X	In Force: 23 Jul 1996	525	
Guatemala[2]	X	In Force: 01 Feb 1982	299	In Force: 28 May 2008
Guinea				

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Guinea–Bissau				
Guyana[2]	X	In Force: 23 May 1997	543	
Haiti[2]	X	In Force: 9 Mar 2006	681	In Force: 9 Mar 2006
Holy See	Amended: 11 Sep 2006	In Force: 01 Aug 1972	187	In Force: 24 Sep 1998
Honduras[2]	Amended: 20 Sep 2007	In Force: 18 Apr 1975	235	Signed: 7 Jul 2005
Hungary[17]		Accession: 1 Jul 2007	193	Accession: 1 Jul 2007
Iceland	X	In Force: 16 Oct 1974	215	In Force: 12 Sep 2003
India		In Force: 30 Sep 1971	211	
		In Force: 17 Nov 1977	260	
		In Force: 27 Sep 1988	360	
		In Force: 11 Oct 1989	374	
		In Force: 01 Mar 1994	433	
		Approved: 1 Aug 2008		
Indonesia		In Force: 14 Jul 1980	283	In Force: 29 Sep 1999
Iran, Islamic Republic of		In Force: 15 May 1974	214	Signed: 18 Dec 2003
Iraq		In Force: 29 Feb 1972	172	Signed: 9 Oct 2008
Ireland		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Israel		In Force: 04 Apr 1975	249/Add.	
Italy		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Jamaica[2]	Rescinded: 15 Dec 2006	In Force: 06 Nov 1978	265	In Force: 19 Mar 2003
Japan		In Force: 02 Dec 1977	255	In Force: 16 Dec 1999
Jordan	X	In Force: 21 Feb 1978	258	In Force: 28 Jul 1998
Kazakhstan		In Force: 11 Aug 1995	504	In Force: 9 May 2007
Kenya				

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Kiribati	X	In Force: 19 Dec 1990	390	In Force: 09 Nov 2004
Korea, Rep. of		In Force: 14 Nov 1975	236	In Force: 19 Feb 2004
Kuwait	X	In Force: 07 Mar 2002	607	In Force: 02 Jun 2003
Kyrgyzstan	X	In Force: 03 Feb 2004	629	Signed: 29 Jan 2007
Lao Peoples Democratic Republic	X	In Force: 05 Apr 2001	599	
Latvia[18]		Accession: 1 Oct 2008	193	Accession: 1 Oct 2008
Lebanon	Amended: 5 Sep 2007	In Force: 05 Mar 1973	191	
Lesotho	X	In Force: 12 Jun 1973	199	Approved: 24 Sep 2008
Liberia				
Libyan Arab Jamahiriya		In Force: 08 Jul 1980	282	In Force: 11 Aug 2006
Liechtenstein		In Force: 04 Oct 1979	275	Signed: 14 Jul 2006
Lithuania[19]		Accession: 1 Jan 2008	193	Accession: 1 Jan 2008
Luxembourg		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
Madagascar	Amended: 29 May 2008	In Force: 14 Jun 1973	200	In Force: 18 Sep 2003
Malawi	Amended: 29 Feb 2008	In Force: 03 Aug 1992	409	In Force: 26 July 2007
Malaysia		In Force: 29 Feb 1972	182	Signed: 22 Nov 2005
Maldives	X	In Force: 02 Oct 1977	253	
Mali	Amended: 18 Apr 2006	In Force: 12 Sep 2002	615	In Force: 12 Sep 2002
Malta[20]	X	Accession: 1 Jul 2007	193	Accession: 1 Jul 2007
Marshall Islands		In Force: 03 May 2005	653	In Force: 03 May 2005
Mauritania	*X*	*Signed: 02 Jun 2003*		*02 Jun 2003*
Mauritius	Amended: 26 Sep 2008	In Force: 31 Jan 1973	190	In Force: 17 Dec 2007
Mexico[21]		In Force: 14 Sep 1973	197	Signed: 29 Mar 2004
Micronesia, Federated States of				

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Monaco	X	In Force: 13 Jun 1996	524	In Force: 30 Sep 1999
Mongolia	X	In Force: 05 Sep 1972	188	In Force: 12 May 2003
Montenegro	*Signed: 26 May 2008*	*Signed: 26 May 2008*		*Signed: 26 May 2008*
Morocco	Rescinded: 15 Nov 2007	In Force: 18 Feb 1975	228	Signed: 22 Sep 2004
Mozambique	*Approved: 22 Nov 2007*	*Approved: 22 Nov 2007*		*Approved: 22 Nov 2007*
Myanmar	X	In Force: 20 Apr 1995	477	
Namibia	X	In Force: 15 Apr 1998	551	Signed: 22 Mar 2000
Nauru	X	In Force: 13 Apr 1984	317	
Nepal	X	In Force: 22 Jun 1972	186	
Netherlands		In Force: 05 Jun 1975	229[14]	
		In Force: 21 Feb 1977	193	In Force: 30 Apr 2004
New Zealand[22]	X	In Force: 29 Feb 1972	185	In Force: 24 Sep 1998
Nicaragua[2]	X	In Force: 29 Dec 1976	246	In Force: 18 Feb 2005
Niger		In Force: 16 Feb 2005	664	In Force: 2 May 2007
Nigeria		In Force: 29 Feb 1988	358	In Force: 4 Apr 2007
Norway		In Force: 01 Mar 1972	177	In Force: 16 May 2000
Oman	X	In Force: 5 Sep 2006	691	
Pakistan		In Force: 05 Mar 1962	34	
		In Force: 17 Jun 1968	116	
		In Force: 17 Oct 1969	135	
		In Force: 18 Mar 1976	239	
		In Force: 02 Mar 1977	248	
		In Force: 10 Sep 1991	393	
		In Force: 24 Feb 1993	418	

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
		In Force: 22 Feb 2007	705	
Palau	Amended: 15 Mar 2006	In Force: 13 May 2005	650	In Force: 13 May 2005
Panama[8]	X	In Force: 23 Mar 1984	316	In Force: 11 Dec 2001
Papua New Guinea	X	In Force: 13 Oct 1983	312	
Paraguay[2]	X	In Force: 20 Mar 1979	279	In Force: 15 Sep 2004
Peru[2]		In Force: 01 Aug 1979	273	In Force: 23 Jul 2001
Philippines		In Force: 16 Oct 1974	216	Signed: 30 Sep 1997
Poland[23]		Accession: 1 Mar 2007	193	Accession: 1 Mar 2007
Portugal[24]		Accession: 01 Jul 1986	193	In Force: 30 Apr 2004
Qatar	*Approved: 24 Sep 2008*	*Approved: 24 Sep 2008*		
Republic of Moldova	X	In Force: 17 May 2006	690	Approved: 13 Sep 2006
Romania		In Force: 27 Oct 1972	180	In Force: 07 Jul 2000
Russian Federation		In Force: 10 Jun 1985	327*	In Force: 16 Oct 2007
Rwanda				
St. Kitts and Nevis[5]	X	In Force: 07 May 1996	514	
St. Lucia[5]	X	In Force: 02 Feb 1990	379	
St. Vincent and the Grenadines[5]	X	In Force: 08 Jan 1992	400	
Samoa	X	In Force: 22 Jan 1979	268	
San Marino	X	In Force: 21 Sep 1998	575	
São Tome and Principe				
Saudi Arabia		*Signed: 16 Jun 2005*		
Senegal	X	In Force: 14 Jan 1980	276	Signed: 15 Dec 2006
Serbia[25]		In Force: 28 Dec 1973	204	
Seychelles	Amended: 31 Oct 2006	In Force: 19 Jul 2004	635	In Force: 13 Oct 2004

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Sierra Leone	*X*	*Signed: 10 Nov 1977*		
Singapore	Amended: 31 Mar 2008	In Force: 18 Oct 1977	259	In Force: 31 Mar 2008
Slovakia[26]		Accession: 1 Dec 2005	193	Accession: 1 Dec 2005
Slovenia[27]		Accession: 1 Sep 2006	193	Accession: 1 Sep 2006
Solomon Islands	X	In Force: 17 Jun 1993	420	
Somalia				
South Africa		In Force: 16 Sep 1991	394	In Force: 13 Sep 2002
Spain		Accession: 05 Apr 1989	193	In Force: 30 Apr 2004
Sri Lanka		In Force: 06 Aug 1984	320	
Sudan	X	In Force: 07 Jan 1977	245	
Suriname[2]	X	In Force: 02 Feb 1979	269	
Swaziland		In Force: 28 Jul 1975	227	
Sweden[28]		Accession: 01 Jun 1995	193	In Force: 30 Apr 2004
Switzerland		In Force: 06 Sep 1978	264	In Force: 01 Feb 2005
Syrian Arab Republic		In Force: 18 May 1992	407	
Tajikistan	Amended: 6 Mar 2006	In Force: 14 Dec 2004	639	In Force: 14 Dec 2004
Thailand		In Force: 16 May 1974	241	Signed: 22 Sep 2005
The Former Yugoslav Republic of Macedonia	X	In Force: 16 Apr 2002	610	In Force: 11 May 2007
Timor-Leste	*Approved: 11 Sep 2007*	*Approved: 11 Sep 2007*		*Approved: 11 Sep 2007*
Togo	*X*	*Signed: 29 Nov 1990*		*Signed: 22 Sep 2003*
Tonga	X	In Force: 18 Nov 1993	426	
Trinidad and Tobago[2]	X	In Force: 04 Nov 1992	414	
Tunisia		In Force: 13 Mar 1990	381	Signed: 24 May 2005
Turkey		In Force: 01 Sep 1981	295	In Force: 17 Jul 2001

O. STATUS WITH REGARD TO CONCLUSION OF SAFEGUARDS AGREEMENTS AND ADDITIONAL PROTOCOLS[a,b] AND SMALL QUANTITIES PROTOCOLS[c]

State/Party	SQP[c]	Status of Safeguards Agreement(s)	INFCIRC	Additional Protocol Status
Turkmenistan		In Force: 3 Jan 2006	673	In Force: 3 Jan 2006
Tuvalu	X	In Force: 15 Mar 1991	391	
Uganda	X	In Force: 14 Feb 2006	674	In Force: 14 Feb 2006
Ukraine		In Force: 22 Jan 1998	550	In Force: 24 Jan 2006
United Arab Emirates	X	In Force: 09 Oct 2003	622	
United Kingdom of Great Britain		In Force: 14 Dec 1972	175[29]	
		In Force: 14 Aug 1978	263*	In Force: 30 Apr 2004
		In Force: 14 Aug 1978[14]		
United Republic of Tanzania	X	In Force: 07 Feb 2005	643	In Force: 07 Feb 2005
United States of America		09 Dec 1980	288*	In Force: 06 Jan 2009
	X	In Force: 6 Apr 1989	366[14]	
Uruguay[2]		In Force: 17 Sep 1976	157	In Force: 30 Apr 2004
Uzbekistan		In Force: 08 Oct 1994	508	In Force: 21 Dec 1998
Vanuatu				
Venezuela[2]		In Force: 11 Mar 1982	300	
Vietnam		In Force: 23 Feb 1990	376	Signed: 10 Aug 2007
Yemen, Rep. of	X	In Force: 14 Aug 2002	614	
Zambia.	X	In Force: 22 Sep 1994	456	
Zimbabwe	X	In Force: 26 Jun 1995	483	

Strengthened Safeguards System: *Other Parties with Additional Protocols* (as of 9 October 2008).

Other Parties[1]	Board Approved	Date Signed	In force
Euratom	11 Jun 1998	22 Sep 1998	30 Apr 2004

STATUS AS OF January 6, 2009

Key

States: **States not party to the NPT whose safeguards agreements are of INFCIRC/66–type.**

States: Non–nuclear–weapon States which are party to the NPT but have not brought into force a safeguards agreement pursuant to Article III of that Treaty.

*: Voluntary offer safeguards agreement for NPT nuclear–weapon States.

[a] This Annex does not aim at listing all safeguards agreements that the Agency has concluded. Not included are agreements whose application has been suspended in light of the application of safeguards pursuant to a comprehensive safeguards agreement. Unless otherwise indicated, the safeguards agreements referred to are comprehensive safeguards agreements concluded pursuant to the NPT.

[b] The Agency also applies safeguards in Taiwan, China under two agreements, INFCIRC/133 and INFCIRC/158, which came into force on 13 October 1969 and 6 December 1971, respectively.

[c] States that conclude comprehensive safeguards agreements, provided that they fulfil certain conditions (including that the quantities of nuclear material do not exceed the limits of paragraph 37 of INFCIRC/153), have the option to conclude a so-called "Small Quantity Protocol", thus holding in abeyance the implementation of most of the detailed provisions set out in Part II of a comprehensive safeguards agreement as long as these conditions continue

to apply. This column contains countries whose SQPs have been approved by the Board and for which, as far as the Secretariat is aware, these conditions continue to apply. For those States that have accepted the modified standard SQP text, which was approved by the Board of Governors on 20 September 2005, the current status is reflected.

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[1] *Sui generis* comprehensive safeguards agreement. On 28 November 2002, upon approval by the Board of Governors, an exchange of letters entered into force confirming that the safeguards agreement satisfies the requirement of Article III of the NPT.

[2] Safeguards agreement refers to both the Treaty of Tlatelolco and the NPT.

[3] Date refers to the safeguards agreement concluded between Argentina, Brazil, ABACC and the Agency. On 18 March 1997, upon approval by the Board of Governors, an exchange of letters entered into force between Argentina and the Agency confirming that the safeguards agreement satisfies the requirements of Article 13 of the Treaty of Tlatelolco and Article III of the NPT to conclude a safeguards agreement with the Agency.

[4] The application of safeguards in Austria under the NPT safeguards agreement INFCIRC/156, in force since 23 July 1972, was suspended on 31 July 1996, on which date the agreement of 5 April 1973 (INFCIRC/193) between the non–nuclear weapon States of EURATOM, EURATOM and the Agency, to which Austria had acceded, entered into force for Austria.

[5] Date refers to a safeguards agreement pursuant to Article III of the NPT. Upon approval by the Board of Governors, an exchange of letters entered into force (for Saint Lucia on 12 June 1996 and for Belize, Dominica, Saint Kitts & Nevis and Saint Vincent & Grenadines on 18 March 1997) confirming that the safeguards agreement satisfies the requirement of Article 13 of the Treaty of Tlatelolco.

[6] The NPT safeguards agreement concluded with the Socialist Federal Republic of Yugoslavia (INFCIRC/204), which entered into force on 28 December 1973, continues to be applied in Bosnia and Herzegovina to the extent relevant to the territory of Bosnia and Herzegovina.

[7] Date refers to the safeguards agreement concluded between Argentina, Brazil, ABACC and the Agency. On 10 June 1997, upon approval by the Board of Governors, an exchange of letters entered into force between Brazil and the Agency confirming that the safeguards agreement satisfies the requirements of Article 13 of the Treaty of Tlatelolco. On 20 September 1999, upon approval by the Board of Governors, an exchange of letters entered into force confirming that the safeguards agreement also satisfies the requirements of Article III of the NPT.

[8] Date refers to a safeguards agreement pursuant to Article 13 of the Treaty of Tlatelolco. Upon approval by the Board of Governors an exchange of letters entered into force (for Chile on 9 September 1996; for Columbia on 13 June 2001; for Panama on 21 November 2003) confirming that the safeguards agreement satisfies the requirement of Article III of the NPT.

[9] The application of safeguards in Cyprus under the NPT safeguards agreement INFCIRC/189, in force since 26 January 1973, was suspended on 1 May 2008, on which date the agreement of 5 April 1973 between the non-nuclear weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193) to which Cyprus had acceded, entered into force for Cyprus.

[10] The NPT safeguards agreement concluded with the Czechoslovak Socialist Republic (INFCIRC/173), which entered into force on 3 March 1972, continued to be applied in the Czech Republic to the extend relevant to the territory of the Czech Republic until 11 September 1997, on which date the NPT safeguards agreement concluded with the Czech Republic entered into force.

[11] The application of safeguards in Denmark under the bilateral NPT safeguards agreement INFCIRC/176, in force since 1 March 1972, was

suspended on 5 April 1973, on which date the agreement of 5 April 1973 (INFCIRC/193) between the non-nuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Denmark had acceded, entered into force for Denmark. Since 1 May 1974, that agreement also applies to the Faroe Islands. Upon Greenland's secession from EURATOM as of 31 January 1985, the agreement between the Agency and Denmark (INFCIRC/176) re-entered into force for Greenland.

[12] The application of safeguards in Estonia under the NPT safeguards agreement INFCIRC/547, in force since 24 November 1997, was suspended on 1 December 2005, on which date the agreement of 5 April 1973 between the non nuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Estonia had acceded, entered into force for Estonia.

[13] The application of safeguards in Finland under the NPT safeguards agreement INFCIRC/155, in force since 9 February 1972, was suspended on 1 October 1995, on which date the agreement of 5 April 1973 (INFCIRC/193) between the non–nuclear–weapon States of EURATOM, EURATOM and the Agency, to which Finland had acceded, entered into force for Finland.

[14] The safeguards agreement referred to is pursuant to Additional Protocol I to the Treaty of Tlatelolco.

[15] The NPT safeguards agreement of 7 March 1972 concluded with the German Democratic Republic (INFCIRC/181) is no longer in force with effect from 3 October 1990, on which date the German Democratic Republic acceded to the Federal Republic of Germany.

[16] The application of safeguards in Greece under the NPT safeguards agreement INFCIRC/166, provisionally in force since 1 March 1972, was suspended on 17 December 1981, on which date Greece acceded to the agreement of 5 April 1973 (INFCIRC/193) between the non–nuclear– weapon States of EURATOM, EURATOM and the Agency.

[17] The application of safeguards in Hungary under the bilateral NPT safeguards agreement INFCIRC/174, in force since 30 March 1972, was suspended on 1 July 2007, on which date the agreement of 5 April 1973 between the nonnuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Hungary had acceded, entered into force for Hungary.

[18] The application of safeguards in Latvia under the bilateral NPT safeguards agreement INFCIRC/434, in force since 21 December 1993, was suspended on 1 October 2008, on which date the agreement of 5 April 1973 between the non-nuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Latvia had acceded, entered into force for Latvia.

[19] The application of safeguards in Lithuania under the bilateral NPT safeguards agreement INFCIRC/413, in force since 15 October 1992, was suspended on 1 January 2008, on which date the agreement of 5 April 1973 between the non–nuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Lithuania had acceded, entered into force for Lithuania.

[20] The application of safeguards in Malta under the bilateral NPT safeguards agreement INFCIRC/387, in force since 13 November 1990, was suspended on 1 July 2007, on which date the agreement of 5 April 1973 between the nonnuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Malta had acceded, entered into force for Malta.

[21] The safeguards agreement referred to was concluded pursuant to both the Treaty of Tlatelolco and the NPT. The application of safeguards under an earlier safeguards agreement pursuant to the Treaty of Tlatelolco, which entered into force on 6 September 1968 (INFCIRC/118), was suspended as of 14 September 1973.

[22] Whereas the NPT safeguards agreement and small quantities protocol with New Zealand (INFCIRC/185) also apply to Cook Islands and Niue, the additional protocol thereto (INFCIRC/185/Add.1) does not apply to those territories.

[23] The application of safeguards in Poland under the NPT safeguards agreement INFCIRC/179, in force since 11 October 1972, was suspended on 1 March 2007, on which date the agreement of 5 April 1973 between the non-nuclear weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193) to which Poland had acceded, entered into force for Poland.

[24] The application of safeguards in Portugal under the NPT safeguards agreement INFCIRC/272, in force since 14 June 1979, was suspended on 1 July 1986, on which date Portugal acceded to the agreement of 5 April 1973 (INFCIRC/193) between the non–nuclear–weapon States of EURATOM, EURATOM and the Agency.

[25] The NPT safeguards agreement concluded with the Socialist Federal Republic of Yugoslavia (INFCIRC/204), which entered into force on 28 December 1973, continues to be applied in Serbia (formerly Serbia and Montenegro) to the extent relevant to the territory of Serbia.

[26] The application of safeguards in Slovakia under the bilateral NPT safeguards agreement with the Czechoslovak Socialist Republic (INFCIRC 173), in force since 3 March 1972, was suspended on 1 December 2005, on which date the agreement of 5 April 1973 between the non-nuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193), to which Slovakia had acceded, entered into force for Slovakia.

[27] The application of safeguards in Slovenia under the NPT safeguards agreement INFCIRC/538, in force since 1 August 1997, was suspended on 1 September 2006, on which date the agreement of 5 April 1973 between the nonnuclear-weapon States of EURATOM, EURATOM and the Agency (INFCIRC/193) to which Slovenia had acceded, entered into force for Slovenia.

[28] The application of safeguards in Sweden under the NPT safeguards agreement INFCIRC/234, in force since 14 April 1975, was suspended on 1 June 1995, on which date the agreement of 5 April 1973 (INFCIRC/193) between the non–nuclear–weapon States of EURATOM, EURATOM and the Agency, to which Sweden had acceded, entered into force for Sweden.

[29] Date refers to the INFCIRC/66–type safeguards agreement, concluded between the United Kingdom and the Agency, which remains in force.

P. TABLE: IAEA SUPPLY AGREEMENTS

Agreements between the International Atomic Energy Agency, the United States, and other countries for Supply of Nuclear Material or Equipment pursuant to the Agreement for Peaceful Nuclear Cooperation between the United States and the IAEA.

Agreement	Date Signed	IAEA Information Effective Date	Circular Number/Citations[1]
Argentina	December 2, 1964	December 2, 1964	INFCIRCS/62
Argentina	December 13, 1964	December 30, 1965	INFCIRCS/62/Add. 1
Argentina–Peru	May 9, 1978	May 9, 1978	INFCIRCS /266, TIAS No. 9263, 30 UST 1539
Canada–Jamaica	January 25, 1984	January 25, 1984	INFCIRCS/ 315, TIAS No. 10933, 35 UST 4309
Chile	December 19, 1969	December 19, 1969	INFCIRCS/137
Chile	December 31, 1974	December 31, 1974	INFCIRCS/137/Add. 1
Colombia	May 30, June 7 & 17, 1994	June 17, 1994	INFCIRCS /460, 1857 UNTS 105
Finland	December 30, 1960	December 30, 1960	INFCIRCS/24
Finland	July 8, 1966	July 8, 1966	INFCIRCS/24/Add. 2
Finland	November 5, 1967	November 5, 1967	INFCIRCS/24/Add. 3
Finland	–	November 27, 1969	INFCIRCS/24/Add. 4
Greece	March 1, 1972	March 1, 1972	INFCIRCS/163
Greece	March 1, 1974	March 1, 1974	INFCIRCS/163/Add. 1
Greece	December 15, 1977	December 15, 1977	INFCIRCS/163/Add. 2, Part II
India	December 9, 1966	December 9, 1966	INFCIRCS/94, Part II
India	July 2, 1970	July 2, 1970	INFCIRCS/94/Add. 1, Part I
India	November 16, 1970	November 16, 1970	INFCIRCS/94/Add. 1, Part II
India	July 1, 1971	July 1, 1971	INFCIRCS/94/Add. 2, Part I
India	August 20, 1971	August 20, 1971	INFCIRCS/94/Add. 2, Part II
India	October 1, 1971	October 1, 1971	INFCIRCS/94/Add. 2, Part III
Indonesia	December 19, 1969	December 19, 1969	INFCIRCS/136

[1] Citations refer to IAEA Information Circulars (INFCIRCS), *Treaties and Other International Acts Series* (TIAS), *United Nations Treaty Series* (UNTS), and/or *United States Treaties and Other International Agreements* (UST).

Agreement	Date Signed	IAEA Information Effective Date	Circular Number/Citations[1]
Indonesia	April 7, 1975	April 7, 1975	INFCIRCS/135/Add. 1, Mod. 1
Indonesia	September 14, 1972	September 14, 1972	INFCIRCS/136/Add. 1
Indonesia	December 7, 1979	December 7, 1979	INFCIRCS/136/Add. 2, TIAS No. 9705, 32 UST 361
Iran	June 7, 1967	June 7, 1967	INFCIRCS/97
Iraq	December 28, 1972	December 28, 1972	INFCIRCS/195, Part II
Malaysia	September 22, 1980	September 22, 1980	INFCIRCS/287, TIAS No. 9863, 32 UST 2610
Malaysia	June 12 & July 22, 1981	July 22, 1981	INFCIRCS/287/Mod. 1, TIAS No. 10202, 33 UST 2785
Mexico	December 18, 1963	December 18, 1963	INFCIRCS/52, TIAS No. 9906, 32 UST 3607
Mexico	June 20, 1966	June 20, 1966	INFCIRCS/82
Mexico	August 23, 1967	August 23, 1967	INFCIRCS/ 102
Mexico	October 4, 1972	October 4, 1972	INFCIRCS/52/Add. 1, TIAS No. 9906,32 UST 3618
Mexico	December 12, 1972	December 12, 1972	INFCIRCS/194, Part II
Mexico	February 12, 1974	February 12, 1974	INFCIRCS/203, TIAS No. 10705
Mexico	June 14, 1974	June 14, 1974	INFCIRCS/203/Add. 1, TIAS No. 10705
Mexico	March 6, 1980	March 6, 1980	TIAS No. 9906, 32 UST 3628
Morocco	December 2, 1983	December 2, 1983	INFCIRCS/313, TIAS No. 10866, 35 UST 3531
Norway	April 10, 1961	June 15, 1961	INFCIRCS/29
Norway	September 3, 1962	September 3, 1962	INFCIRCS/29/Add. 1
Norway	April 8, 1964	April 8, 1964	INFCIRCS/29/Add. 2, Part I & II
Norway	April 10, 1967	April 10, 1967	INFCIRCS/29/Add. 3
Pakistan	March 5, 1962	March 5, 1962	INFCIRCS/34
Pakistan	October 19, 1967	October 19, 1967	INFCIRCS/34/Add. 1
Pakistan	June 17, 1968	June 17, 1968	INFCIRCS/116
Pakistan	September 30, 1969	September 30, 1969	INFCIRCS/34/Add. 2
Pakistan	June 16, 1971	June 16, 1971	INFCIRCS/34/Add. 3
Pakistan	June 22, 1971	June 22, 1971	INFCIRCS/116/Add.1
Pakistan	November 16, 1971	November 16, 1971	INFCIRCS/150/Add. 1
Philippines	September 28, 1966	September 28, 1966	INFCIRCS/88
Philippines	August 23, 1968	August 23, 1968	INFCIRCS/88/Add. 1
Romania	August 1, 1966	August 1, 1966	INFCIRCS/95, Part II
Romania	March 30, 1973	March 30, 1973	INFCIRCS/206
Romania	September 26, 1973	September 26, 1973	INFCIRCS/95/Add. 2
Romania	July 24, 1975	July 24, 1975	INFCIRCS/206/Mod. 1

Agreement	Date Signed	IAEA Information Effective Date	Circular Number/Citations[1]
Spain	June 23. 1967	June 23. 1967	INFCIRCS/99
Thailand	September 30, 1986	September 30, 1986	INFCIRCS/342
Turkey	February 8, 1966	February 8, 1966	INFCIRCS/83, Part II
Turkey	May 17, 1974	May 17, 1974	INFCIRCS/212
Venezuela	November 7, 1975	November 7, 1975	INFCIRCS/238
Yugoslavia	October 4, 1961	October 4, 1961	INFCIRCS/32
Yugoslavia	September 28, 1965	September 28, 1965	INFCIRCS/32/Add. 1
Yugoslavia	February 20, 1968	February 20, 1968	INFCIRCS/32/Add. 2
Yugoslavia	December 30, 1970	December 30, 1970	INFCIRCS/32/Add. 3
Yugoslavia	December 29, 1972	December 29, 1972	INFCIRCS/32/Add. 3/Mod. 1
Yugoslavia	June 14, 1974	June 14, 1974	INFCIRCS/213, TIAS No. 9728, 32 UST 773
Yugoslavia	October 31, 1974	October 31, 1974	INFCIRCS/32Add. 3/Mod. 1
Yugoslavia	January 16, 1980	July 14, 1980	INFCIRCS/32/Add. 4, TIAS No. 9767, 32 UST 1128
Yugoslavia	December 14, 15 and 20, 1982	December 20, 1982	INFCIRCS/32/Add. 4/Mod. 1, TIAS No. 10621
Yugoslavia	February 23, 1983	February 23, 1983	INFCIRCS/32/Add. 5, TIAS No. 10664
Zaire	June 27, 1962	June 27, 1962	INFCIRCS/37, Part II
Zaire	February 14, 1968	February 14, 1968	INFCIRCS/37/Add. 2
Zaire	December 9, 1970	December 9, 1970	INFCIRCS/37/Add. 3
Zaire	April 15, 1971	April 15, 1971	INFCIRCS/37/Add.4

July 27, 2007

Information has been compiled from the International Atomic Energy Agency and the State Department Office of the Legal Advisor, Treaty Affairs

Q. TABLE: UNITED STATES AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION

List of Agreements

Agreement	Date Signed	Effective Date	Termination Date	Citation
Argentina	February 29, 1996	October 16, 1997	October 15, 2027	TIAS No. 12730
Australia[1]	July 5, 1979	January 16, 1981	January 15, 2011	TIAS No. 9893
Bangladesh	October 14, 1997	September 15, 1999	June 24, 2012[2]	TIAS No. 10339
Brazil	October 14, 1997	September 15, 1999	September 14, 2029	TIAS No. 7439, 23 USC 2477
Canada	June 15, 1955	July 21, 1955	January 1, 2030[3]	TIAS No. 3304, 6 USC 2595
China	July 23, 1985	December 30, 1985	December 29, 2015	TIAS No. 12027
Colombia	January 8, 1981	September 7, 1983	September 6, 2013	TIAS No. 10722
Egypt	June 29, 1981	December 29, 1981	December 28, 2021	TIAS No. 10208
European Atomic Energy Community (EURATOM)[4]	November 7, 1995 & March 29, 1996	April 12, 1996		
India	October 10, 2008	December 6, 2008	December 5, 2048[5]	
Indonesia	June 30, 1980	December 30, 1981	December 30, 2031[6]	TIAS No. 10219, – USC –
International Atomic Energy Agency (IAEA)	May 11, 1959	August 7, 1959		TIAS No. 4291, 10 USC 1424
amendment	February 12, 1974	May 31, 1974	August 6, 2014	TIAS No. 7852, 25 USC 1199
Japan	November 4, 1987	July 17, 1988	July 16, 2018	1547 UNTS 287
Kazakhstan	November 18, 1997	November 5, 1999	November 4, 2029	
Morocco	May 30, 1980	May 16, 1981	May 16, 2021	TIAS No. 10018, –USC–
Norway	January 12, 1984	July 2, 1984	July 1, 2014	TIAS No. 10979, –USC–

[1] Australia and the United States also signed the "Agreement for Cooperation Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation" on October 28, 1999 and entered into force on May 24, 2000; 2117 UNS 243.
[2] Extended January 5 and February 16, 1993.
[3] This agreement has been amended and/or extended five times. It was most recently amended on June 23, 1999.
[4] Euratom comprises the following Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.
[5] This agreement is automatically renewed for 10-year periods unless one of the parties gives 6 months prior notice asking to terminate the agreement.
[6] Extended February 20, 2004.

Agreement	Date Signed	Effective Date	Termination Date	Citation
South Africa	August 25, 1995	December 4, 1997	December 3, 2022	TIAS No. 12685
Switzerland	October 31, 1997	June 23, 1998	June 22, 2028	
Taiwan[7]	April 4, 1972	June 22, 1972		TIAS No. 7364, 23 USC 945
amendment	March 15, 1974	June 14, 1974	June 21, 2014	TIAS No. 7834, 25 USC 913
Thailand	May 14, 1974	June 27, 1974	June 26, 2014	TIAS No. 7850, 25 USC 1181
Turkey	July 26, 2000	June 2, 2008	June 1, 2023	
Ukraine	May 6, 1998	May 28, 1999	May 27, 2029	

October 20, 2008

[7]Pursuant to section 6 of the Taiwan Relations Act, P.L. 96-8, 93 Stat. 14, and Executive Order 12143, 44 F.R. 37191, all agreements concluded with the Taiwan authorities prior to January 1, 1979 are administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitute neither recognition of Taiwan authorities nor the continuation of any official relationship with Taiwan.

R. TABLE: TRILATERALS BETWEEN THE UNITED STATES, THE INTERNATIONAL ATOMIC ENERGY AGENCY AND OTHER COUNTRIES FOR THE APPLICATION OF SAFEGUARDS BY THE INTERNATIONAL ATOMIC ENERGY AGENCY TO EQUIPMENT, DEVICES, AND MATERIALS SUPPLIED UNDER THE BILATERAL AGREEMENTS FOR COOPERATION CONCERNING CIVIL USES OF ATOMIC ENERGY.

Country	Effective Date	TIAS No.
Argentina	July 25, 1969	6722
Australia	[1]Sep. 26, 1966	6117
Austria	[2]Jan. 24, 1970	6816
Brazil	Oct. 31, 1968	6583
Amended	July 27, 1972	7440
China, Republic of (Taiwan)	Dec. 6, 1971	7228
Colombia	Dec. 9, 1970	7010
Extended	Mar. 28, 1977	8556
India	Jan. 27, 1971	7049
Iran	[3]Aug. 20, 1969	6741
Israel	Apr. 4, 1975	8051
Extended	Apr. 7, 1977	8554
Korea	Jan. 5, 1968	6435
Amended	Nov. 30, 1972	7584
Philippines	[4]July 19, 1968	6524
Portugal	[5]July 19, 1969	6718
South Africa	July 26, 1967	6306
Amended	June 20, 1974	7848
Spain	Dec. 9, 1966	6182
Amended	June 28, 1974	7856
Sweden	[6]Mar. 1, 1972	7295
Switzerland	[7]Feb. 28, 1972	7294
Turkey	[8]June 5, 1969	6692
Extended	June 30, 1981	10201
Venezuela	Mar. 27, 1968	6433

[1]Suspended by agreement signed July 10, 1974
[2]Suspended by agreement signed Sept. 21, 1971.
[3]Suspended by agreement signed June 19, 1973.
[4]Suspended by agreement signed Feb. 21, 1973.
[5]Suspended by agreement signed Sept. 23, 1980.
[6]Suspended by agreement signed Apr. 14, 1975.
[7]Suspended by agreement signed Sept. 23, 1980.
[8] Suspended by agreement signed Jan. 15, 1985.

S. TABLE: TRILATERALS BETWEEN THE UNITED STATES, THE INTERNATIONAL ATOMIC ENERGY AGENCY AND OTHER COUNTRIES FOR THE SUSPENSION OF THE APPLICATION OF SAFEGUARDS PURSUANT TO THE NONPROLIFERATION TREATY

Country	Effective Date	TIAS No.
Australia	July 10, 1974	7865
Austria	July 23, 1972	7409
Denmark	Mar. 1, 1972	7289
Greece	Mar. 1, 1972	7290
Iran	May 15, 1974	7829
Norway	Sept. 25, 1973	7721
Philippines	Oct. 16, 1974	7957
Portugal	Sept. 23, 1980	9899
Sweden	May 6, 1975	8046
Switzerland	Sept. 23, 1980	9900
Thailand	June 27, 1974	7849
Turkey	Jan. 15, 1985	11932
Vietnam	Jan. 9, 1974	7780

T. CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTERS

Convention done at London, Mexico City, Moscow and Washington, December 29, 1972
Ratification of the United States of America deposited at Washington, London and Mexico City, April 29, 1974 and at Moscow, May 6, 1974
Entered into force, August 30, 1975

The Contracting Parties to this Convention,

Recognizing that the marine environment and the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that it is so managed that its quality and resources are not impaired.

Recognizing that the capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources is not unlimited;

Recognizing that States have in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environment policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recalling Resolution 2749 (XXV) of the General Assembly of the United Nations on the principles governing the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

Noting that marine pollution originates in many sources, such as dumping and discharges through the atmosphere, rivers, estuaries, outfalls and pipelines, and that it is important that States use the best practicable means to prevent such pollution and develop products and processes which will reduce the amount of harmful wastes to be disposed of;

Being convinced that the international action to control the pollution of the sea by dumping can and must be taken without delay but that this action should not preclude discussion of measures to control other sources of marine pollution as soon as possible; and

Wishing to improve protection of the marine environment by encouraging States with a common interest in particular geographical areas to enter into appropriate agreements supplementary to this Convention;

Have agreed as follows:

ARTICLE I

Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

ARTICLE II

Contracting Parties shall, as provided for in the following Articles, take effective measures individually, according to their scientific, technical and economic capabilities, and collectively, to prevent marine pollution caused by dumping and shall harmonize their policies in this regard.

ARTICLE III

For the purposes of this Convention

1. (a) "Dumping" means:

(i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

(b) "Dumping" does not include:

(i) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

(c) The disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of this Convention.

2. "Vessels and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not.

3. "Sea" means all marine waters other than the internal waters of States.

4. "Wastes or other matter" means material and substance of any kind, form of description.

5. "Special permit" means permission granted specifically on application in advance and in accordance with Annex II and Annex III.

6. "General permit" means permission granted in advance and in accordance with Annex III.

7. "The Organization" means the Organization designated by the Contracting Parties in accordance with Article XIV(2).

ARTICLE IV

1. In accordance with the provisions of this Convention Contracting Parties shall prohibit the dumping of any wastes or other matter in whatever form or condition except as otherwise specified below:

(a) the dumping of wastes or other matter listed in Annex I is prohibited;

(b) the dumping of wastes or other matter listed in Annex II requires a prior special permit;

(c) the dumping of all other wastes or matter requires a prior general permit.

2. Any permit shall be issued only after careful consideration of all the factors set forth in Annex III, including prior studies of the characteristics of the dumping site, as set forth in sections B and C of that Annex.

3. No provision of this Convention is to be interpreted as preventing a Contracting Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter not mentioned in Annex I. That Party shall notify such measures to the Organization.

ARTICLE V

1. The provisions of Article IV shall not apply when it is necessary to secure the safety of human life or of vessels aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the organization.

2. A Contracting Party may issue a special permit as an exception to Article IV(1)(a), in emergencies, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Parties, and international organizations as appropriate, shall, in accordance with Article XIV promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Parties pledge themselves to assist one another in such situations.

3. Any Contracting Party may waive its right under paragraph (2) at the time of, or subsequent to ratification of, or accession to this Convention.

ARTICLE VI

1. Each Contracting Party shall designate an appropriate authority or authorities to:

(a) issue special permits which shall be required prior to, and for, the dumping of matter listed in Annex II and in the circumstances provided for in Article V(2);

(b) issue general permits which shall be required prior to, and for, the dumping of all other matter;

(c) keep records of the nature and quantities of all matter permitted to be dumped and the location, time and method of dumping;

(d) monitor individually, or in collaboration with other Parties and competent international organizations, the condition of the seas for the purposes of this Convention.

2. The appropriate authority or authorities of a Contracting Party shall issue prior special or general permits in accordance with paragraph (1) in respect of matter intended for dumping:

(a) loaded in its territory;

(b) loaded by a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not party to this Convention.

3. In issuing permits under sub-paragraphs (1)(a) and (b) above, the appropriate authority or authorities shall comply with Annex III, together with such additional criteria, measures and requirements as they may consider relevant.

4. Each Contracting Party, directly or through a Secretariat established under a regional agreement, shall report to the Organization, and where appropriate to other Parties, the information specified in sub-paragraphs (c) and (d) of paragraph (1) above, and the criteria, measures and requirements it adopts in accordance with paragraph (3) above. The procedure to be followed and the nature of such reports shall be agreed by the Parties in consultation.

ARTICLE VII

1. Each Contracting Party shall apply the measures required to implement the present Convention to all:

(a) vessels and aircraft registered in its territory or flying its flag;

(b) vessels and aircraft loading in its territory or territorial seas matter which is to be dumped;

(c) vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping.

2. Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Convention.

3. The Parties agree to co-operate in the development of procedures for the effective application of this Convention particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping is contravention of the Convention.

4. This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention, and shall inform the Organization accordingly.

5. Nothing in this Convention shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping at sea.

ARTICLE VIII

In order to further the objectives of this Convention, the Contracting Parties with common interests to protect in the marine environment in a given geographical area shall endeavor, taking into account characteristic regional features, to enter into regional agreements consistent with this Convention for the prevention of pollution, especially by dumping. The Contracting Parties to the present Convention shall endeavor to act consistently with the objectives and provisions of such regional agreements, which shall be notified to them by the Organization. Contracting Parties shall seek to co-operate with the Parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned. Special attention shall be given to cooperation in the field of monitoring and scientific research.

ARTICLE IX

The Contracting Parties shall promote, through collaboration within the Organization and other international bodies, support for those Parties which request it for:

(a) the training of scientific and technical personnel;

(b) the supply of necessary equipment and facilities for research and monitoring;

(c) the disposal and treatment of waste and other measures to prevent or mitigate pollution caused by dumping; preferably within the countries concerned, so furthering the aims and purposes of this Convention.

ARTICLE X

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other mater of all kinds, the Contracting Parties undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping.

ARTICLE XI

The Contracting Parties shall at their first consultative meeting consider procedures for the settlement of disputes concerning the interpretation and application of this Convention.

ARTICLE XII

The Contracting Parties pledge themselves to promote, within the competent specialised agencies and other international bodies, measures to protect the marine environment against pollution caused by:

(a) hydrocarbons, including oil, and their wastes;

(b) other noxious or hazardous matter transported by vessels for purposes other than dumping.;

(c) wastes generated in the course of operation of vessels, aircraft, platforms and other man-made structures at sea;

(d) radio-active pollutants from all sources, including vessels;

(e) agents of chemical and biological warfare;

(f) wastes or other matter directly arising from , or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

The Parties will also promote, within the appropriate international organization, the codification of signals to be used by vessels engaged in dumping.

ARTICLE XIII

Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. The Contracting Parties agree to consult at a meeting to be convened by the Organization after the Law of the Sea Conference, and in any case not later than 1976, with a view to defining the nature and extent of the right and the responsibility of a coastal State to apply the Convention in a zone adjacent to its coast.

ARTICLE XIV

1. The Government of the United Kingdom of Great Britain and Northern Ireland as a depositary shall call a meeting of the Contracting Parties not later than three months after the entry into force of this Convention to decide on organizational matters.

2. The Contracting Parties shall designate a competent Organization existing at the time of that meeting to be responsible for Secretariat duties in relation to this Convention. Any Party to this Convention not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

3. The Secretariat duties of the Organization shall include:

(a) the convening of consultative meetings of the Contracting Parties not less frequently than once every two years and of special meetings of the Parties at any time on the request of two-thirds of the Parties;

(b) preparing and assisting, in consultation with the Contracting Parties and appropriate International Organizations, in the development and implementation of procedures referred to in sub-paragraph (4)(e) of this Article;

(c) considering inquiries by, and information from the Contracting Parties, consulting with them and with the appropriate International Organizations and providing recommendations to the Parties on questions related to, but not specifically covered by the Convention;

(d) conveying to the Parties concerned all notifications received by the Organization in accordance with Articles IV(3), V(1) and (2), VI(4), XV, XX, and XXI.

Prior to the designation of the Organization these functions shall, as necessary, be performed by the depositary, who for this purpose shall be the Government of the United Kingdom of Great Britain and Northern Ireland.

4. Consultative or special meetings of the Contracting Parties shall keep under continuing review the implementation of this Convention and may, inter alia:

(a) review and adopt amendments to this Convention and its Annexes in accordance with Article XV;

(b) invite the appropriate scientific body or bodies to collaborate with and to advise the Parties or the Organization on any scientific or technical aspect relevant to this Convention, including particularly the content of this Annexes;

(c) receive and consider reports made pursuant to article VI(4);

(d) promote co-operation with and between regional organizations concerned with the prevention of marine pollution;

(e) develop or adopt, in consultation with appropriate International Organizations, procedures referred to in Article V(2), including basic criteria for determining

exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter in such circumstances, including the designation of appropriate dumping areas, and recommend accordingly;

(f) consider any additional action that may be required.

5. The Contracting Parties at their first consultative meeting shall establish rules of procedure as necessary.

ARTICLE XV

1. (a) At meetings of the Contracting Parties called in accordance with Article XIV amendments to this Convention may be adopted by a two-thirds majority of those present. An amendment shall enter into force for the Parties which have accepted it on the sixtieth day after two-thirds of the Parties shall have deposited an instrument of acceptance of the amendment with the Organization. Thereafter the amendment shall enter into force for any other Party 30 days after that Party deposits its instrument of acceptance of the amendment.

(b) The Organization shall inform all Contracting Parties of any request made for a special meeting under Article XIV and of any amendments adopted at meetings of the Parties and of the date on which each such amendment enters into force for each Party.

2. Amendments to the Annexes will be based on scientific or technical considerations. Amendments to the Annexes approved by a two-thirds majority of those present at a meeting called in accordance with Article XIV shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization ad 100 days after approval by the meeting for all other Parties except for those which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. Parties should endeavour to signify their acceptance of an amendment to the Organization as soon as possible after approval at a meeting. A Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Party.

3. An acceptance or declaration of objection under this Article shall be made by the deposit of an instrument with the Organization. The Organization shall notify all Contracting Parties of the receipt of such instruments.

4. Prior to the designation of the Organization, the Secretarial functions herein attributed to it, shall be performed temporarily by the Government of the United Kingdom of Great Britain and Northern Ireland, as one of the depositories of this Convention.

ARTICLE XVI

This Convention shall be open for signature by any State at London, Mexico City, Moscow and Washington from 29 December 1972 until 31 December 1973.

ARTICLE XVII

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

ARTICLE XVIII

After 31 December 1973, this Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

ARTICLE XIX

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each Contracting Party ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such Party of its instrument of ratification or accession.

ARTICLE XX

The depositories shall inform Contracting Parties:

(a) of signatures to this Convention and of the deposit of instruments of ratification, accession or withdrawal, in accordance with Articles XVI, XVII, XVIII and XXI, and

(b) of the date on which this Convention will enter into force, in accordance with Article XIX.

ARTICLE XXI

Any Contracting Party may withdraw from this Convention by giving six months' notice in writing to a depositary, which shall promptly inform all Parties of such notice.

ARTICLE XXII

The original of this Convention of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America who shall send certified copies thereof to all States.

In WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments have signed the present Convention.

DONE in quadruplicate at London, Mexico City, Moscow and Washington, this twenty-ninth day of December, 1972.

ANNEX I

1. Organohalogen compounds.
2. Mercury and mercury compounds.
3. Cadmium and cadmium compounds.
4. Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may float or may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.
5. Crude oil, fuel oil, heavy diesel oil, and lubricating oils, hydraulic fluids, and any mixtures containing any of these taken on board for the purpose of dumping.
6. High-level radioactive wastes or other high-level radio-active matter, defined on public health, biological or other grounds, by the competent international body in this field, at present the International Atomic Energy Agency, as unsuitable for dumping at sea.
7. Materials in whatever form (e.g. solids, liquids, semi liquids, gases or in a living sates) produced for biological and chemical warfare.
8. The preceding paragraphs of this Annex do not apply to substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:

(i) make edible marine organisms unpalatable, or

(ii) endanger human health or that of domestic animals.

The consultative procedures provided for under Article XIV should be followed by a Party if there is doubt about the harmlessness of the substance.

9. This Annex does not apply to wastes or other materials (e.g. sewage sludges and dredged spoils) containing the matters referred to in paragraphs 1-5 above as trace contaminants. Such wastes shall be subject to the provisions of Annexes II and III as appropriate.

ANNEX II

The following substances and materials requiring special care are listed for the purposes of Article VI(1)(a).

A. Wastes containing significant amounts of the matters listed below:

arsenic
lead and their compounds
copper
zinc
organosilicon compounds
cyanides
fluorides
pesticides and their by-products not covered in Annex I.

B. In the issue of permits for the dumping of large quantities of acids and alkalis, consideration shall be given to the possible presence in such wastes of the substances listed in paragraph A and to the following additional substances:

beryllium
chromium and their compounds
nickel
vanadium

C. Containers, scrap metal and other bulky wastes liable to sink to the sea bottom may present a serious obstacle to fishing or navigation.

D. Radioactive wastes or other radioactive matter not included in Annex I. In the issue of permits for the dumping of this matter, the Contracting Parties should take full account of the recommendations of the competent international body in this field, at present the International Atomic Energy Agency.

ANNEX III

Provisions be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account Article IV (2), include:

A.–Characteristics and Composition of the Matter

1. Total amount of average composition of matter dumped (e.g. per year).
2. Form, e.g. solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).
4. Toxicity.
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).

B.–Characteristics of Dumping Site and Method of Deposit

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to the other areas (e.g., amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.

5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and vertical mixing).

6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution–dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD)–nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).

7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).

8. Existence and effects of other dumpings which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).

9. In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outline in this Annex, taking into account seasonal variations.

C.–General Considerations and Conditions

1. Possible effects on amenities (e.g., presence of floating or stranded material, turbidity, objectionable odour, discolouration and foaming).

2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.

3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).

4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

Table: Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other matter, with Annexes.

Done at Washington, London, Mexico City and Moscow December 29, 1972; entered into force August 30, 1975. 26 USC 2403; TIAS 8165; 1046 UNTS 120.

Parties:

Afghanistan
Angola
Antigua & Barbuda
Argentina[1]
Australia
Azerbaijan
Barbados
Belarus
Belgium[1]
Belize[2]
Bolivia
Brazil
Bulgaria
Canada
Cape Verde
Chile
Kenya
Kiribati
Korea
Libya
Luxembourg
Malta
Mexico
Monaco
Morocco
Nauru
Netherlands[6]
New Zealand[7]
Nigeria
Norway
Oman
Pakistan

China[3]
Congo, Democratic Republic of the
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Denmark[4]
Dominican Republic
Egypt
Equatorial Guinea
Finland
France[1 5]
Gabon
Germany, Fed. Rep.[6]
Greece[5]
Guatemala
Haiti
Honduras
Hungary
Iceland
Iran
Ireland
Italy[1]
Jamaica
Japan
Jordan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Russian Federation
St. Lucia
St. Vincent and the Grenadines
Serbia
Seychelles
Slovenia
Solomon Islands
South Africa
Spain
Suriname
Sweden
Switzerland
Tonga
Tunisia
Tuvalu[2]
Ukraine
Union of Soviet Socialist Reps.[8]
United Arab Emirates
United Kingdom[9]
United States
Yugoslavia[10]

Updated as of July 27, 2007

Amendment: November 12, 1993.

NOTES:

[1] With statement.

[2] On September 21, 1981 Belize became an independent state. In a letter dated September 29, 1982 to the Secretary General of the United Nations, the Prime Minister and Minister of Foreign Affairs of Belize made a statement reading in part as follows: I have the honour to inform you that the Government of Belize has decided to continue to apply provisionally and on the basis of reciprocity, all treaties to which the Government of the United Kingdom of Great Britain and Northern Ireland was a party, the application of which was extended either expressly or by necessary implication to the then dependent territory of Belize. Such provisional application would subsist until Belize otherwise notifies Your Excellency, the depository (in the case of a multilateral treaty), or the state party (in the case of a bilateral treaty.)

[3] Applicable to Hong Kong and Macao. With declarations.

[4] Extended to Faroe Is.

[5] With reservation.

[6] Applicable to Netherlands Antilles and Aruba.

[7] Not applicable to Cook Is., Niue, and Tokalau Is.

[8] The Union of Soviet Socialist Republics dissolved December 25, 1991. As stated in the Alma-Ata Declaration of December 21, 1991, "... The States participating in the Commonwealth guarantee in accordance with their constitutional procedures the discharge of the international obligations deriving from treaties and agreements concluded by the former Union of Soviet Socialist Republics....".

[9] Extended to Bailiwick of Guernsey, Bermuda, British Indian Ocean Territory, British Virgin Is., Cayman Is., Ducie and Osno Is., Falkland Is. and dependencies, Henderson, Hong Kong, Isle of Man, Bailiwick of Jersey, Montserrat, Pitcairn, St. Helena and dependencies, Turks and Caicos Is., and United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus.

[10] Yugoslavia has dissolved. Where a multilateral treaty action was taken prior to dissolution, "Yugoslavia" is retained; where a successor state has taken action it is listed separately. The status of the agreements listed below is under review.

INFCIRC/546
24 December 1997

International Atomic Energy Agency
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U. JOINT CONVENTION ON THE SAFETY OF SPENT FUEL MANAGEMENT AND ON THE SAFETY OF RADIOACTIVE WASTE MANAGEMENT

1. The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management was adopted on 5 September 1997 by a Diplomatic Conference convened by the International Atomic Energy Agency at its headquarters from 1 to 5 September 1997. The Joint Convention was opened for signature at Vienna on 29 September 1997 during the forty-first session of the General Conference of the International Atomic Energy Agency and will remain open for signature until its entry into force.

2. Pursuant to article 40, the Joint Convention will enter into force on the ninetieth day after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

3. The text of the Convention, as adopted, is attached hereto for the information of Member States.

Preamble

The Contracting Parties

(i) Recognizing that the operation of nuclear reactors generates spent fuel and radioactive waste and that other applications of nuclear technologies also generate radioactive waste;

(ii) Recognizing that the same safety objectives apply both to spent fuel and radioactive waste management;

(iii) Reaffirming the importance to the international community of ensuring that sound practices are planned and implemented for the safety of spent fuel and radioactive waste management;

(iv) Recognizing the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management;

(v) Desiring to promote an effective nuclear safety culture worldwide;

(vi) Reaffirming that the ultimate responsibility for ensuring the safety of spent fuel and radioactive waste management rests with the State;

(vii) Recognizing that the definition of a fuel cycle policy rests with the State, some States considering spent fuel as a valuable resource that may be reprocessed, others electing to dispose of it;

(viii) Recognizing that spent fuel and radioactive waste excluded from the present Convention because they are within military or defence programmes should be managed in accordance with the objectives stated in this Convention;

(ix) Affirming the importance of international co-operation in enhancing the safety of spent fuel and radioactive waste management through bilateral and multilateral mechanisms, and through this incentive Convention;

(x) Mindful of the needs of developing countries, and in particular the least developed countries, and of States with economies in transition and of the need to facilitate existing mechanisms to assist in the fulfillment of their rights and obligations set out in this incentive Convention;

(xi) Convinced that radioactive waste should, as far as is compatible with the safety of the management of such material, be disposed of in the State in which it was generated, whilst recognizing that, in certain circumstances, safe and efficient management of spent fuel and radioactive waste might be fostered through agreements among Contracting Parties to use facilities in one of them for the benefit of the other Parties, particularly where waste originates from joint projects;

(xii) Recognizing that any State has the right to ban import into its territory of foreign spent fuel and radioactive waste;

(xiii) Keeping in mind the Convention on Nuclear Safety (1994), the Convention on Early Notification of a Nuclear Accident (1986), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986), the Convention on the Physical Protection of Nuclear Material (1980), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter as amended (1994) and other relevant international instruments;

(xiv) Keeping in mind the principles contained in the interagency "International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources" (1996), in the IAEA Safety Fundamentals entitled "The Principles of Radioactive Waste Management" (1995), and in the existing international standards relating to the safety of the transport of radioactive materials;

(xv) Recalling Chapter 22 of Agenda 21 by the United Nations Conference on Environment and Development in Rio de Janeiro adopted in 1992, which reaffirms the

paramount importance of the safe and environmentally sound management of radioactive waste;

(xvi) Recognizing the desirability of strengthening the international control system applying specifically to radioactive materials as referred to in Article 1(3) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989);

Have agreed as follows:

Chapter 1. Objectives Definitions And Scope Of Application

Article 1 – Objectives

The objectives of this Convention are:

(i) to achieve and maintain a high level of safety worldwide in spent fuel and radioactive waste management, through the enhancement of national measures and international co-operation, including where appropriate, safety-related technical co-operation;

(ii) to ensure that during all stages of spent fuel and radioactive waste management there are effective defenses against potential hazards so that individuals, society and the environment are protected from harmful effects of ionizing radiation, now and in the future, in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations;

(iii) to prevent accidents with radiological consequences and to mitigate their consequences should they occur during any stage of spent fuel or radioactive waste management.

Article 2 – Definitions

For the purposes of this Convention:

(a) *"closure"* means the completion of all operations at some time after the emplacement of spent fuel or radioactive waste in a disposal facility. This includes the final engineering or other work required to bring the facility to a condition that will be safe in the long term;

(b) *"decommissioning"* means all steps leading to the release of a nuclear facility, other than a disposal facility, from regulatory control. These steps include the processes of decontamination and dismantling;

(c) *"discharges"* means planned and controlled releases into the environment, as a legitimate practice, within limits authorized by the regulatory body, of liquid or gaseous radioactive materials that originate from regulated nuclear facilities during normal operation;

(d) *"disposal"* means the emplacement of spent fuel or radioactive waste in an appropriate facility without the intention of retrieval;

(e) *"licence"* means any authorization, permission or certification granted by a regulatory body to carry out any activity related to management of spent fuel or of radioactive waste;

(f) *"nuclear facility"* means a civilian facility and its associated land, buildings and equipment in which radioactive materials are produced, processed, used, handled, stored or disposed of on such a scale that consideration of safety is required;

(g) *"operating lifetime"* means the period during which a spent fuel or a radioactive waste management facility is used for its intended purpose. In the case of a disposal facility, the period begins when spent fuel or radioactive waste is first emplaced in the facility and ends upon closure of the facility;

(h) *"radioactive waste"* means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the Contracting Party or by a natural or legal person whose decision is accepted by the Contracting Party, and which is controlled as radioactive

waste by a regulatory body under the legislative and regulatory framework of the Contracting Party;

(i) *"radioactive waste management"* means all activities, including decommissioning activities, that relate to the handling, pretreatment, treatment, conditioning, storage, or disposal of radioactive waste, excluding off-site transportation. It may also involve discharges;

(j) *"radioactive waste management facility"* means any facility or installation the primary purpose of which is radioactive waste management, including a nuclear facility in the process of being decommissioned only if it is designated by the Contracting Party as a radioactive waste management facility;

(k) *"regulatory body"* means any body or bodies given the legal authority by the Contracting Party to regulate any aspect of the safety of spent fuel or radioactive waste management including the granting of licences;

(l) *"reprocessing"* means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

(m) *"sealed source"* means radioactive material that is permanently sealed in a capsule or closely bonded and in a solid form, excluding reactor fuel elements;

(n) *"spent fuel"* means nuclear fuel that has been irradiated in and permanently removed from a reactor core;

(o) *"spent fuel management"* means all activities that relate to the handling or storage of spent fuel, excluding off-site transportation. It may also involve discharges;

(p) *"spent fuel management facility"* means any facility or installation the primary purpose of which is spent fuel management;

(q) *"State of destination"* means a State to which a transboundary movement is planned or takes place;

®) *"State of origin"* means a State from which a transboundary movement is planned to be initiated or is initiated;

(s) *"State of transit"* means any State, other than a State of origin or a State of destination, through whose territory a transboundary movement is planned or takes place;

(t) *"storage"* means the holding of spent fuel or of radioactive waste in a facility that provides for its containment, with the intention of retrieval;

(u) *"transboundary movement"* means any shipment of spent fuel or of radioactive waste from a State of origin to a State of destination.

Article 3 – Scope of Application

1. This Convention shall apply to the safety of spent fuel management when the spent fuel results from the operation of civilian nuclear reactors. Spent fuel held at reprocessing facilities as part of a reprocessing activity is not covered in the scope of this Convention unless the Contracting Party declares reprocessing to be part of spent fuel management.

2. This Convention shall also apply to the safety of radioactive waste management when the radioactive waste results from civilian applications. However, this Convention shall not apply to waste that contains only naturally occurring radioactive materials and that does not originate from the nuclear fuel cycle, unless it constitutes a disused sealed source or it is declared as radioactive waste for the purposes of this Convention by the Contracting Party.

3. This Convention shall not apply to the safety of management of spent fuel or radioactive waste within military or defence programmes, unless declared as spent fuel or radioactive waste for the purposes of this Convention by the Contracting Party. However, this Convention shall apply to the safety of management of spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes.

4. This Convention shall also apply to discharges as provided for in Articles 4, 7, 11, 14, 24 and 26.

Chapter 2. Safety Of Spent Fuel Management

Article 4 – General Safety Requirements

Each Contracting Party shall take the appropriate steps to ensure that at all stages of spent fuel management, individuals, society and the environment are adequately protected against radiological hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) ensure that criticality and removal of residual heat generated during spent fuel management are adequately addressed;

(ii) ensure that the generation of radioactive waste associated with spent fuel management is kept to the minimum practicable, consistent with the type of fuel cycle policy adopted;

(iii) take into account interdependencies among the different steps in spent fuel management;

(iv) provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) take into account the biological, chemical and other hazards that may be associated with spent fuel management;

(vi) strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) aim to avoid imposing undue burdens on future generations.

Article 5 – Existing Facilities

Each Contracting Party shall take the appropriate steps to review the safety of any spent fuel management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility.

Article 6 – Siting of Proposed Facilities

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed spent fuel management facility:

(i) to evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime;

(ii) to evaluate the likely safety impact of such a facility on individuals, society and the environment;

(iii) to make information on the safety of such a facility available to members of the public;

(iv) to consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of Article 4.

Article 7 – Design and Construction of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the design and construction of a spent fuel management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) at the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a spent fuel management facility are taken into account;

(iii) the technologies incorporated in the design and construction of a spent fuel management facility are supported by experience, testing or analysis.

Article 8 – Assessment of Safety of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) before construction of a spent fuel management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) before the operation of a spent fuel management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in paragraph (i).

Article 9 – Operation of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the licence to operate a spent fuel management facility is based upon appropriate assessments as specified in Article 8 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) operational limits and conditions derived from tests, operational experience and the assessments, as specified in Article 8, are defined and revised as necessary;

(iii) operation, maintenance, monitoring, inspection and testing of a spent fuel management facility are conducted in accordance with established procedures;

(iv) engineering and technical support in all safety-related fields are available throughout the operating lifetime of a spent fuel management facility;

(v) incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vi) programmes to collect and analyse relevant operating experience are established and that the results are acted upon, where appropriate;

(vii) decommissioning plans for a spent fuel management facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body.

Article 10 – Disposal of Spent Fuel

If, pursuant to its own legislative and regulatory framework, a Contracting Party has designated spent fuel for disposal, the disposal of such spent fuel shall be in accordance with the obligations of Chapter 3 relating to the disposal of radioactive waste.

Chapter 3. Safety Of Radioactive Waste Management

Article 11 – General Safety Requirements

Each Contracting Party shall take the appropriate steps to ensure that at all stages of radioactive waste management individuals, society and the environment are adequately protected against radiological and other hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) ensure that criticality and removal of residual heat generated during radioactive waste

management are adequately addressed;

(ii) ensure that the generation of radioactive waste is kept to the minimum practicable;

(iii) take into account interdependencies among the different steps in radioactive waste management;

(iv) provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) take into account the biological, chemical and other hazards that may be associated with radioactive waste management;

(vi) strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) aim to avoid imposing undue burdens on future generations.

Article 12 – Existing Facilities and Past Practices

Each Contracting Party shall in due course take the appropriate steps to review:

(i) the safety of any radioactive waste management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility;

(ii) the results of past practices in order to determine whether any intervention is needed for reasons of radiation protection bearing in mind that the reduction in detriment resulting from the reduction in dose should be sufficient to justify the harm and the costs, including the social costs, of the intervention.

Article 13 – Siting of Proposed Facilities

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed radioactive waste management facility:

(i) to evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime as well as that of a disposal facility after closure;

(ii) to evaluate the likely safety impact of such a facility on individuals, society and the environment, taking into account possible evolution of the site conditions of disposal facilities after closure;

(iii) to make information on the safety of such a facility available to members of the public;

(iv) to consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of Article 11.

Article 14 – Design and Construction of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the design and construction of a radioactive waste management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) at the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a radioactive waste management facility other than a disposal facility are taken into account;

(iii) at the design stage, technical provisions for the closure of a disposal facility are prepared;

(iv) the technologies incorporated in the design and construction of a radioactive waste management facility are supported by experience, testing or analysis.

Article 15 – Assessment of Safety of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) before construction of a radioactive waste management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) in addition, before construction of a disposal facility, a systematic safety assessment and an environmental assessment for the period following closure shall be carried out and the results evaluated against the criteria established by the regulatory body;

(iii) before the operation of a radioactive waste management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in paragraph (i).

Article 16 – Operation of Facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) the licence to operate a radioactive waste management facility is based upon appropriate assessments as specified in Article 15 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) operational limits and conditions, derived from tests, operational experience and the assessments as specified in Article 15 are defined and revised as necessary;

(iii) operation, maintenance, monitoring, inspection and testing of a radioactive waste management facility are conducted in accordance with established procedures. For a disposal facility the results thus obtained shall be used to verify and to review the validity of assumptions made and to update the assessments as specified in Article 15 for the period after closure;

(iv) engineering and technical support in all safety-related fields are available throughout the operating lifetime of a radioactive waste management facility;

(v) procedures for characterization and segregation of radioactive waste are applied;

(vi) incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vii) programmes to collect and analyse relevant operating experience are established and that the results are acted upon, where appropriate;

(viii) decommissioning plans for a radioactive waste management facility other than a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body;

(ix) plans for the closure of a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility and are reviewed by the regulatory body.

Article 17 – Institutional Measures After Closure

Each Contracting Party shall take the appropriate steps to ensure that after closure of a disposal facility:

(i) records of the location, design and inventory of that facility required by the regulatory body are preserved;

(ii) active or passive institutional controls such as monitoring or access restrictions are carried out, if required; and

(iii) if, during any period of active institutional control, an unplanned release of radioactive materials into the environment is detected, intervention measures are implemented, if necessary.

Chapter 4. General Safety Provisions

Article 18 – Implementing Measures

Each Contracting Party shall take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under this Convention.

Article 19 – Legislative and Regulatory Framework

1. Each Contracting Party shall establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste management.

2. This legislative and regulatory framework shall provide for:

(i) the establishment of applicable national safety requirements and regulations for radiation safety;

(ii) a system of licensing of spent fuel and radioactive waste management activities;

(iii) a system of prohibition of the operation of a spent fuel or radioactive waste management facility without a licence;

(iv) a system of appropriate institutional control, regulatory inspection and documentation and reporting;

(v) the enforcement of applicable regulations and of the terms of the licences;

(vi) a clear allocation of responsibilities of the bodies involved in the different steps of spent fuel and of radioactive waste management.

3. When considering whether to regulate radioactive materials as radioactive waste, Contracting Parties shall take due account of the objectives of this Convention.

Article 20 – Regulatory Body

1. Each Contracting Party shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to in Article 19, and provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities.

2. Each Contracting Party, in accordance with its legislative and regulatory framework, shall take the appropriate steps to ensure the effective independence of the regulatory functions from other functions where organizations are involved in both spent fuel or radioactive waste management and in their regulation.

Article 21 – Responsibility of the License Holder

1. Each Contracting Party shall ensure that prime responsibility for the safety of spent fuel or radioactive waste management rests with the holder of the relevant licence and shall take the appropriate steps to ensure that each such licence holder meets its responsibility.

2. If there is no such licence holder or other responsible party, the responsibility rests with the Contracting Party which has jurisdiction over the spent fuel or over the radioactive waste.

Article 22 – Human and Financial Resources

Each Contracting Party shall take the appropriate steps to ensure that:

(i) qualified staff are available as needed for safety-related activities during the operating lifetime of a spent fuel and a radioactive waste management facility;

(ii) adequate financial resources are available to support the safety of facilities for spent fuel and radioactive waste management during their operating lifetime and for decommissioning;

(iii) financial provision is made which will enable the appropriate institutional controls and monitoring arrangements to be continued for the period deemed necessary following the closure of a disposal facility.

Article 23 – Quality Assurance

Each Contracting Party shall take the necessary steps to ensure that appropriate quality assurance programmes concerning the safety of spent fuel and radioactive waste management are established and implemented.

Article 24 – Operational Radiation Protection

1. Each Contracting Party shall take the appropriate steps to ensure that during the operating lifetime of a spent fuel or radioactive waste management facility:

(i) the radiation exposure of the workers and the public caused by the facility shall be kept as low as reasonably achievable, economic and social factors being taken into account;

(ii) no individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection; and

(iii) measures are taken to prevent unplanned and uncontrolled releases of radioactive materials into the environment.

2. Each Contracting Party shall take appropriate steps to ensure that discharges shall be limited:

(i) to keep exposure to radiation as low as reasonably achievable, economic and social factors being taken into account; and

(ii) so that no individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection.

3. Each Contracting Party shall take appropriate steps to ensure that during the operating lifetime of a regulated nuclear facility, in the event that an unplanned or uncontrolled release of radioactive materials into the environment occurs, appropriate corrective measures are implemented to control the release and mitigate its effects.

Article 25 – Emergency Preparedness

1. Each Contracting Party shall ensure that before and during operation of a spent fuel or radioactive waste management facility there are appropriate on-site and, if necessary, off-site emergency plans. Such emergency plans should be tested at an appropriate frequency.

2. Each Contracting Party shall take the appropriate steps for the preparation and testing of emergency plans for its territory insofar as it is likely to be affected in the event of a radiological emergency at a spent fuel or radioactive waste management facility in the vicinity of its territory.

Article 26 – Decommissioning

Each Contracting Party shall take the appropriate steps to ensure the safety of decommissioning of a nuclear facility. Such steps shall ensure that:

(i) qualified staff and adequate financial resources are available;

(ii) the provisions of Article 24 with respect to operational radiation protection, discharges and unplanned and uncontrolled releases are applied;

(iii) the provisions of Article 25 with respect to emergency preparedness are applied; and

(iv) records of information important to decommissioning are kept.

Chapter 5. Miscellaneous Provisions

Article 27 – Transboundary Movement

1. Each Contracting Party involved in transboundary movement shall take the appropriate steps to ensure that such movement is undertaken in a manner consistent with the provisions of this Convention and relevant binding international instruments.

In so doing:

(i) a Contracting Party which is a State of origin shall take the appropriate steps to ensure that transboundary movement is authorized and takes place only with the prior notification and consent of the State of destination;

(ii) transboundary movement through States of transit shall be subject to those international obligations which are relevant to the particular modes of transport utilized;

(iii) a Contracting Party which is a State of destination shall consent to a transboundary movement only if it has the administrative and technical capacity, as well as the regulatory structure, needed to manage the spent fuel or the radioactive waste in a manner consistent with this Convention;

(iv) a Contracting Party which is a State of origin shall authorize a transboundary movement only if it can satisfy itself in accordance with the consent of the State of destination that the requirements of subparagraph (iii) are met prior to transboundary movement;

(v) a Contracting Party which is a State of origin shall take the appropriate steps to permit re-entry into its territory, if a transboundary movement is not or cannot be completed in conformity with this Article, unless an alternative safe arrangement can be made.

2. A Contracting Party shall not licence the shipment of its spent fuel or radioactive waste to a destination south of latitude 60 degrees South for storage or disposal.

3. Nothing in this Convention prejudices or affects:

(i) the exercise, by ships and aircraft of all States, of maritime, river and air navigation rights and freedoms, as provided for in international law;

(ii) rights of a Contracting Party to which radioactive waste is exported for processing to return, or provide for the return of, the radioactive waste and other products after treatment to the State of origin;

(iii) the right of a Contracting Party to export its spent fuel for reprocessing;

(iv) rights of a Contracting Party to which spent fuel is exported for reprocessing to return, or provide for the return of, radioactive waste and other products resulting from reprocessing operations to the State of origin.

Article 28 – Disused Sealed Sources

1. Each Contracting Party shall, in the framework of its national law, take the appropriate steps to ensure that the possession, remanufacturing or disposal of disused sealed sources takes place in a safe manner.

2. A Contracting Party shall allow for reentry into its territory of disused sealed sources if, in the framework of its national law, it has accepted that they be returned to a manufacturer qualified to receive and possess the disused sealed sources.

Chapter 6. Meetings Of The Contracting Parties

Article 29 – Preparatory Meeting

1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

2. At this meeting, the Contracting Parties shall:

(i) determine the date for the first review meeting as referred to in Article 30. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention;

(ii) prepare and adopt by consensus Rules of Procedure and Financial Rules;

(iii) establish in particular and in accordance with the Rules of Procedure:

(a) guidelines regarding the form and structure of the national reports to be submitted pursuant to Article 32;

(b) a date for the submission of such reports;

(c) the process for reviewing such reports.

3. Any State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention and for which the Convention is not yet in force, may attend the preparatory meeting as if it were a Party to this Convention.

Article 30 – Review Meetings

1. The Contracting Parties shall hold meetings for the purpose of reviewing the reports submitted pursuant to Article 32.

2. At each review meeting the Contracting Parties:

(i) shall determine the date for the next such meeting, the interval between review meetings not exceeding three years;

(ii) may review the arrangements established pursuant to paragraph 2 of Article 29, and adopt revisions by consensus unless otherwise provided for in the Rules of Procedure. They may also amend the Rules of Procedure and Financial Rules by consensus.

3. At each review meeting each Contracting Party shall have a reasonable opportunity to discuss the reports submitted by other Contracting Parties and to seek clarification of such reports.

Article 31 – Extraordinary Meetings

An extraordinary meeting of the Contracting Parties shall be held:

(i) if so agreed by a majority of the Contracting Parties present and voting at a meeting; or

(ii) at the written request of a Contracting Party, within six months of this request having been communicated to the Contracting Parties and notification having been received by the secretariat referred to in Article 37 that the request has been supported by a majority of the Contracting Parties.

Article 32 – Reporting

1. In accordance with the provisions of Article 30, each Contracting Party shall submit a national report to each review meeting of Contracting Parties. This report shall address the measures taken to implement each of the obligations of the Convention. For each Contracting Party the report shall also address its:

(i) spent fuel management policy;

(ii) spent fuel management practices;

(iii) radioactive waste management policy;

(iv) radioactive waste management practices;

(v) criteria used to define and categorize radioactive waste.

2. This report shall also include:

(i) a list of the spent fuel management facilities subject to this Convention, their location, main purpose and essential features;

(ii) an inventory of spent fuel that is subject to this Convention and that is being held in storage and of that which has been disposed of. This inventory shall contain a

description of the material and, if available, give information on its mass and its total activity;

(iii) a list of the radioactive waste management facilities subject to this Convention, their location, main purpose and essential features;

(iv) an inventory of radioactive waste that is subject to this Convention that:

(a) is being held in storage at radioactive waste management and nuclear fuel cycle facilities;

(b) has been disposed of; or

(c) has resulted from past practices.

This inventory shall contain a description of the material and other appropriate information available, such as volume or mass, activity and specific radionuclides;

(v) a list of nuclear facilities in the process of being decommissioned and the status of decommissioning activities at those facilities.

Article 33 – Attendance

1. Each Contracting Party shall attend meetings of the Contracting Parties and be represented at such meetings by one delegate, and by such alternates, experts and advisers as it deems necessary.

2. The Contracting Parties may invite, by consensus, any intergovernmental organization which is competent in respect of matters governed by this Convention to attend, as an observer, any meeting, or specific sessions thereof. Observers shall be required to accept in writing, and in advance, the provisions of Article 36.

Article 34 – Summary Reports

The Contracting Parties shall adopt, by consensus, and make available to the public a document addressing issues discussed and conclusions reached during meetings of the Contracting Parties.

Article 35 – Languages

1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

2. Reports submitted pursuant to Article 32 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

3. Notwithstanding the provisions of paragraph 2, the secretariat, if compensated, will assume the translation of reports submitted in any other language of the meeting into the designated language.

Article 36 – Confidentiality

1. The provisions of this Convention shall not affect the rights and obligations of the Contracting Parties under their laws to protect information from disclosure. For the purposes of this article, "information" includes, inter alia, information relating to national security or to the physical protection of nuclear materials, information protected by intellectual property rights or by industrial or commercial confidentiality, and personal data.

2. When, in the context of this Convention, a Contracting Party provides information identified by it as protected as described in paragraph 1, such information shall be used only for the purposes for which it has been provided and its confidentiality shall be respected.

3. With respect to information relating to spent fuel or radioactive waste falling within the scope of this Convention by virtue of paragraph 3 of Article 3, the provisions of this

Convention shall not affect the exclusive discretion of the Contracting Party concerned to decide:

(i) whether such information is classified or otherwise controlled to preclude release;

(ii) whether to provide information referred to in sub-paragraph (i) above in the context of the Convention; and

(iii) what conditions of confidentiality are attached to such information if it is provided in the context of this Convention.

4. The content of the debates during the reviewing of the national reports at each review meeting held pursuant to Article 30 shall be confidential.

Article 37 – Secretariat

1. The International Atomic Energy Agency, (hereinafter referred to as "the Agency") shall provide the secretariat for the meetings of the Contracting Parties.

2. The secretariat shall:

(i) convene, prepare and service the meetings of the Contracting Parties referred to in Articles 29, 30 and 31;

(ii) transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in sub-paragraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source.

Chapter 7. Final Clauses And Other Provisions

Article 38 – Resolution of Disagreements

In the event of a disagreement between two or more Contracting Parties concerning the interpretation or application of this Convention, the Contracting Parties shall consult within the framework of a meeting of the Contracting Parties with a view to resolving the disagreement. In the event that the consultations prove unproductive, recourse can be made to the mediation, conciliation and arbitration mechanisms provided for in international law, including the rules and practices prevailing within the IAEA.

Article 39 – Signature, Ratification, Acceptance, Approval, Accession

1. This Convention shall be open for signature by all States at the Headquarters of the Agency in Vienna from 29 September 1997 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention shall be open for accession by all States.

4. (i) This Convention shall be open for signature subject to confirmation, or accession by regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(ii) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.

(iii) When becoming party to this Convention, such an organization shall communicate to the Depositary referred to in Article 43, a declaration indicating which States are

members thereof, which Articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

(iv) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval, accession or confirmation shall be deposited with the Depositary.

Article 40 – Entry into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

2. For each State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention after the date of deposit of the last instrument required to satisfy the conditions set forth in paragraph 1, this Convention shall enter into force on the ninetieth day after the date of deposit with the Depositary of the appropriate instrument by such a State or organization.

Article 41 – Amendments to the Convention

1. Any Contracting Party may propose an amendment to this Convention. Proposed amendments shall be considered at a review meeting or at an extraordinary meeting.

2. The text of any proposed amendment and the reasons for it shall be provided to the Depositary who shall communicate the proposal to the Contracting Parties at least ninety days before the meeting for which it is submitted for consideration. Any comments received on such a proposal shall be circulated by the Depositary to the Contracting Parties.

3. The Contracting Parties shall decide after consideration of the proposed amendment whether to adopt it by consensus, or, in the absence of consensus, to submit it to a Diplomatic Conference. A decision to submit a proposed amendment to a Diplomatic Conference shall require a two-thirds majority vote of the Contracting Parties present and voting at the meeting, provided that at least one half of the Contracting Parties are present at the time of voting.

4. The Diplomatic Conference to consider and adopt amendments to this Convention shall be convened by the Depositary and held no later than one year after the appropriate decision taken in accordance with paragraph 3 of this article. The Diplomatic Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted with a two-thirds majority of all Contracting Parties.

5. Amendments to this Convention adopted pursuant to paragraphs 3 and 4 above shall be subject to ratification, acceptance, approval, or confirmation by the Contracting Parties and shall enter into force for those Contracting Parties which have ratified, accepted, approved or confirmed them on the ninetieth day after the receipt by the Depositary of the relevant instruments of at least two thirds of the Contracting Parties. For a Contracting Party which subsequently ratifies, accepts, approves or confirms the said amendments, the amendments will enter into force on the ninetieth day after that Contracting Party has deposited its relevant instrument.

Article 42 – Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification.

Article 43 – Depositary

1. The Director General of the Agency shall be the Depositary of this Convention.

2. The Depositary shall inform the Contracting Parties of:

(i) the signature of this Convention and of the deposit of instruments of ratification, acceptance, approval, accession or confirmation in accordance with Article 39;

(ii) the date on which the Convention enters into force, in accordance with Article 40;

(iii) the notifications of denunciation of the Convention and the date thereof, made in accordance with Article 42;

(iv) the proposed amendments to this Convention submitted by Contracting Parties, the amendments adopted by the relevant Diplomatic Conference or by the meeting of the Contracting Parties, and the date of entry into force of the said amendments, in accordance with Article 41.

Article 44 – Authentic Texts

The original of this Convention of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary, who shall send certified copies thereof to the Contracting Parties.

IN WITNESS WHEREOF THE UNDERSIGNED, BEING DULY AUTHORIZED TO THAT EFFECT, HAVE SIGNED THIS CONVENTION.

Done at Vienna on the fifth day of September, one thousand nine hundred and ninety-seven.

Table: Joint Convention On The Safety Of Spent Fuel Management And On The Safety Of Radioactive Waste Management

Notes: The Convention, pursuant to Article 40.1 entered into force on 18 June 2001, *i.e.* on the ninetieth day after the day of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

Country/ Organization	Signature	Instrument	Date of Deposit	Decla-ration	With-draw	Entry into Force
Argentina[1]	19 Dec 1997	Ratification	14 Nov 2000			18 Jun 2001
Australia	13 Nov 1998	Ratification	05 Aug 2003			03 Nov 2003
Austria	17 Sep 1998	Ratification	13 Jun 2001			11 Sep 2001
Belarus	13 Oct 1999	Ratification	26 Nov 2002			24 Feb 2003
Belgium[1]	08 Dec 1997	Ratification	05 Sep 2002			04 Dec 2002
Brazil[1]	31 Oct 1997	Ratification	17 Feb 2006			18 May 2006
Bulgaria[1]	22 Sep 1998	Ratification	21 Jun 2000			18 Jun 2001
Canada[1]	07 May 1998	Ratification	07 May 1998			18 Jun 2001
China[1]		Accession	13 Sep 2006	✔		12 Dec 2006
Croatia	09 Apr 1998	Ratification	10 May 1999			18 Jun 2001
Czech Republic[1]	30 Sep 1997	Approval	25 Mar 1999			18 Jun 2001
Denmark	09 Feb 1998	Acceptance	03 Sep 1999			18 Jun 2001
Estonia	05 Jan 2001	Ratification	03 Feb 2006			04 May 2006
Finland[1]	02 Oct 1997	Acceptance	10 Feb 2000			18 Jun 2001
France[1]	29 Sep 1997	Approval	27 Apr 2000			18 Jun 2001
Germany[1]	01 Oct 1997	Ratification	13 Oct 1998			18 Jun 2001
Greece	09 Feb 1998	Ratification	18 Jul 2000			18 Jun 2001
Hungary[1]	29 Sep 1997	Ratification	02 Jun 1998			18 Jun 2001
Iceland		Accession	27 Jan 2006			27 Apr 2006
Indonesia	06 Oct 1997					
Ireland	01 Oct 1997	Ratification	20 Mar 2001			18 Jun 2001
Italy	26 Jan 1998	Ratification	08 Feb 2006			09 May 2006
Japan[1]		Accession	26 Aug 2003			24 Nov 2003
Kazakhstan[1]	29 Sep 1997					
Korea, Republic	29 Sep 1997	Ratification	16 Sep 2002			15 Dec 2002
Kyrgyzstan		Accession	18 Dec 2006			18 Mar 2007
Latvia	27 Mar 2000	Acceptance	27 Mar 2000			18 Jun 2001
Lebanon	30 Sep 1997					
Lithuania[1]	30 Sep 1997	Ratification	16 Mar 2004			14 Jun 2004
Luxembourg	01 Oct 1997	Ratification	21 Aug 2001			19 Nov 2001
Morocco	29 Sep 1997	Ratification	23 Jul 1999			18 Jun 2001
Netherlands[1,2]	10 Mar 1999	Acceptance	26 Apr 2000			18 Jun 2001
Nigeria		Accession	04 Apr 2007			03vJul 2007
Norway	29 Sep 1997	Ratification	12 Jan 1998			18 Jun 2001
Peru	04 Jun 1998					
Philippines	10 Mar 1998					
Poland	03 Oct 1997	Ratification	05 May 2000			18 Jun 2001
Romania[1]	30 Sep 1997	Ratification	06 Sep 1999			18 Jun 2001
Russian Federation[1]	27 Jan 1999	Ratification	19 Jan 2006			19 Apr 2006
Senegal		Accession	24 Dec 2008			24 Mar 2009

Table: Joint Convention On The Safety Of Spent Fuel Management And On The Safety Of Radioactive Waste Management

Notes: The Convention, pursuant to Article 40.1 entered into force on 18 June 2001, *i.e.* on the ninetieth day after the day of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

Country/ Organization	Signature	Instrument	Date of Deposit	Declaration	Withdraw	Entry into Force
Slovakia[1]	30 Sep 1997	Ratification	06 Oct 1998			18 Jun 2001
Slovenia[1]	29 Sep 1997	Ratification	25 Feb 1999			18 Jun 2001
South Africa		Accession	15 Nov 2006			13 Feb 2007
Spain[1]	30 Jun 1998	Ratification	11 May 1999			18 Jun 2001
Sweden[1]	29 Sep 1997	Ratification	29 Jul 1999			18 Jun 2001
Switzerland[1]	29 Sep 1997	Ratification	05 Apr 2000			18 Jun 2001
Tajikistan		Accession	12 Dec 2007			11 Mar 2008
Ukraine[1]	29 Sep 1997	Ratification	24 Jul 2000			18 Jun 2001
United Kingdom[1]	29 Sep 1997	Ratification	12 Mar 2001			18 Jun 2001
United States of America[1]	29 Sep 1997	Ratification	15 Apr 2003			14 Jul 2003
Uruguay		Accession	28 Dec 2005			28 Mar 2006
EURATOM		Accession	04 Oct 2005			02 Jan 2006

[1] Indicates that the State has at least one operational nuclear power plant.
[2] For the Kingdom in Europe.

Last change of status: 19 Jan 2009 Parties: 48 Signatories: 42

Declarations/Reservations On The Joint Convention On The Safety Of Spent Fuel Management And On The Safety Of Radioactive Waste Management

Declarations/reservations made upon expressing consent to be bound and objections thereto

China, Peoples Republic of **acceded 13 Sep 2006**

"1.The interpretation of the Government of the People's Republic of China of 'transboundary movement', as referred to in Article 2 subparagraph (u) and in Article 27, is as follows: before consenting to a transboundary movement originating from another Contracting Party's domestic entity, any Contracting Party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management which is a State of destination shall confirm the said transboundary movement with the State of origin of the said transboundary movement, and obtain authorization from the said State of origin. 2.Unless the Government of the People's Republic of China issues a separate notice, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management shall not apply to the Macao Special Administrative Region of the People's Republic of China."

[Additional statement relating to the above declaration - received on 3 July 2007]

"In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administratie Region of the People's Republic of China, the Government of the People's Republic of China decides that the Convention applies to the Hong Kong Special Administrative Region, and unless otherwise notified, shall not apply to the Macao Special Administrative Region. The declaration made by the People's Republic of China to Subparagraph (u), Article 2 and Article 27 of the Convention also applies to the Hong Kong Special Administrative Region."

Denmark, Kingdom of **accepted 03 Sep 1999**

"Until further notice the Convention shall not apply to Greenland and the Faroe Islands."

EURATOM **acceded 04 Oct 2005**

"The following States are presently members of the European Atomic Energy Community: the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Lativa, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland. The Community declares that Articles 1 to 16, 18, 19 to 21 and 24 to 44 of the Joint Convention apply to it. The Community possesses competences, shared with the abovementioned Member States, in the fields covered by Articles 4, 6 to 11, 13 to 16, 19 and 24 to 28 of the Joint Convention as provided by the Treaty establishing the European Atomic Energy Community in Article 2(b) and the relevant Articles of Title II, Chapter 3, entitled 'Health and Safety'." "When acceding to this Convention, the European Atomic Energy Community also wishes to put forward a reservation with regard to the non-compliance of Article 12(1) of the Directive 92/3/Euratom on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community with the specific requirement in

Article 27(1)(i) of the Joint Convention which requires the consent of the state of destination in the framework of transboundary movements. A revision of this Directive, which will bring the relevant Community law in conformity with this Convention, is currently in the process of adoption."

Japan **accepted 26 Aug 2003**

"The Government of Japan, in accedding to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, adopted at Vienna on September 5, 1997, declares reprocessing to be part of spent fuel management pursuant to Article 3, paragraph 1 of the Convention."

Declarations/reservations made upon signature

Denmark, Kingdom of **09 Feb 1998**

". . . for the time being, the signature on behalf of Denmark does not commit the Faroe Islands and Greenland."

IAEA

International Atomic Energy Agency
Agence internationale de l'energie atomique

2005/Note 8

Note by the Secretariat

V. CODE OF CONDUCT ON THE SAFETY AND SECURITY OF RADIOACTIVE SOURCES

On 8 September 2003, the Board of Governors approved the Code of Conduct on the Safety and Security of Radioactive Sources that was contained in document GOV/2003/49-GC(47)/9. The approved text was subsequently, in January 2004, published with the symbol IAEA/CODEOC/2004.

The Secretariat has recently noticed a typographical error in Table I (Activities Corresponding to Thresholds of Categories) annexed to the Code of Conduct: for Po-210, the entry '6.E+02' under **Category 1** should read '6.E+01'.

The Secretariat is issuing a correction slip in all official languages for insertion into publication IAEA/CODEOC/2004.

7 February 2005

IAEA
International Atomic Energy Agency

Board of Governors
General Conference

GO V /2003/49-GC(47)/9
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Item 14 of the Conference's provisional agenda (GC/47)/1)

Measures To Strengthen International Cooperation In Nuclear, Radiation And Transport Safety And Waste Management

Revision of the Code of Conduct on the Safety and Security of Radioactive Sources

Report by the Director General

Summary

- The purpose of this document is to seek adoption by the Board of Governors of the revised Code of Conduct on the Safety and Security of Radioactive Sources that is contained in Annex 1 to this document.

Background

- In September 1999, the Board approved an Action Plan for the Safety of Radiation Sources and Security of Radioactive Materials (see document GOV/1999/46-GC(43)/IO and Corr.l) and requested the Secretariat to implement it. The Action Plan included the following action: "to initiate a meeting of technical and legal experts for exploratory discussions relating to an international undertaking in the area of the safety of radiation sources and the security of radioactive materials." Statements made in the Board at that time suggested that the development of a code of conduct would be the most generally acceptable way of proceeding.

- Early in 2000, the Secretariat convened an open-ended group of technical and legal experts to undertake exploratory discussions on a possible Code of Conduct on the Safety of Radiation Sources and the Security of Radioactive Materials. The group met in March and July 2000 and produced a Code of Conduct on the Safety and Security of Radioactive Sources (see document GOV/2000/34- GC(44/7) which was taken note of by the Board in

September 2000.[1] In taking note of the Code of Conduct, the Board also took note of an accompanying report by the Chairman of the open-ended group - Mr. S. McIntosh (Australia) - and requested the Director General "to organize consultations on decisions which the Agency's policy-making organs may wish to take, in the light of the report of the Chairman of the Open-ended Meeting, regarding - inter alia - the application and implementation of the *Code of Conduct on the Safety and Security of Radioactive Sources* and to make recommendations thereon to the Board."

- In May 2002, the Secretariat requested from Member States information about how they were implementing the Code of Conduct and in August 2002, it convened an open-ended group of technical and legal experts to consider how the Code of Conduct might be strengthened, particularly in response to security concerns and to questions arising from the responses to the Secretariat's May 2002 request for information, and to examine previously unresolved issues. The group met, under the chairmanship of Mr. S. McIntosh (Australia), again in March and July 2003, and agreed on the revised Code of Conduct on the Safety and Security of Radioactive Sources that is contained in Annex 1 to this document. Annex 2 contains the report on the last meeting by the Chairman of the open-ended group.

Recommended Action by the Board

- It is recommended that the Board approve the revised Code of Conduct on the Safety and Security of Radioactive Sources and transmit it to the General Conference with a recommendation that the Conference adopt it and encourage its wide implementation.

[1]The Agency published the Code of Conduct (in Arabic, Chinese, English, French, Russian and Spanish) in 2001 under the symbol IAEA/CODE0C/2001.

Revised Code Of Conduct On The Safety And Security Of Radioactive Sources (Annex 1)

International Atomic Energy Agency

The IAEA's Member States

Noting that radioactive sources are used throughout the world for a wide variety of beneficial purposes, e.g. in industry, medicine, research, agriculture and education,

Aware that the use of these radioactive sources involves risks due to potential radiation exposure,

Recognizing the need to protect individuals, society and the environment from the harmful effects of possible accidents and malicious acts involving radioactive sources,

Noting that ineffective, interrupted or sporadic regulatory or management control of radioactive sources has led to serious accidents, or malicious acts, or to the existence of orphan sources,

Aware that the risks arising from such incidents must be minimized and protected against through the application of appropriate radiation safety and security standards,

Recognizing the importance of fostering a safety and security culture in all organizations and among all individuals engaged in the regulatory control or the management of radioactive sources,

Recognizing the need for effective and continuous regulatory control, in particular to reduce the vulnerability of radioactive sources during transfers, within and between States2,

Recognizing that States should take due care in authorizing exports, particularly because a number of States may lack appropriate infrastructure for the safe management and secure protection of radioactive sources, and that States should make efforts to harmonize their systems of export control of radioactive sources,

Recognizing the need for technical facilities, including appropriate equipment and qualified staff, to ensure the safe management and secure protection of radioactive sources,

Noting that the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources contain recommendations for protection against exposure to ionizing radiation and for the safety and security of radioactive sources,

Recalling the IAEA's Safety Requirements document on Legal and Governmental Infrastructure for Nuclear, Radiation, Radioactive Waste and Transport Safety,

Taking account of the provisions of the Convention on Early Notification of a Nuclear Accident (1986) and of the provisions of the Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency (1986),

Taking account of the provisions of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (1997), in particular those provisions which relate to the transboundary movement of radioactive waste and to the possession, remanufacturing or disposal of disused sealed sources,

Recognizing that, while unsealed radioactive material is excluded from this Code, there may be circumstances where it should be managed in accordance with the objectives of this Code,

Recognizing the global role of the IAEA in the area of the safety and security of radioactive sources,

Taking account of the IAEA's categorization of radioactive sources, currently found in IAEA- TECDOC-1344 entitled "Categorization of radioactive sources", while recognizing that TECDOC-1344 is based on deterministic health effects and does not fully take into

account the range of impacts that could result from accidents or malicious acts involving radioactive sources, and

Taking account of the approval by the Board of Governors of the activities regarding protection against nuclear terrorism proposed to it in March 2002, including activities relating to the security of radioactive material other than nuclear material,

DECIDE that the following Code of Conduct should serve as guidance to States for - *inter alia* - the development and harmonization of policies, laws and regulations on the safety and security of radioactive sources.

I. Definitions

1. For the purposes of this Code:

"authorization" means a permission granted in a document by a regulatory body to a natural or legal person who has submitted an application to manage a radioactive source. The authorization can take the form of a registration, a licence or alternative effective legal control measures which achieve the objectives of the Code.

"disposal" means the emplacement of radioactive sources in an appropriate facility without the intention of retrieval.

"disused source" means a radioactive source which is no longer used, and is not intended to be used, for the practice for which an authorization has been granted.

"management" means the administrative and operational activities that are involved in the manufacture, supply, receipt, possession, storage, use, transfer, import, export, transport, maintenance, recycling or disposal of radioactive sources.

"orphan source" means a radioactive source which is not under regulatory control, either because it has never been under regulatory control, or because it has been abandoned, lost, misplaced, stolen or transferred without proper authorization.

"radioactive source" means radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It also means any radioactive material released if the radioactive source is leaking or broken, but does not mean material encapsulated for disposal, or nuclear material within the nuclear fuel cycles of research and power reactors.

"regulatory body" means an entity or organization or a system of entities or organizations designated by the government of a State as having legal authority for exercising regulatory control with respect to radioactive sources, including issuing authorizations, and thereby regulating one or more aspects of the safety or security of radioactive sources.

"regulatory control" means any form of control or regulation applied to facilities or activities by a regulatory body for reasons related to radiation protection or to the safety or security of radioactive sources.

"safety" means measures intended to minimize the likelihood of accidents involving radioactive sources and, should such an accident occur, to mitigate its consequences.

"safety culture" means the assembly of characteristics and attitudes in organizations and individuals which establishes that, as an overriding priority, protection and safety issues receive the attention warranted by their significance.

"security" means measures to prevent unauthorized access or damage to, and loss, theft or unauthorized transfer of, radioactive sources.

"security culture" means characteristics and attitudes in organizations and of individuals which establish that security issues receive the attention warranted by their significance.

"storage" means the holding of radioactive sources in a facility that provides for their containment with the intention of retrieval.

II. Scope And Objectives

2. This Code applies to all radioactive sources that may pose a significant risk to individuals, society and the environment, that is the sources referred to in the Annex to this Code. States should also devote appropriate attention to the regulation of other potentially harmful radioactive sources.

3. This Code does not apply to nuclear material as defined in the Convention on the Physical Protection of Nuclear Material, except for sources incorporating plutonium-239.

4. This Code does not apply to radioactive sources within military or defence programmes.

5. (a) The objectives of this Code are, through the development, hamlonization and implementation of national policies, laws and regulations, and through the fostering of international co-operation, to:

(i) achieve and maintain a high level of safety and security of radioactive sources;

(ii) prevent unauthorized access or damage to, and loss, theft or unauthorized transfer of, radioactive sources, so as to reduce the likelihood of accidental harmful exposure to such sources or the malicious use of such sources to cause harm to individuals, society or the environment; and

(iii) mitigate or minimize the radiological consequences of any accident or malicious act involving a radioactive source.

(b) These objectives should be achieved through the establishment of an adequate system of regulatory control of radioactive sources, applicable from the stage of initial production to their final disposal, and a system for the restoration of such control if it has been lost.

6. This Code relies on existing international standards relating to nuclear, radiation, radioactive waste and transport safety and to the control of radioactive sources. It is intended to complement existing international standards in these areas.

III. Basic Principles

GENERAL

7. Every State should, in order to protect individuals, society and the environment, take the appropriate measures necessary to ensure:

(a) that the radioactive sources within its territory, or under its jurisdiction or control, are safely managed and securely protected during their useful lives and at the end of their useful lives; and

(b) the promotion of safety culture and of security culture with respect to radioactive sources.

8. Every State should have in place an effective national legislative and regulatory system of control over the management and protection of radioactive sources. Such a system should:

(a) place the prime responsibility for the safe management of, and the security of, radioactive sources on the persons being granted the relevant authorizations;

(b) minimize the likelihood of a loss of control;

(c) include national strategies for gaining or regaining control over orphan sources;

(d) provide for rapid response for the purpose of regaining control over orphan sources;

(e) foster ongoing communication between the regulatory body and users;

(f) provide for measures to reduce the likelihood of malicious acts, including sabotage, consistent with the threat defined by the State;

(g) mitigate or minimize the radiological consequences of accidents or malicious acts involving radioactive sources; and.

(h) provide for its own continuous improvement.

9. Every State should ensure that appropriate facilities and services for radiation protection, safety and security are available to, and used by, the persons who are authorized to manage radioactive sources. Such facilities and services should include, but are not limited to, those needed for:

(a) searching for missing sources and securing found sources;

(b) intervention in the event of an accident or malicious act involving a radioactive source;

(c) personal dosimetry and environmental monitoring; and

(d) the calibration of radiation monitoring equipment.

10. Every State should ensure that adequate arrangements are in place for the appropriate training of the staff of its regulatory body, its law enforcement agencies and its emergency services organizations.

11. Every State should establish a national register of radioactive sources. This register should, as a minimum, include Category I and 2 radioactive sources as described in the Annex to this Code. The information contained in that register should be appropriately protected. For the purpose of introducing efficiency in the exchange of radioactive source information between States, States should endeavour to harmonize the formats of their registers.

12. Every State should ensure that information concerning any loss of control over radioactive sources, or any incidents, with potential transboundary effects involving radioactive sources, is provided promptly to potentially affected States through established IAEA or other mechanisms.

13. Every State should:

(a) promote awareness among industry, health professionals, the public, and government bodies of the safety and security hazards associated with orphan sources; and

(b) encourage bodies and persons likely to encounter orphan sources during the course of their operations (such as scrap metal recyclers and customs posts) to implement appropriate monitoring programmes to detect such sources.

14. Every State should encourage the reuse or recycling of radioactive sources, when practicable and consistent with considerations of safety and security.

15. Every State should, in implementing this Code, emphasize to designers, manufacturers (both manufacturers of radioactive sources and manufacturers of devices in which radioactive sources are incorporated), suppliers and users and those managing disused sources their responsibilities for the safety and security of radioactive sources.

16. Every State should define its domestic threat, and assess its vulnerability with respect to this threat for the variety of sources used within its territory, based on the potential for loss of control and malicious acts involving one or more radioactive sources.

17. Each State should take appropriate measures consistent with its national law to protect the confidentiality of any information that it receives in confidence under this Code of Conduct from another State or through participation in an activity carried out for the implementation of this Code of Conduct. If any State provides information to international organizations in confidence, steps should be taken to ensure that the

confidentiality of such information is protected. A State that has received information in confidence from another State should only provide this information to third parties with the consent of that other State. A State is not expected to provide any information that it is not permitted to communicate pursuant to its national law or which would jeopardize the security of that State.

LEGISLATION AND REGULATIONS

18. Every State should have in place legislation and regulations that.

(a) prescribe and assign governmental responsibilities to assure the safety and security of radioactive sources;

(b) provide for the effective control of radioactive sources;

(c) specify the requirements for protection against exposure to ionizing radiation; and

(d) specify the requirements for the safety and security of radioactive sources and of the devices in which sources are incorporated.

19. Such legislation and/or regulations should provide for, in particular:

(a) the establishment of a regulatory body whose regulatory functions are effectively independent of other functions with respect to radioactive sources, such as the management of radioactive sources or the promotion of the use of radioactive sources. This body should have the powers and characteristics listed in paragraphs 20 to 22;

(b) measures to protect individuals, society and the environment from the deleterious effects of ionizing radiation from radioactive sources;

(c) administrative requirements relating to the authorization of the management of radioactive sources;

(d) provisions for exemption, as appropriate, from the administrative requirements referred to in paragraph (c) above;

(e) administrative requirements relating to notifications to the regulatory body of actions involved in the management of radioactive sources that may engender a significant risk to individuals, society or the environment;

(f) managerial requirements relating in particular to the establishment of adequate policies, procedures and measures for the control of radioactive sources;

(g) requirements for security measures to deter, detect and delay the unauthorized access to, or the theft, loss or unauthorized use or removal of radioactive sources during all stages of management;

(h) requirements relating to the verification of the safety and security of radioactive sources, through safety and security assessments, monitoring and verification of compliance, and the maintenance of appropriate records; and

(i) the capacity to take appropriate enforcement actions

REGULATORY BODY

20. Every State should ensure that the regulatory body established by its legislation has the authority to:

(a) establish regulations and issue guidance relating to the safety and security of radioactive sources;

(b) require those who intend to manage radioactive sources to seek an authorization and to submit:

(i) a safety assessment; and

(ii) a security plan or assessment as appropriate

for the source and/or the facility in which the source is to be managed, if deemed necessary in the light of the risks posed and, in the case of security, the current national threat assessment;

(c) obtain all relevant information from an applicant for an authorization;

(d) issue, amend, suspend or revoke, as necessary, authorizations for the management of radioactive sources.

(e) attach clear and unambiguous conditions to the authorizations issued by it, including conditions relating to:

(i) responsibilities;

(ii) minimum operator competencies;

(iii) minimum design and performance criteria, and maintenance requirements for radioactive sources and the devices in which they are incorporated;

(iv) minimum performance criteria and maintenance requirements for equipment and systems used to ensure the safety and security of radioactive sources;

(v) requirements for emergency procedures and communication links;

(vi) work procedures to be followed;

(vii) the safe and secure management of disused sources, including, where applicable, agreements regarding the return of disused sources to a supplier;

(viii) measures to determine, as appropriate, the trustworthiness of individuals involved in the management of radioactive sources; and

(ix) the confidentiality of information relating to the security of sources;

(f) obtain any relevant and necessary information from a person with an authorization, in particular if that is warranted by revised safety or security assessments;

(g) require those supplying or transferring radioactive sources or devices incorporating radioactive sources to provide the recipient with all relevant technical information to permit their safe and secure management.

(h) enter premises in order to undertake inspections for the verification of compliance with regulatory requirements;

(i) enforce regulatory requirements;

(j) monitor, or request other authorized bodies to monitor, at appropriate checkpoints for the purpose of detecting orphan sources;

(k) ensure that corrective actions are taken when a radioactive source is in an unsafe or non-secure condition;

(l) provide, on a case-by-case basis, to a person with an authorization and the public any information that is deemed necessary in order to protect individuals, society and the environment;

(m) liaise and co-ordinate with other governmental bodies and with relevant non- governmental bodies in all areas relating to the safety and security of radioactive sources;

(n) liaise with regulatory bodies of other countries and with international organizations to promote co-operation and the exchange of regulatory information;

(o) establish criteria for intervention in emergency situations;

(p) ensure that radioactive sources are stored in facilities appropriate for the purpose of such storage; and

(q) ensure that, where disused sources are stored for extended periods of time, the facilities in which they are stored are fit for that purpose.

21. Every State should ensure that its regulatory body

(a) is staffed by qualified personnel;

(b) has the financial resources and the facilities and equipment necessary to undertake its functions in an effective manner; and

(c) is able to draw upon specialist resources and expertise from other relevant governmental agencies.

22. Every State should ensure that its regulatory body

(a) establishes procedures for dealing with applications for authorization;

(b) ensures that arrangements are made for the safe management and secure protection of radioactive sources, including financial provisions where appropriate, once they have become disused;

(c) maintains appropriate records of persons with authorizations in respect of radioactive sources, with a clear indication of the type(s) of radioactive sources that they are authorized to use, and appropriate records of the transfer and disposal of the radioactive sources on termination of the authorizations. These records should be properly secured against unauthorized access or alteration, and back-up copies should be made;

(d) promotes the establishment of a safety culture and of a security culture among all individuals and in all bodies involved in the management of radioactive sources;

(e) establishes systems for ensuring that, where practicable, both radioactive sources and their containers, are marked by users with an appropriate sign to warn members of the public of the radiation hazard, but where this is not practicable, at least the container is so marked;

(f) establishes systems for ensuring that the areas where radioactive sources are managed are marked by users with appropriate signs to warn workers or members of the public, as applicable, of the radiation hazard;

(g) establishes systems for ensuring that, where practicable, radioactive sources are identifiable and traceable, or where this is not practicable, ensures that alternative processes for identifying and tracing those sources are in place;

(h) ensures that inventory controls are conducted on a regular basis by persons with authorizations;

(i) carries out both announced and unannounced inspections at an appropriate frequency taking into account past performance and the risks presented by the radioactive source;

(j) takes enforcement actions, as appropriate, to ensure compliance with regulatory requirements;

(k) ensures that the regulatory principles and criteria remain adequate and valid and take into account, as applicable, operating experience and internationally endorsed standards and recommendations;

(l) requires the prompt reporting by authorized persons of loss of control over, and of incidents in connection with, radioactive sources;

(m) provides guidance on appropriate levels of information, instruction and training on the safety and security of radioactive sources and the devices or facilities in which they are housed, to manufacturers, suppliers and users of radioactive sources;

(n) requires authorized persons to prepare emergency plans, as appropriate;

(o) is prepared, or has established provisions, to recover and restore appropriate control over orphan sources, and to deal with radiological emergencies and has established appropriate response plans and measures;

(p) is prepared in respect of orphan sources that may have originated within the State to assist in obtaining technical information relating to their safe and secure management.

IMPORT AND EXPORT OF RADIOACTIVE SOURCES

23. Every State involved in the import or export of radioactive sources should take appropriate steps to ensure that transfers are undertaken in a manner consistent with the provisions of the Code and that transfers of radioactive sources in Categories 1 and 2 of

the Annex to this Code take place only with the prior notification by the exporting State and, as appropriate, consent by the importing State in accordance with their respective laws and regulations.

24. Every State intending to authorize the import of radioactive sources in Categories 1 and 2 of the Annex to this Code should consent to their import only if the recipient is authorized to receive and possess the source under its national law and the State has the appropriate technical and administrative capability, resources and regulatory structure needed to ensure that the source will be managed in a manner consistent with the provisions of this Code.

25. Every State intending to authorize the export of radioactive sources in Categories 1 and 2 of the Annex to this Code should consent to its export only if it can satisfy itself, insofar as practicable, that the receiving State has authorized the recipient to receive and possess the source and has the appropriate technical and administrative capability, resources and regulatory structure needed to ensure that the source will be managed in a manner consistent with the provisions of this Code.

26. If the conditions in paragraphs 24 and 25 with respect to a particular import or export cannot be satisfied, that import or export may be authorized in exceptional circumstances with the consent of the importing State if an alternative arrangement has been made to ensure the source will be managed in a safe and secure manner.

27. Every State should allow for re-entry into its territory of disused radioactive sources if, in the framework of its national law, it has accepted that they be returned to a manufacturer authorized to manage the disused sources.

28. Every State which authorizes the import or export of a radioactive source should take appropriate steps to ensure that such import or export is conducted in a manner consistent with existing relevant international standards relating to the transport of radioactive materials.

29. Although not subject to the authorization procedures outlined in paragraphs 24 and 25 above, the transport of radioactive sources through the territory of a transit or transshipment state should be conducted in a manner consistent with existing relevant international standards relating to the transport of radioactive materials, in particular paying careful attention to maintaining continuity of control during international transport.

ROLE OF THE IAEA

30. The IAEA should:

(a) continue to collect and disseminate information on laws, regulations and technical standards relating to the safe management and secure protection of radioactive sources, develop and establish relevant technical standards and provide for the application of these standards at the request of any State, inter alia by advising and assisting on all aspects of the safe management and secure protection of radioactive sources;

(b) disseminate this Code and related information widely; and

(c) in particular, implement the measures approved by its policy-making organs.

DISSEMINATION OF THE CODE

31. Every State should, as appropriate, inform persons involved in the management of radioactive sources, such as industry, health professionals, and government bodies, and the public, of the measures it has taken to implement this Code, and should take steps to disseminate that information.

Annex: List of Sources Covered by the Code

Category I sources, if not safely managed or securely protected would be likely to cause permanent injury to a person who handled them, or were otherwise in contact with them, for more than a few minutes. It would probably be fatal to be close to this amount of unshielded material for a period of a few minutes to an hour. These sources are typically used in practices such as radiothermal generators, irradiators and radiation teletherapy.

Category 2 sources, if not safely managed or securely protected, could cause permanent injury to a person who handled them, or were otherwise in contact with them, for a short time (minutes to hours). It could possibly be fatal to be close to this amount of unshielded radioactive material for a period of hours to days. These sources are typically used in practices such as industrial gamma radiography, high dose rate brachytherapy and medium dose rate brachytherapy.

Category 3 sources, if not safely managed or securely protected, could cause permanent injury to a person who handled them, or were otherwise in contact with them, for some hours. It could possibly - although it is unlikely - be fatal to be close to this amount of unshielded radioactive material for a period of days to weeks. These sources are typically used in practices such as fixed industrial gauges involving high activity sources (for example, level gauges, dredger gauges, conveyor gauges and spinning pipe gauges) and well logging.

Table I provides a categorization by activity levels for radionuclides that are commonly used. These are based on D-values which define a dangerous source i.e.: a source that could, if not under control, give rise to exposure sufficient to cause severe deterministic effects. A more complete listing of radionuclides and associated activity levels corresponding to each category, and a fuller explanation of the derivation of the D-values, may be found in TECDOC-1344, which also provides the underlying methodology that could be applied to radionuclides not listed. Typical source uses are noted above for illustrative purposes only.

In addition to these categories, States should give appropriate attention to radioactive sources considered by them to have the potential to cause unacceptable consequences if employed for malicious purposes, and to aggregations of lower activity sources (as defined by TECDOC 1344) which require management under the principles of this Code.

Table I. Activities Corresponding to Thresholds of Categories						
Radionuclides	Category 1		Category 2		Category 1	
	1000 x D		10 x D		D	
	(TBq)	(Ci)[a]	(TBq)	(Ci)[a]	(TBq)	(Ci)[a]
Am-241	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Am-241/Be	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Cf-252	2.E+01	5.E+02	2.E-01	5.E-00	2.E-02	5.E-01
Cm-244	5.E+01	1.E+03	5.E-01	1.E+01	5.E-02	1.E+00
Co-60	3.E+01	8.E+02	3.E-01	8.E+00	3.E-02	8.E-01
Cs-137	1.E+02	3.E+03	1.E+00	3.E+01	1.E-01	3.E+00
Gd-153	1.E+03	3.E+04	1.E+01	3.E+02	1.E+00	3.E+01
Ir-192	8.E+01	2.E+03	8.E-01	2.E+01	8.E-02	2.E+00
Pm-147	4.E+04	1.E+06	4.E+02	1.E+04	4.E+01	1.E+03
Pu-238	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Pu-239[b]/Be	6.E+01	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00
Ra-226	4.E+01	1.E+03	4.E-01	1.E+01	4.E-02	1.E+00
Se-75	2.E+02	5.E+03	2.E+00	5.E+01	2.E-01	5.E+00
Sr-90 (Y-90)	1.E+03	3.E+04	1.E+01	3.E+02	1.E+00	3.E+01
Tm-170	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02
Yb-169	3.E+02	8.E+03	3.E+00	8.E+01	3.E-01	8.E+00
Au-198*	2.E+02	5.E+03	2.E+00	5.E+01	2.E-01	5.E+00
Cd-109*	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02
Co-57*	7.E+02	2.E+04	7.E+00	2.E+02	7.E-01	2.E+01
Fe-55*	8.E+05	2.E+07	8.E+03	2.E+05	8.E+02	2.E+04
Ge-68*	7.E+02	2.E+04	7.E+00	2.E+02	7.E-01	2.E+01
Ni-63*	6.E+04	2.E+06	6.E+02	2.E+04	6.E+01	2.E+03
Pd-103*	9.E+04	2.E+06	9.E+02	2.E+04	9.E+01	2.E+03
Po-210*	6.E+02	2.E+03	6.E-01	2.E+01	6.E-02	2.E+00

Table I. Activities Corresponding to Thresholds of Categories						
Radionuclides	**Category 1**		**Category 2**		**Category 1**	
	1000 x D		**10 x D**		**D**	
	(TBq)	**(Ci)[a]**	**(TBq)**	**(Ci)[a]**	**(TBq)**	**(Ci)[a]**
Ru-106 (Rh-106)*	3.E+02	8.E+03	3.E+00	8.E+01	3.E-01	8.E+00
Tl-204*	2.E+04	5.E+05	2.E+02	5.E+03	2.E+01	5.E+02

*These radionuclides are very unlikely to be used in individual radioactive sources with activity levels that would place them within Categories 1, 2 or 3 and would therefore not be subject to the paragraph relating to national registries (11) or the paragraphs relating to import and export control (23 to 26).

[a] The primary values to be used are given in TBq. Curie values are provided for practical usefulness and are rounded after conversion.

[b] Criticality and safeguard issues will need to be considered for multiples of D.

Open-Ended Meeting Of Technical And Legal Experts To Review A Draft Revised Code Of Conduct On The Safety And Security Of Radioactive Sources (Annex 2)

Vienna, 14-18 July 2003

Report of the Chairman

1. An open-ended meeting of technical and legal experts to review and finalize a draft revised Code of Conduct on the Safety and Security of Radioactive Sources[1] met from 14 to 18 July 2003 at the IAEA Headquarters in Vienna under the chairmanship of Mr. S. McIntosh (Australia). The meeting was attended by representatives from 21 Member States (Argentina, Australia, Belgium, Canada, China, the Czech Republic, Egypt, Ethiopia, France, Germany, India, Israel, Japan, Malaysia, Mexico, the Russian Federation, the Slovak Republic, Turkey, Ukraine, the United Kingdom and the United States of America) and an observer from the NEA/OECD. The meeting was opened by Mr T. Taniguchi, DDG-NS, followed by introductory remarks by Mr A. Gonzalez, NSRW .

2. At the outset, the Chairman recalled the discussions undertaken and decisions made at the Group's previous meetings of 19-23 August 2002 and 3-7 March 2003. Building on those discussions and decisions, the Group made a number of amendments to the draft revised Code. These included, inter alia, changes to some of the definitions in the Code and the addition of language concerning the establishment of systems for mitigating or minimizing the radiological consequences of accidents or malicious acts involving radioactive sources.

3. As foreshadowed in the report of the meeting of 3-7 March 2003, the Group gave priority to consideration of the scope of the Code. That consideration was carried out in the light of the recent finalization of the revisions to the IAEA's Categorization of Radioactive Sources, published as IAEA-TECDOC-1344. The Group confirmed that the Code – with the exception of paragraphs relating to national registers and export/import control – should apply, with some modification, to sources in Categories I to 3 of the categorization developed in TECDOC-1344. This approach is now reflected in the Annex to the Code. Sources containing radionuclides which, although included in TECDOC-1344, do not meet the definition of "radioactive source" in the Code - for example because they are not in a solid form, or are unsealed sources – are outside the scope of the Code, and are therefore excluded from Table I in the Annex. Additionally, radionuclides that are unlikely to be used in radioactive sources with activity levels that would place them within Categories 1, 2 or 3 were marked with an asterisk, in order to indicate that the Code is not currently applicable to individual sources of these types.

4. At the same time, the Group agreed that States should also devote appropriate attention to the regulation, in accordance with the Code, of other potentially harmful radioactive sources. Such sources include those considered by them to have the potential to cause unacceptable consequences if employed for malicious purposes, and aggregations of lower activity sources.

5. The Group recalled that the scope of the Code excluded unsealed radioactive sources. The Group agreed that, although the content of the Code could not be precisely applied to unsealed radioactive sources, States should be encouraged to regulate them under similar

[1]The IAEA Board of Governors took note of an earlier version of the Code of Conduct on 11 September 2000, published as IAEA/CODEOC/200 1.

principles in some circumstances. A paragraph to that effect was inserted in the preamble to the Code.

6. The Group agreed that the Code did not apply to radioactive sources within military or defence programmes, although some states expressed the opinion that such sources should be managed in accordance with the objectives of the Code and that the Code's principles should apply to such sources during and after transfer to civilian programmes. The vulnerability of sources during any form of transfer was highlighted in the preamble.

7. The Group agreed on further enhancements to the paragraphs concerning the export and import of radioactive sources. In particular, it was agreed that the scope of these paragraphs should be restricted to sources within Categories I and 2 of the classification structure contained in the Annex to the Code. The Group considered that the implementation of these paragraphs would be assisted if the Secretariat could take responsibility for the compilation, maintenance and publication of a list of contact details of competent national regulatory bodies, and for the development of a standardised format for importing States to use in indicating that prospective users were properly authorized. Some experts considered that the Secretariat should also take responsibility for providing information concerning the degree of implementation by importing States of the Code, with the consent of the States involved. The Group noted the importance of developing further guidance on the full implementation of the paragraphs dealing with export and import control. In particular, the guidance should include understandings on how an exporting State would assess the degree to which an importing State has implemented the Code. As in the draft developed in March 2003, the revised draft Code includes language permitting the export of a source other than in accordance with these paragraphs only "in exceptional circumstances". The Group noted that the guidance referred to above should include a common understanding as to the scope of the term "exceptional circumstances". The Group encouraged supplier states to consult on the harmonization of their export control systems.

8. The Group gave further consideration to the issue of security of sources, and inserted additional language concerning assessment of domestic threats and vulnerability, sabotage, mitigation and minimisation of consequences, and confidentiality. The Group noted that interim guidance on the security of radioactive sources had recently been published as TECDOC-1355, and that further guidance on this issue will be published by the Agency. The Group also noted that a TECDOC regarding security during transport was currently under development elsewhere in the Agency, and that there was therefore no need to include detailed language in this regard in the Code. Some states expressed concern that the strict application of the Code should not impede international initiatives directed at securing or recovering sources in an unsafe or insecure condition.

9. The Group noted that the Agency's revised draft Action Plan for Safety and Security of Radioactive Sources, to be submitted to the September meeting of the IAEA' s Board of Governors, would contain a number of actions relevant to the implementation of the Code. The Group looked forward to the Board's consideration of this issue. The Chairman also noted the importance of the implementation of the Code by developing states, and the role which the Agency's technical co-operation programme might play in assisting that process.

10. The Group agreed that the finalized draft Code should be submitted to the September meeting of the IAEA's Board of Governors and to the subsequent General Conference for their adoption.

11. The Group further considered whether, and if so by what means, the commitment of States to the Code could be reinforced. That consideration was assisted by the circulation of a Chairman's paper on the subject prior to the meeting. The Group agreed that decisions and guidance on this issue were properly matters for the Agency's policy-making organs. However, some States expressed a preference for a political commitment. Further, several experts considered that, in addition to endorsement by the General Conference, States should be encouraged to make individual political commitments concerning their

implementation of the Code. Options for the wording of such a commitment that were proposed were:

- "[State] declares that it will fully implement the terms of the Code of Conduct on the Safety and Security of Radioactive Sources. Consistent with the non-legally binding status of the Code, this declaration does not create any legal obligations."
- "[State] fully supports and endorses the IAEA's efforts to create international standards for the safety and security of radioactive sources. [State] is working toward full implementation of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources and encourages other countries to do the same."
- "[State] affirms its determination to uphold the principles of safe and secure management of radioactive sources, as are stated in the Code of Conduct on the Safety and Security of Radioactive Sources. Consistent with the non-legally binding status of the Code, this declaration does not create any legal obligations or any specific reporting system."
- "[State] affirms its support for the IAEA's work on the safety and security of radioactive sources, including the completion of the recently revised IAEA Code of Conduct on the Safety and Security of Radioactive Sources, which is non- legally binding in nature. [State] will implement the IAEA Code of Conduct on the Safety and Security of Radioactive Sources and urges other countries to do the same. This declaration does not create any legal obligations or any specific reporting systems."

12. The experts agreed that the Code as revised by the Group provides the basis for significant enhancements of the control of radioactive sources. Such control would be a significant step towards enhancing both the safety and the security of radioactive sources.

Steven McIntosh
Chairman
18 July 2003

17: Miscellaneous International Legislation and Executive Orders

17. Miscellaneous International Legislation and Executive Orders

Contents

A. EXECUTIVE ORDER 10841—PROVIDING FOR THE CARRYING OUT OF CERTAIN PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, RELATING TO INTERNATIONAL COOPERATION

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (42 USC 201 *et seq.*), hereinafter referred to as the Act, and section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

Section 1. Whenever the President, pursuant to section 123 of the Act, has approved and authorized the execution of a proposed agreement providing for cooperation pursuant to section 91c, 144a, 144b, or 144c of the Act (42 USC 2121(c), 2164(a), 2164(b), 2164(c), such approval and authorization by the President shall constitute his authorization to cooperate to the extent provided for in the agreement and in the manner provided for in section 91c, 144a, 144b, or 144c, as pertinent. In respect of sections 91c, 144b, and 144c, authorizations by the President to cooperate shall be subject to the requirements of section 123d of the Act and shall also be subject to appropriate determinations made pursuant to section 2 of this order.

Section 2. (a) The Secretary of Defense and the Atomic Energy Commission are hereby designated and empowered to exercise jointly, after consultation with executive agencies as may be appropriate, the following-described authority without the approval, ratification, or other action of the President:

(1) The authority vested in the President by section 91c of the Act to determine that the proposed cooperation and each proposed transfer arrangement referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(2) The authority vested in the President by section 144b of the Act to determine that the proposed cooperation and the proposed communication of Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(3) The authority vested in the President by section 144c of the Act to determine that the proposed cooperation and the communication of the proposed Restricted Data referred to in that section will promote and not constitute an unreasonable risk to the common defense and security.

(b) Whenever the Secretary of Defense and the Atomic Energy Commission are unable to agree upon a joint determination under the provisions of subsection (a) of this section, the recommendations of each of them, together with the recommendations of other agencies concerned, shall be referred to the President, and the determination shall be made by the President.

Section 3. This order shall not be construed as delegating the function vested in the President by section 91c of the Act of approving programs proposed under that section.

Section 4. (a) The functions of negotiating and entering into international agreements under the Act shall be performed by or under the authority of the Secretary of State.

(b) International cooperation under the Act shall be subject to the responsibilities of the Secretary of State with respect to the foreign policy of the United States pertinent thereto.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE.
September 30, 1959

B. EXECUTIVE ORDER 10956—AMENDMENT OF EXECUTIVE ORDER 10841

Amendment Of Executive Order No 10841, Relating To International Cooperation Under The Atomic Energy Act Of 1954, As Amended

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (42 U.S. C. 201 *et seq.*), and section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

Executive Order No. 10841 of September 30, 1959, entitled "providing for the Carrying Out of Certain Provisions of the Atomic Energy Act of 1954, as Amended, Relating to International cooperation," is hereby amended by changing the period at the end of paragraph 92) of section 2(a) thereof to a colon and adding to such paragraph the following: "*Provided,* that each determination made under this paragraph shall be referred to the President and, unless disapproved by him, shall become effective fifteen days after such referral or at such later time as may be specified in the determination."

JOHN F. KENNEDY.

THE WHITE HOUSE.
August 10, 1961

C. EXECUTIVE ORDER 12058—FUNCTIONS RELATING TO NUCLEAR NON-PROLIFERATION

May 11, 1978, 43 F.R. 20947

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Department of Energy.

The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), hereinafter referred to as the Act, and by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy:

(a) That function vested in section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).

(b) Those functions vested by sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).

(c) That function vested by section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

Section 2. Department of State.

The Secretary of State shall be responsible for performing the following functions vested in the President:

(a) Those functions vested by sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 146, 147, and 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S.C. 2153b, 2153b, 2153c, 2153e, and 22 U.S.C. 3261).

(b) That function vested by section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).

(c) That function vested by section 601 of the Act to the extent it relates to the preparation of an annual report.

(d) The preparation of timely information and recommendations related to the President's functions vested by sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138, 42 U.S.C. 2155, 2157, and 2158).

(e) That function vested by section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

Section 3. Department of Commerce.

The Secretary of Commerce shall be responsible for performing the function vested in the President by section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

Section 4. Coordination.

In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

Section 5. General Provisions.

(a) Executive Order No. 11902 of February 2, 1976[1] entitled "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.

(b) The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such

[1] 1978 U.S. Code Cong, and Adm. News Pamph. No. 4, p. 1159.

functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.

Jimmy Carter

The White House,
May 11, 1978

D. EXECUTIVE ORDER 12730—CONTINUATION OF EXPORT CONTROL REGULATIONS

Executive Order 12730 of September 30, 1990

Continuation of Export Control Regulations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereafter referred to as "the Act"),

I, GEORGE BUSH, president of the United States of America, find that the unrestricted access of foreign parties to U.S. goods, technology, and technical data and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States, including it policy with respect to cooperation by U.S. persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), the provisions of that Act, the provisions for administration of that Act, and the delegations of authority set forth in Executive Order 12002 of July 7, 1977, Executive Order 12214[1] of May 2, 1980, and Executive Order No. 12131[2] of May 4, 1979, as amended by Executive Order No. 12551 of February 21, 1986, shall, to the extend permitted by law, be incorporated in this order and shall continue in full force and effect.

Section 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive, and all orders, regulations, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Section 3. Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

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[1] 50 App. U.S.C.A. section 2403 nt.
[2] 50 App. U.S.C.A. section 2401 nt.

Section 4. This order shall be effective as of midnight between September 30, 1990, and October 1, 1990, and shall remain in effect until terminated. It is my intention to terminate this order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act.

George Bush

THE WHITE HOUSE
September 30, 1990

E. EXECUTIVE ORDER 12114—ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Source: The provisions of Executive Order 12114 of Jan. 4, 1979, appear at 44 FR 1957, 3 CFR, 1979 Comp., p. 356, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and the laws of the United states, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1

1-1. Purpose and Scope. The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Section 2

2-1. Agency Procedures. Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. Information Exchange. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. Actions Included. Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authority and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;
(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. Applicable Procedures. (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.
Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.
In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.
2-5. Exemptions and Considerations. (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;
(ii) actions taken by the President;
(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;
(iv) intelligence activities and arms transfers;
(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;
(vi) votes and other actions in international conferences and organizations;
(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;
(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or
(iii) ensure appropriate reflection of:
(1) diplomatic factors;
(2) international commercial, competitive and export promotion factors;
(3) needs for governmental or commercial confidentiality;
(4) national security considerations;
(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and
(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such

additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.
(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

Section 3

3-1. Rights of Action. This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. Foreign Relations. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. Multi-Agency Actions. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. Certain Terms. For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. Multiple Impacts. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

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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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