

# **Nuclear Regulatory Legislation**

**117<sup>th</sup> Congress; 2<sup>nd</sup> Session**

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## **117<sup>th</sup> Congress; 2<sup>nd</sup> Session**

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## FOREWORD

This compilation of statutes and materials pertaining to nuclear regulatory legislation through the 117th Congress<sup>1</sup>, has been prepared by the Office of the General Counsel, U.S. Nuclear Regulatory Commission, with the assistance of staff, for use as an internal resource document. The compilation is not to be used as an authoritative citation in lieu of the primary legislative sources. Furthermore, while every effort has been made to ensure the completeness and accuracy of this material, neither the United States Government, the Nuclear Regulatory Commission, nor any of their employees makes any expressed or implied warranty or assumes liability for the accuracy or completeness of the material presented in this compilation.

This compilation reflects legislation signed into law through January 3, 2023 and can also be found on-line at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/>.

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<sup>1</sup> This compilation reflects one public law enacted during the 118th Congress: the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 ([ADVANCE Act of 2024](#)).



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# **1. Commissioner Tenure**



## 1. COMMISSIONER TENURE

A. ATOMIC ENERGY COMMISSION (AEC), 1946–1975 (updated October 2022)			
Appointee	From	To	Remarks
David E. Lilienthal, Chairman	Nov. 1, 1946	Feb. 15, 1950	Resigned
Robert F. Bacher	Nov. 1, 1946	May 10, 1949	Resigned
Sumner T. Pike	Oct. 31, 1947	Dec. 15, 1951	Resigned
William W. Waymack	Nov. 5, 1946	Dec. 21, 1948	Resigned
Lewis L. Strauss	Nov. 12, 1946	April 15, 1950	Resigned
Lewis L. Strauss, Chairman	July 2, 1953	June 30, 1958	Term Expired
Henry DeWolf Smyth	May 30, 1949	Sep. 30, 1954	Resigned
Gordon Dean	May 24, 1949	June 30, 1953	Term Expired
Gordon Dean, Chairman	July 11, 1950	June 30, 1953	
Thomas E. Murray	May 9, 1950	June 30, 1957	Term Expired
Thomas Keith Glennan	Oct. 2, 1950	Nov. 1, 1952	Resigned
Eugene M. Zuckert	Feb. 25, 1952	June 30, 1954	Term Expired
Joseph Campbell	July 27, 1953	Nov. 30, 1954	Resigned
Willard F. Libby	Oct. 5, 1954	June 30, 1959	Resigned
John von Neumann	March 15, 1955	Feb. 8, 1957	Deceased
Harold S. Vance	Oct. 31, 1955	Aug. 31, 1959	Deceased
John S. Graham	Sep. 12, 1957	June 30, 1962	Resigned
John Forrest Floberg	Oct. 1, 1957	June 23, 1960	Resigned
John A. McCone, Chairman	July 14, 1958	Jan. 20, 1961	Resigned
John H. Williams	Aug. 13, 1959	June 30, 1960	Resigned
Robert E. Wilson	March 22, 1960	Jan. 31, 1964	Resigned
Loren K. Olson	June 23, 1960	June 30, 1962	Term Expired
Glenn T. Seaborg, Chairman	March 1, 1961	Aug. 16, 1971	Resigned
Leland J. Haworth	April 17, 1961	June 30, 1963	Resigned
John G. Palfrey	Aug. 31, 1962	June 30, 1966	Resigned
James T. Ramey	Aug. 31, 1962	June 30, 1973	Term Expired
Gerald F. Tape	July 15, 1963	April 30, 1969	Resigned
Mary I. Bunting	June 29, 1964	June 30, 1965	Term Expired
Wilfrid E. Johnson	Aug. 1, 1966	June 30, 1972	Term Expired
Samuel M. Nabrit	Aug. 1, 1966	Aug. 1, 1967	Resigned
Francesco Costagliola	Oct. 1, 1968	June 30, 1969	Term Expired
Theos J. Thompson	June 12, 1969	Nov. 25, 1970	Deceased
Clarence E. Larson	Sep. 2, 1969	June 30, 1974	Term Expired
James R. Schlesinger, Chairman	Aug. 17, 1971	Feb. 5, 1973	Resigned
William O. Doub	Aug. 17, 1971	Aug. 17, 1974	Resigned
Dixy Lee Ray	Aug. 8, 1972	Jan. 19, 1975	AEC Abolished
Dixy Lee Ray, <sup>1</sup> Chairman	Feb. 6, 1973	Jan. 19, 1975	
William E. Kriegsman	June 12, 1973	Dec. 31, 1974	Resigned

<sup>1</sup> Designated Chairman on February 6, 1973.

<b>B. U.S. NUCLEAR REGULATORY COMMISSION (NRC) 1975 – PRESENT</b>			
<b>Appointee</b>	<b>From</b>	<b>To</b>	<b>Remarks</b>
William A. Anders, Chairman NRC	Jan. 19, 1975	April 20, 1976	Resigned
Marcus A. Rowden	Jan. 19, 1975	April 20, 1976	
Marcus A. Rowden, Chairman	April 21, 1976	June 30, 1977	Term Expired
Edward A. Mason	Jan. 19, 1975	Jan. 15, 1977	Resigned
Victor Gilinsky <sup>2</sup>	Jan. 19, 1975	June 30, 1979	Term Expired
Victor Gilinsky	July 1, 1979	June 30, 1984	Term Expired
Richard T. Kennedy	Jan. 19, 1975	June 30, 1980	Term Expired
Joseph M. Hendrie, Chairman <sup>3</sup>	Aug. 9, 1977	Dec. 7, 1979	
Joseph M. Hendrie	Dec. 8, 1979	March 2, 1981	
Joseph M. Hendrie, Chairman <sup>4</sup>	March 3, 1981	June 30, 1981	Term Expired
Peter A. Bradford	Aug. 15, 1977	March 12, 1982	Resigned
John F. Ahearne	July 31, 1978	Dec. 7, 1979	
John F. Ahearne, Chairman <sup>5</sup>	Dec. 7, 1979	March 2, 1981	
John F. Ahearne <sup>6</sup>	Mar. 3, 1981	June 30, 1983	Term Expired
Nunzio J. Palladino, Chairman	July 1, 1981	June 30, 1986	Term Expired
Thomas M. Roberts <sup>7</sup>	Aug. 3, 1981	June 30, 1985	Term Expired
Thomas M. Roberts	July 12, 1985	June 30, 1990	Term Expired
James K. Asselstine	May 17, 1982	June 30, 1982	
James K. Asselstine <sup>8</sup>	July 17, 1982	June 30, 1987	Term Expired
Frederick M. Bernthal	Aug. 4, 1983	June 30, 1988	Term Expired
Lando W. Zech, Jr. <sup>9</sup>	July 5, 1984	June 30, 1986	
Lando W. Zech, Jr., Chairman	July 1, 1986	June 30, 1989	Term Expired
Kenneth M. Carr	Aug. 14, 1986	June 30, 1989	
Kenneth M. Carr, Chairman	July 1, 1989	June 30, 1991	Term Expired
Kenneth C. Rogers <sup>10</sup>	Aug. 7, 1987	June 30, 1992	Term Expired
Kenneth C. Rogers	July 1, 1992	June 30, 1997	Term Expired
James R. Curtiss	Oct. 20, 1988	June 30, 1993	Term Expired
Forrest J. Remick	Dec. 1, 1989	June 30, 1994	Term Expired
Ivan Selin, Chairman <sup>11</sup>	July 1, 1991	June 30, 1995	Resigned
E. Gail de Planque	Dec. 16, 1991	June 30, 1995	Term Expired

<sup>2</sup> Victor Gilinsky served two terms. The Senate reconfirmed his nomination for a 5-year term on June 27, 1979.

<sup>3</sup> On December 7, 1979, Joseph M. Hendrie vacated the chairmanship but remained as a Commissioner.

<sup>4</sup> On March 3, 1981, Joseph M. Hendrie resumed the chairmanship.

<sup>5</sup> On December 7, 1979, John F. Ahearne assumed the chairmanship.

<sup>6</sup> On March 3, 1981, John F. Ahearne vacated the chairmanship but remained as a Commissioner.

<sup>7</sup> Thomas M. Roberts' first term expired on June 30, 1985; he took the oath of office for a second term on July 12, 1985.

<sup>8</sup> James K. Asselstine completed Peter A. Bradford's term and was appointed to a full 5-year term.

<sup>9</sup> On June 28, 1984, Lando W. Zech, Jr., was nominated by the President. He received a recess appointment on July 3, 1984, and took office on July 5, 1984. On January 3, 1985, the President resubmitted the nomination to the 99th Congress for a full 5-year appointment. The Senate subsequently confirmed the nomination, and he took office for the full 5-year term on March 6, 1985. On July 1, 1986, Admiral Zech assumed the chairmanship.

<sup>10</sup> Kenneth C. Rogers served as Commissioner from August 7, 1987, to June 30, 1992, and was reappointed as Commissioner from July 1, 1992, to June 30, 1997.

<sup>11</sup> Ivan Selin resigned on June 30, 1995.

Appointee	From	To	Remarks
Shirley A. Jackson	May 2, 1995	June 30, 1995	
Shirley A. Jackson, Chairman	July 1, 1995	June 30, 1999	Term Expired
Greta J. Dicus	Feb. 15, 1996	June 30, 1998	Term Expired
Greta J. Dicus <sup>12</sup>	Oct. 27, 1998	June 30, 1999	
Greta J. Dicus, Chairman <sup>13</sup>	July 1, 1999	Oct. 29, 1999	
Greta J. Dicus <sup>14</sup>	Oct. 29, 1999	June 30, 2003	Term Expired
Nils J. Diaz	Aug. 23, 1996	June 30, 2001	Term Expired
Nils J. Diaz	Oct. 4, 2001	June 30, 2006	Term Expires
Nils J. Diaz, Chairman <sup>15</sup>	April 1, 2003	June 30, 2006	Term Expired
Edward McGaffigan, Jr.	Aug. 28, 1996	June 30, 2000	Term Expired
Edward McGaffigan, Jr.	July 1, 2000	June 30, 2005	Term Expired
Edward McGaffigan, Jr. <sup>16</sup>	Oct. 12, 2005	Sep. 2, 2007	Deceased
Jeffrey S. Merrifield	Oct. 23, 1998	June 30, 2002	Term Expired
Jeffrey S. Merrifield	Aug. 5, 2002	June 30, 2007	Term Expired
Richard A. Meserve, Chairman <sup>17</sup>	Oct. 29, 1999	March 31, 2003	Resigned
Gregory B. Jaczko <sup>18</sup>	Jan. 21, 2005	Recess Appt	
Gregory B. Jaczko	May 31, 2006	June 30, 2008	
Gregory B. Jaczko	July 1, 2008	May 13, 2009	
Gregory B. Jaczko, Chairman <sup>19</sup>	May 13, 2009	July 9, 2012	Resigned
Peter B. Lyons <sup>20</sup>	Jan. 25, 2005	Recess Appt	
Peter B. Lyons	May 31, 2006	June 30, 2009	Term Expired
Dale E. Klein, Chairman	July 1, 2006	May 13, 2009	
Dale E. Klein, Commissioner <sup>21</sup>	May 13, 2009	March 29, 2010	Resigned
Kristine L. Svinicki	March 17, 2008	June 30, 2012	Term Expired
Kristine L. Svinicki	July 1, 2012	Jan. 23, 2017	
Kristine L. Svinicki, Chairman <sup>22</sup>	Jan. 23, 2017	June 30, 2017	Term Expired
Kristine L. Svinicki, Chairman <sup>23</sup>	July 1, 2017	Jan. 20, 2021	Resigned <sup>24</sup>

<sup>12</sup> Greta J. Dicus was renominated to a new 5-year term as Commissioner on May 22, 1998. Her nomination was confirmed by the Senate on October 21, 1998.

<sup>13</sup> Greta J. Dicus assumed the chairmanship on July 1, 1999.

<sup>14</sup> On October 29, 1999, Greta J. Dicus vacated the chairmanship but remained as a Commissioner.

<sup>15</sup> On April 1, 2003, Nils J. Diaz assumed the chairmanship.

<sup>16</sup> Following the expiration of his second term, Commissioner Edward McGaffigan, Jr.'s office was vacant from July 1, 2005, through October 11, 2005. He was nominated for a third term on July 28, 2005, and died in office.

<sup>17</sup> On October 29, 1999, Richard A. Meserve assumed the Chairmanship, succeeding Chairman Dicus. On March 31, 2003, he resigned.

<sup>18</sup> On January 19, 2005, President Bush appointed Gregory B. Jaczko during the Senate recess (effective to the end of the Senate's session in 2006).

<sup>19</sup> Gregory B. Jaczko assumed the chairmanship on May 13, 2009. Chairman Jaczko's resignation was effective upon Senate confirmation of Allison M. Macfarlane as his successor.

<sup>20</sup> On January 19, 2005, President Bush appointed Peter B. Lyons during the Senate recess (effective to the end of Senate's session in 2006). He was reappointed in 2006 and continued to serve until 2009.

<sup>21</sup> On May 13, 2009, Dale E. Klein vacated the chairmanship but remained as a Commissioner. On March 29, 2010, Dale E. Klein resigned his position as Commissioner.

<sup>22</sup> On January 23, 2017, President Trump appointed Kristine L. Svinicki as Chairman.

<sup>23</sup> President Trump nominated Chairman Svinicki on June 5, 2017, for a third term. Her nomination was confirmed by the Senate on June 26, 2017, and signed by the President on June 28, 2017.

<sup>24</sup> Kristine Svinicki resigned on January 20, 2021.

Appointee	From	To	Remarks
William D. Magwood IV <sup>25</sup>	July 1, 2010	Aug. 31, 2014	Resigned
William C. Ostendorff	March 29, 2010	June 30, 2011	Term Expired
William C. Ostendorff	July 5, 2011	June 30, 2016	Term Expired
George E. Apostolakis	March 29, 2010	June 30, 2014	Term Expired
Allison M. Macfarlane, Chairman <sup>26</sup>	July 9, 2012	June 30, 2013	Term Expired
Allison M. Macfarlane, Chairman <sup>27</sup>	July 1, 2013	Dec. 31, 2014	Resigned <sup>28</sup>
Jeffery M. Baran <sup>29</sup>	Oct. 14, 2014	June 30, 2015	Resigned <sup>30</sup>
Jeffery M. Baran <sup>31</sup>	Jan. 2, 2015	June 30, 2018	Term Expired
Jeffery M. Baran <sup>32</sup>	July 1, 2018	June 30, 2023	Term Expires
Stephen G. Burns <sup>33</sup>	Nov. 4, 2014	Dec. 31, 2014	
Stephen G. Burns, Chairman <sup>34</sup>	Jan. 1, 2015	Jan. 23, 2017	Vacated
Stephen G. Burns, Commissioner <sup>35</sup>	Jan. 23, 2017	April 30, 2019 <sup>36</sup>	Resigned
Annie Caputo <sup>37</sup>	May 25, 2018	June 30, 2021	Term Expired
Annie Caputo	Aug. 4, 2022 <sup>38</sup>	June 30, 2026	Term Expires
David A. Wright <sup>39</sup>	May 25, 2018	June 30, 2020	Term Expired

<sup>25</sup>William D. Magwood IV was appointed by President Obama to fill the remainder of Commissioner McGaffigan's term, and he was then reappointed for a full 5-year term.

<sup>26</sup> On May 24, 2012, President Obama nominated Allison M. Macfarlane as Chairman for the remainder of Gregory Jaczko's term. Her nomination was confirmed by the Senate on June 28, 2012, and signed by the President on July 9, 2012.

<sup>27</sup> On March 21, 2013, President Obama nominated Chairman Macfarlane for an additional 5-year term. Her nomination was confirmed by the Senate on June 27, 2013, and signed by the President on June 28, 2013.

<sup>28</sup> Allison M. Macfarlane resigned as Chairman on December 31, 2014.

<sup>29</sup> On July 23, 2014, President Obama nominated Jeffery M. Baran as Commissioner for the remainder of William Magwood's term. His nomination was confirmed by the Senate on September 16, 2014, and signed by the President on October 14, 2014.

<sup>30</sup> On January 1, 2015, Jeffery Baran resigned from his appointment to fill the remainder of Allison Macfarlane's term.

<sup>31</sup> On November 13, 2014, President Obama nominated Jeffery M. Baran as Commissioner for the remainder of Allison Macfarlane's term. His nomination was confirmed by the Senate on December 8, 2014, and signed by the President on January 2, 2015.

<sup>32</sup> On September 5, 2017, President Trump nominated Jeffery M. Baran for an additional 5-year term. His nomination was confirmed by the Senate on May 24, 2018, and signed by the President on May 25, 2018.

<sup>33</sup> On July 23, 2014, President Obama nominated Stephen G. Burns as Commissioner. His nomination was confirmed by the Senate on September 16, 2014, and signed by the President on November 4, 2014.

<sup>34</sup> On January 1, 2015, President Obama appointed Stephen G. Burns as Chairman.

<sup>35</sup> On January 23, 2017, Stephen Burns vacated the Chairmanship but remained as Commissioner.

<sup>36</sup> Stephen Burns resigned on April 30, 2022.

<sup>37</sup> On June 6, 2017, President Trump nominated Annie Caputo as Commissioner for the remainder of the term that had not been filled when William Ostendorff's term expired. Her nomination was confirmed by the Senate on May 24, 2018, and signed by the President on May 25, 2018.

<sup>38</sup> On May 3, 2022, President Biden nominated Annie Caputo for the remainder of an additional 5-year term. Her nomination was confirmed by the Senate on August 2, 2022, and signed by the President on August 4, 2022.

<sup>39</sup> On June 6, 2017, President Trump nominated David A. Wright to fill Commissioner Magwood's term (Jeffery Baran's original term, from which he resigned to move to the remainder of Allison Macfarlane's term). David Wright's nomination was confirmed by the Senate on May 24, 2018, and signed by the President on May 25, 2018.

Appointee	From	To	Remarks
David A. Wright <sup>40</sup>	July 1, 2020	June 30, 2025	Term Expires
Christopher T. Hanson <sup>41</sup>	June 5, 2020	Jan. 19, 2021	
Christopher T. Hanson <sup>42</sup> Chair	Jan. 20, 2021	June 30, 2024	Term Expires
Bradley R. Crowell <sup>43</sup>	Aug. 4, 2022	June 30, 2027	Term Expires

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<sup>40</sup> On January 6, 2020, President Trump nominated David A. Wright for an additional 5 year term. His nomination was confirmed by the Senate on May 21, 2020, and signed by the President on May 27, 2020.

<sup>41</sup> On March 2, 2020, President Trump nominated Christopher T. Hanson as Commissioner. His nomination was confirmed by the Senate on May 27, 2020, and signed by the President on June 5, 2020.

<sup>42</sup> On January 20, 2021, President Biden appointed Christopher T. Hanson as Chair of the NRC.

<sup>43</sup> On May 3, 2022, President Biden nominated Bradley R. Crowell for the remainder of a 5-year term. His Nomination was confirmed by the Senate on August 2, 2022, and signed by the President on August 4, 2022.





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**A. ATOMIC ENERGY ACT OF 1954, AS AMENDED****Original Pub. L. 83–703  
August 30, 1954****68 Stat. 919****Title I—Atomic Energy****Chapter 1—Declaration, Findings, and Purpose****42 USC 2011. Sec. 1. Congressional Declaration of Policy**

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

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

(b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.<sup>1</sup>

**42 USC 2012. Sec. 2. Congressional Findings**

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

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

(b) Repealed. Pub.L. 88–489, §1, Aug. 26, 1964, 78 Stat. 602.

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

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

(e) Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

(f) The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization

<sup>1</sup> Aug. 1, 1946, ch. 724, title I, §1, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this chapter.

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

(h) Repealed. PL. 88–489, §2, Aug. 26, 1964, 78 Stat. 602 .

(i) In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.<sup>2</sup>

### 42 USC 2013. Sec. 3. Purpose of Chapter

It is the purpose of this chapter to effectuate the policies set forth above by providing for-

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

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

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

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

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

(f) a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be

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<sup>2</sup> Aug. 1, 1946, ch. 724, title I, §2, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921 ; amended Pub. L. 85–256, §1, Sept. 2, 1957, 71 Stat. 576 ; Pub. L. 88–489, §§1, 2, Aug. 26, 1964, 78 Stat. 602 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

currently informed so as to take further legislative action as may be appropriate.<sup>3</sup>

## Chapter 2—Definitions

### 42 USC 2014. Sec. 11. Definitions

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

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

(b) The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 2074, 2077, 2094, 2112, 2121(c), 2133, 2134, or 2164 of this title, and made pursuant to section 2153 of this title.

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

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

(e) The term "byproduct material" means—

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

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

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

(B) any material that—

(i) has been made radioactive by use of a particle accelerator, including use by a fusion machine<sup>4</sup>; and

(ii) if made radioactive by use of a particle accelerator that is not a fusion machine<sup>5</sup>, is produced, extracted, or converted after

<sup>3</sup> Aug. 1, 1946, ch. 724, title I, §3, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 922 ; amended Pub. L. 88–489, §3, Aug. 26, 1964, 78 Stat. 602 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>4</sup> As amended by Pub. L. 118–67, div. B, title II, §205(a)(1)(A)(i), July 9, 2024, 138 Stat. 1447

<sup>5</sup> As amended by Pub. L. 118–67, div. B, title II, §205(a)(1)(A)(ii), July 9, 2024, 138 Stat. 1447

extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

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

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

(B) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

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

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

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

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

(j) The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 2210 of this title.

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

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

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

(m) The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in indemnity agreement entered into pursuant to section 2210 of this title.

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

(o) The term "Energy Committees" means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(p) The term "licensed activity" means an activity licensed pursuant to this chapter and covered by the provisions of section 2210(a) of this title.

(q) The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 2210(l) of this title, it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 2210(d) of this title, it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 2210(c) of this title, it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to subchapters V, VI, VII, and IX of this division, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

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

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

(t) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 2210(c) of this title, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 2210(d) of this title has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

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

(v) The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

(w) The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections (a), (c), and (k) of section 2210 of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(x) The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of

investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(y) The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

(z) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(aa) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

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

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

(dd) FUSION MACHINE.—The term 'fusion machine' means a machine that is capable of—

(1) transforming atomic nuclei, through fusion processes, into different elements, isotopes, or other particles; and

(2) directly capturing and using the resultant products, including particles, heat, or other electromagnetic radiation<sup>6</sup>.

(ee) HIGH-LEVEL RADIOACTIVE WASTE; SPENT NUCLEAR FUEL— The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 10101 of this title.

(ff) <sup>1</sup> LEGAL COSTS— As used in section 2210 of this title, the term "legal costs" means the costs incurred by a plaintiff or a defendant in

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<sup>6</sup> As amended by Pub. L. 118-67, div. B, title II, §205(a)(5), July 9, 2024, 138 Stat. 1447. Redesignated ee, ff, gg, hh, ii to appear in alphabetical order.



initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.<sup>7</sup>

(gg) **NUCLEAR WASTE ACTIVITIES** — The term "nuclear waste activities", as used in section 2210 of this title, means activities subject to an agreement of indemnification under subsection (d) of such section, that the Secretary of Energy is authorized to undertake, under this chapter or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96–164 (93 Stat. 1265).

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

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

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

(ii) **PUBLIC LIABILITY ACTION** — The term "public liability action", as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

(jj) **TRANSURANIC WASTE** — The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and

<sup>7</sup> Aug. 1, 1946, ch. 724, title I, §11, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 922 ; amended Aug. 6, 1956, ch. 1015, §1, 70 Stat. 1069 ; Pub. L. 85–256, §3, Sept. 2, 1957, 71 Stat. 576 ; Pub. L. 85–602, §1, Aug. 8, 1958, 72 Stat. 525 ; Pub. L. 87–206, §§2, 3, Sept. 6, 1961, 75 Stat. 476 ; Pub. L. 87–615, §§4, 5, Aug. 29, 1962, 76 Stat. 410 ; Pub. L. 89–645, §1(a), Oct. 13, 1966, 80 Stat. 891 ; Pub. L. 94–197, §1, Dec. 31, 1975, 89 Stat. 1111 ; Pub. L. 95–604, title II, §201, Nov. 8, 1978, 92 Stat. 3033 ; Pub. L. 100–408, §§4(b)–5(b), 11(b), (d)(2), 16(a)(1), (b)(1), (2), (d)(1)–(3), Aug. 20, 1988, 102 Stat. 1069 , 1070, 1076, 1078–1080 ; Pub. L. 101–575, §5(a), Nov. 15, 1990, 104 Stat. 2835 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(8), title XI, §1102, Oct. 24, 1992, 106 Stat. 2944 , 2955 ; Pub. L. 103–437, §15(f)(1), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 104–134, title III, §3116(b)(1), Apr. 26, 1996, 110 Stat. 1321–349 ; Pub. L. 109–58, title VI, §651(e)(1), Aug. 8, 2005, 119 Stat. 806 ; Pub. L. 118–47, div. G, title I, §107(d), Mar. 23, 2024, 138 Stat. 857 ; Pub. L. 118–67, div. B, title II, §205(a), July 9, 2024, 138 Stat. 1460.



that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

### Chapter 3—Organization

#### 42 USC 2031. Sec. 21. Atomic Energy Commission. Repealed

Pub. L. 93–438, title I, §104(a), Oct. 11, 1974, 88 Stat. 1237.<sup>8</sup>

#### 42 USC 2032. Sec. 22. Members. Repealed

Pub. L. 93–438, title I, §104(a), Oct. 11, 1974, 88 Stat. 1237.<sup>9</sup>

#### 42 USC 2033. Sec. 23. Principal Office

The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia.<sup>10</sup>

#### 42 USC 2034. Sec. 24. General Manager, Deputy and Assistant General Managers

There is established within the Commission-

(a) General Manager; chief executive officer; duties; appointment; removal

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

(b) Deputy General Manager; duties; appointment; removal

a Deputy General Manager, who shall act in the stead of the General Manager during his absence when so directed by the General Manager, and who shall perform such other administrative and executive functions as the General Manager shall direct. The Deputy General Manager shall be appointed by the General Manager with the

<sup>8</sup> Section 2031, act Aug. 1, 1946, ch. 724, §21, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 924 ; amended Aug. 9, 1955, ch. 697, §3, 69 Stat. 630 , provided for establishment of Atomic Energy Commission, its composition, Chairman, acting Chairman, quorum, official spokesman, and seal.

<sup>9</sup> Section 2032, act Aug. 1, 1946, ch. 724, §22, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 924 ; amended Sept. 4, 1957, Pub. L. 85–287, §1, 71 Stat. 612 ; Aug. 14, 1964, Pub. L. 88–426, title III, §305(10)(A), 78 Stat. 423 , provided for appointment of members of Commission, terms of office, and prohibition from engaging in any other vocation, business, or employment, by the members.

<sup>10</sup> Aug. 1, 1946, ch. 724, title I, §23, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 925 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

(c) Assistant General Managers; duties; appointment; removal

Assistant General Managers, or their equivalents (not to exceed a total of three positions), who shall perform such administrative and executive functions as the General Manager shall direct. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.<sup>11</sup>

42 USC 2035.

Assistant  
General  
Manager for  
Military  
Application  
and  
Program  
Divisions

**Sec. 25. Divisions, Offices, and Positions**

There is established within the Commission-

(a) Program divisions; appointment and powers of Assistant General Manager and Division Directors

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

(b) General Counsel

an Office of the General Counsel under the direction of the General Counsel who shall be appointed by the Commission; and

(c) Inspection Division; duties

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

(d) Executive management positions; appointment; removal

such other executive management positions (not to exceed six in number) as the Commission may determine to be necessary to the

<sup>11</sup> Aug. 1, 1946, ch. 724, title I, §24, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 925 ; amended Pub. L. 85–287, §2, Sept. 4, 1957, 71 Stat. 612 ; Pub. L. 88–426, title III, §306(f)(1)–(3), Aug. 14, 1964, 78 Stat. 429 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

discharge of its responsibilities. Such positions shall be established by the General Manager with the approval of the Commission. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.<sup>12</sup>

**42 USC 2036  
Repealed.**

**Sec. 26. General Advisory Committee. Repealed**

**Pub. L. 95–91, title VII, §709(c)(1), Aug. 4, 1977, 91 Stat. 608.<sup>13</sup>**

**42 USC 2037  
Repealed.**

**Sec. 27. Military Liaison Committee. Repealed**

**Pub. L. 99–661, div. C, title I, §3137(c), Nov. 14, 1986, 100 Stat. 4066.<sup>14</sup>**

**42 USC 2038.**

**Sec. 28. Appointment of Army, Navy, or Air Force Officer as Assistant General Manager for Military Application; Chairman of Military Liaison Committee; Compensation**

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

<sup>12</sup> Aug. 1, 1946, ch. 724, title I, §25, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 925 ; amended Pub. L. 85–287, §3, Sept. 4, 1957, 71 Stat. 612 ; Pub. L. 88–426, title III, §306(f)(4)–(7), Aug. 14, 1964, 78 Stat. 429 , 430; Pub. L. 90–190, §5, Dec. 14, 1967, 81 Stat. 577 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 .)

<sup>13</sup> Section, act Aug. 1, 1946, ch. 724, §26, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 926 , established a General Advisory Committee to advise the Atomic Energy Commission on scientific and technical matters relating to materials, production, and research and development.

<sup>14</sup> Section, act Aug. 1, 1946, ch. 724, §27, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 926 ; amended Aug. 14, 1964, Pub. L. 88–426, title III, §305(10)(B), 78 Stat. 423 , related to Military Liaison Committee, its composition and duties, and authority of Defense Department to make recommendations to Committee.

shall receive the compensation fixed for such Chairman and his retired pay.<sup>15</sup>

**42 USC 2039. Sec. 29. Advisory Committee on Reactor Safeguards; Composition; Tenure; Duties; Compensation**

There is established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 2203 of this title shall be applicable to the Committee.<sup>16</sup>

**Chapter 4—Research**

**42 USC 2051. Sec. 31. Research Assistance and Development Assistance**

**(a) Contracts and loans for research activities**

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

- (1) nuclear processes;
- (2) the theory and production of atomic energy, including processes, materials, and devices related to such production;
- (3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;
- (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or

<sup>15</sup> Aug. 1, 1946, ch. 724, title I, §28, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 926 ; amended Pub. L. 88–426, title III, §306(f)(8), Aug. 14, 1964, 78 Stat. 430 ; Pub. L. 88–448, title IV, §401(f), Aug. 19, 1964, 78 Stat. 490 ; Pub. L. 90–190, §6, Dec. 14, 1967, 81 Stat. 577 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 107–107, div. A, title X, §1048(i)(11), Dec. 28, 2001, 115 Stat. 1230.

<sup>16</sup> Aug. 1, 1946, ch. 724, title I, §29, as added Pub. L. 85–256, §5, Sept. 2, 1957, 71 Stat. 579 ; amended Pub. L. 95–209, §5, Dec. 13, 1977, 91 Stat. 1483 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 105–362, title XII, §1201(a), Nov. 10, 1998, 112 Stat. 3292.

production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy;

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

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

(b) Grants and contributions

The Commission is authorized—

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

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

(c) Purchase of supplies without advertising

The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 6101 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

(d) Prevention of dissemination of information prohibited; other conditions of agreements

The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.<sup>17</sup>

<sup>17</sup> Aug. 1, 1946, ch. 724, title I, §31, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 927; amended Aug. 6, 1956, ch. 1015, §§2, 3, 70 Stat. 1069; Pub. L. 91–560, §1, Dec. 19, 1970, 84 Stat. 1472; Pub. L. 92–84, title II, §201(a), Aug. 11, 1971, 85 Stat. 307; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, §651(c)(1), Aug. 8, 2005, 119 Stat. 801.

**42 USC 2052. Sec. 32. Research by the Commission**

The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 2051 of this title.<sup>18</sup>

**42 USC 2053. Sec. 33. Research for Others; Charges**

In this section, with respect to international research projects, the term “private facilities or laboratories” means facilities or laboratories located in the United States. Where the Commission finds private facilities or laboratories are inadequate for the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 2051 of this title as it deems appropriate to the development of energy. To the extent the Commission determines that private facilities or laboratories are inadequate for the purpose, and that the Commission’s facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission’s own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.<sup>19</sup>

**Chapter 5—Production of Special Nuclear Material****42 USC 2061. Sec. 41. Production Facilities****(a)Ownership**

The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 2051 of this title, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; (2) are licensed by the Commission under this division; or (3) are owned by the United States Enrichment Corporation.

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<sup>18</sup> Aug. 1, 1946, ch. 724, title I, §32, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 928 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>19</sup> Aug. 1, 1946, ch. 724, title I, §33, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 928 ; amended Pub. L. 90–190, §7, Dec. 14, 1967, 81 Stat. 577 ; Pub. L. 92–84, title II, §201(b), Aug. 11, 1971, 85 Stat. 307 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 115–246, title III, §307(g), formerly §307(f), Sept. 28, 2018, 132 Stat. 3149 , renumbered §307(g), Pub. L. 116–260, div. Z, title II, §2008(a)(1), Dec. 27, 2020, 134 Stat. 2474.

## (b) Operation of Commission's facilities

The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and © to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 6101 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.

## (c) Operation of other facilities

Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.<sup>20</sup>

**42 USC 2062. Sec. 42. Irradiation of Materials**

The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.<sup>21</sup>

**42 USC 2063. Sec. 43. Acquisition of Production Facilities**

The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 6101 of title 41 upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a

<sup>20</sup> Aug. 1, 1946, ch. 724, title I, §41, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 928 ; amended Pub. L. 90–190, §8, Dec. 14, 1967, 81 Stat. 577 ; Pub. L. 101–575, §5(c), Nov. 15, 1990, 104 Stat. 2835 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(2), (8), Oct. 24, 1992, 106 Stat. 2943, 2944.

<sup>21</sup> Aug. 1, 1946, ch. 724, title I, §42, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 929 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, condemn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefor.<sup>22</sup>

**42 USC 2064. Sec. 44. Disposition of Energy**

If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this chapter shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.<sup>23</sup>

**Chapter 6—Special Nuclear Material**

**42 USC 2071. Sec. 51. Determination of Other Material as Special Nuclear Material; Presidential Assent; Effective Date**

The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the

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<sup>22</sup> Aug. 1, 1946, ch. 724, title I, §43, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 929 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>23</sup> Aug. 1, 1946, ch. 724, title I, §44, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 929 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



determination of the Commission may become effective: Provided, however, That the Energy Committees, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.<sup>24</sup>

**42 USC 2072  
Repealed.**

**Sec. 52. Government Ownership of All Special Nuclear Material.  
Repealed**

**Pub. L. 88–489, §4, Aug. 26, 1964, 78 Stat. 603.<sup>25</sup>**

**42 USC 2073.**

**Sec. 53. Domestic Distribution of Special Nuclear Material**

Nuclear  
material  
licenses.

**(a) Licenses**

The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to [section 2153 of this title](#), special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material-

(1) for the conduct of research and development activities of the types specified in [section 2051 of this title](#);

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to [section 2134 of this title](#);

(3) for use under a license issued pursuant to [section 2133 of this title](#);

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

**(b) Minimum criteria for licenses**

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

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

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

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

**(c) Manner of distribution; charges for material sold; agreements; charges for material leased**

<sup>24</sup> Aug. 1, 1946, ch. 724, title I, §51, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 929 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–437, §15(f)(2), Nov. 2, 1994, 108 Stat. 4592.

<sup>25</sup> Section, act Aug. 1, 1946, ch. 724, §52, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 929 , related to Government ownership of all special nuclear material and provided for compensation of private owners of such material.

(1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to [section 2133 or 2134\(b\) of this title](#) for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

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

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

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

(d) Determination of charges

In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to [section 2133 or 2134 of this title](#), in addition to consideration of the cost thereof, the Commission shall take into consideration-

- (1) the use to be made of the special nuclear material;
- (2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;
- (3) the energy value of the special nuclear material in the particular use for which the license is issued;
- (4) whether the special nuclear material is to be used in facilities licensed pursuant to [section 2133 or 2134 of this title](#). In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to [section 2133 of this title](#); and
- (5) with respect to special nuclear material consumed in a facility licensed pursuant to [section 2133 of this title](#), the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection (c)(2), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to [section 2134 of this title](#).

(e) License conditions

Each license issued pursuant to this section shall contain and be subject to the following conditions-

- (1) Repealed. [Pub. L. 88–489, §8, Aug. 26, 1964, 78 Stat. 604](#).
- (2) no right to the special nuclear material shall be conferred by the license except as defined by the license;
- (3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter;
- (4) all special nuclear material shall be subject to the right of recapture or control reserved by [section 2138 of this title](#) and to all other provisions of this chapter;
- (5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this chapter;
- (6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;
- (7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and
- (8) except to the extent that the indemnification and limitation of liability provisions of [section 2210 of this title](#) apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

(f) Distribution for independent research and development activities

The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material

exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.<sup>26</sup>

**42 USC 2074. Sec. 54. Foreign Distribution of Special Nuclear Material**

(a) Compensation; distribution to International Atomic Energy Agency; procedure for distribution; repurchase of unconsumed materials; price; purchase of materials produced outside United States; price

The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with [section 2153 of this title](#). Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value \$10,000 in the case of one nation or \$50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of [section 2153 of this title](#), to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Energy Committees and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): And provided further, That any**

<sup>26</sup> Aug. 1, 1946, ch. 724, title I, §53, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 930 ; amended Pub. L. 85–256, §2, Sept. 2, 1957, 71 Stat. 576 ; Pub. L. 85–681, §§1, 2, Aug. 19, 1958, 72 Stat. 632 ; Pub. L. 88–489, §§5–8, Aug. 26, 1964, 78 Stat. 603 , 604; Pub. L. 90–190, §§9, 10, Dec. 14, 1967, 81 Stat. 577 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(3), (8), Oct. 24, 1992, 106 Stat. 2944.

such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further*, That prior to the elapse of the first thirty days of any such sixty-day period the Energy Committees shall submit to their respective houses reports of their views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under [section 2134 of this title](#), established by the Commission pursuant to [section 2076 of this title](#), and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

(b) Distribution to persons outside United States of plutonium and other special nuclear material exempted under [section 2077\(d\) of this title](#); compensation; reports

Notwithstanding the provisions of [sections 2153 and 2154 of this title](#) and section 125 of the Atomic Energy Act of 1954, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with [subsection 2077\(d\) of this title](#), exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this subchapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

(c) Licensing or granting permission to others to distribute special nuclear material; conditions

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

(d) Laboratory samples; medical devices; monitoring or other instruments; emergencies

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.

(e) Arrangements for storage or disposition of irradiated fuel elements

The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under [section 2160\(a\)\(2\)\(E\) of this title](#) shall be subject to the requirements of [section 2160 of this title](#).<sup>27</sup>

42 USC 2075.

#### **Sec. 55. Acquisition of Special Nuclear Material; Payments; Just Compensation**

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to purchase without regard to the limitations in [section 2074 of this title](#) or any guaranteed purchase prices established pursuant to [section 2076 of this title](#), and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of [section 6101 of title 41](#), upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section: *Providing*, That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement

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<sup>27</sup> Aug. 1, 1946, ch. 724, title I, §54, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 931 ; amended Pub. L. 85–177, §7, Aug. 28, 1957, 71 Stat. 455 ; Pub. L. 87–206, §4, Sept. 6, 1961, 75 Stat. 476 ; Pub. L. 88–489, §9, Aug. 26, 1964, 78 Stat. 604 ; Pub. L. 93–377, §2, Aug. 17, 1974, 88 Stat. 473 ; Pub. L. 95–242, title III, §§301(a), 303(b)(1), Mar. 10, 1978, 92 Stat. 125 , 131; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 103–437, §15(f)(3), Nov. 2, 1994, 108 Stat. 4592.

under [section 2160\(a\)\(2\)\(E\)](#) of this title shall be subject to the requirements of [section 2160](#) of this title.<sup>28</sup>

**42 USC 2076. Sec. 56. Guaranteed Purchase Prices**

The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under [section 2134](#) of this title and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under [section 2133](#) or [section 2134](#) and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to [section 2073](#) of this title.<sup>29</sup>

**42 USC 2077. Sec. 57. Unauthorized Dealings In Special Nuclear Material**

**Unauthorized (a) Handling by persons**

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to [section 2073](#) of this title, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

**(b) Engagement or participation in development or production**

It shall be unlawful for any person to directly or indirectly engage or participate in the development or 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 2153](#) of this title, including a specific authorization in a subsequent arrangement under [section 2160](#) of this title, 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

<sup>28</sup> Aug. 1, 1946, ch. 724, title I, §55, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 931 ; amended Pub. L. 88–489, §10, Aug. 26, 1964, 78 Stat. 604 ; Pub. L. 95–242, title III, §303(b)(2), Mar. 10, 1978, 92 Stat. 131 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>29</sup> Aug. 1, 1946, ch. 724, title I, §56, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 931 ; amended Pub. L. 88–489, §11, Aug. 26, 1964, 78 Stat. 605 ; Pub. L. 91–560, §2, Dec. 19, 1970, 84 Stat. 1472 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after March 10, 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 inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further*, That the export of component parts as defined in section 2014(v)(2) or (cc)(2) of this title shall be governed by sections 2139 and 2155 of this title: *Provided further*, That notwithstanding section 7172(d) of this title, 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 2074(d), section 2094, or section 2141(b) of this title.

(c) Distribution by Commission

The Commission shall not-

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 2074 of this title; or

(2) distribute any special nuclear material or issue a license pursuant to section 2073 of this title to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to



the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(d) Establishment of classes of special nuclear material; exemption of materials, kinds of uses and users from requirement of license

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

(e) Transfer, etc., of special nuclear material

Special nuclear material, as defined in [section 2014 of this title](#), produced in facilities licensed under [section 2133](#) or [2134 of this title](#) may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.<sup>30</sup>

#### 42 USC 2078. Sec. 58. Review

Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 2076 of this title, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 2073 of this title, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Energy Committees and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): Provided, however, That the Energy Committees, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five-day period.<sup>31</sup>

<sup>30</sup> Aug. 1, 1946, ch. 724, title I, §57, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 932 ; amended Pub. L. 88–489, §12, Aug. 26, 1964, 78 Stat. 605 ; Pub. L. 93–377, §3, Aug. 17, 1974, 88 Stat. 475 ; Pub. L. 95–242, title III, §302, Mar. 10, 1978, 92 Stat. 126 ; Pub. L. 97–415, §14, Jan. 4, 1983, 96 Stat. 2075 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 105–277, div. G, title XII, §1225(d)(1), Oct. 21, 1998, 112 Stat. 2681–774 ; Pub. L. 108–458, title VI, §6803(a), Dec. 17, 2004, 118 Stat. 3768.

<sup>31</sup> Aug. 1, 1946, ch. 724, title I, §58, as added Pub. L. 85–79, §2, July 3, 1957, 71 Stat. 275 ; amended Pub. L. 88–489, §13, Aug. 26, 1964, 78 Stat. 605 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 103–437, §15(f)(4), Nov. 2, 1994, 108 Stat. 4592.

**Chapter 7—Source Material****42 USC 2091. Sec. 61. Determination of Source Material**

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: Provided, however, That the Energy Committees, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.<sup>32</sup>

**42 USC 2092. Sec. 62. License for Transfers Required**

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.<sup>33</sup>

**42 USC 2093. Sec. 63. Domestic Distribution of Source Material****(a) License**

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

- (1) for the conduct of research and development activities of the types specified in [section 2051 of this title](#);
- (2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to [section 2134 of this title](#);
- (3) for use under a license issued pursuant to [section 2133 of this title](#); or

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<sup>32</sup> Aug. 1, 1946, ch. 724, title I, §61, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 932; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, §15(f)(4), Nov. 2, 1994, 108 Stat. 4592.

<sup>33</sup> Aug. 1, 1946, ch. 724, title I, §62, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 932 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

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

(b) Minimum criteria for licenses

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

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

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

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

(c) Determination of charges

The Commission may make a reasonable charge determined pursuant to [section 2201\(m\) of this title](#) for the source material licensed and distributed under subsection (a)(1), (a)(2), or (a)(4) and shall make a reasonable charge determined pursuant to [section 2201\(m\) of this title](#), for the source material licensed and distributed under subsection (a)(3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection (a)(1), (a)(2), or (a)(4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the source material will be used.<sup>34</sup>

**42 USC 2094. Sec. 64. Foreign Distribution of Source Material**

The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with [section 2153 of this title](#). The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.<sup>35</sup>

**42 USC 2095. Sec. 65. Reports**

The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any source

<sup>34</sup> Aug. 1, 1946, ch. 724, title I, §63, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 933 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>35</sup> Aug. 1, 1946, ch. 724, title I, §64, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 933 ; amended Pub. L. 95–242, title III, §301(b), Mar. 10, 1978, 92 Stat. 125 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.<sup>36</sup>

**42 USC 2096. Sec. 66. Acquisition**

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

- (a) to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;
- (b) to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and
- (c) to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

Any purchase made under this section may be made without regard to the provisions of section 6101 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.<sup>37</sup>

**42 USC 2097. Sec. 67. Operations on Lands Belonging to the United States**

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however,* That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.<sup>38</sup>

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<sup>36</sup> Aug. 1, 1946, ch. 724, title I, §65, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 933 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>37</sup> Aug. 1, 1946, ch. 724, title I, §66, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 933 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>38</sup> Aug. 1, 1946, ch. 724, title I, §67, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 934 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2098. Sec. 68. Public and Acquired Lands****(a) Conditions on location, entry, and settlement**

No individual, corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to August 30, 1954, made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

**(b) Reservation of mineral rights; release**

Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, inserted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946, or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is released, remised, and quitclaimed to the person or persons entitled upon August 19, 1958 under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under the applicable Federal or State laws: *Provided, however,* That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be subject to any rights which may have been granted by the United States pursuant to any such reservation, but the releases shall be subrogated to the rights of the United States.

**(c) Prior locations**

Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended, and particularly section 5(b)(7) thereof, or the provisions of sections 501 to 505 of title 30, and particularly section 503 of title 30, any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same

extent as if said mineral deposit were a locatable mineral deposit other than a source material.<sup>39</sup>

**42 USC 2099. Sec. 69. Prohibition**

The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.<sup>40</sup>

**Chapter 8—Byproduct Material**

**42 USC 2111. Sec. 81. Domestic Distribution**

**(a) In general**

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 2112 or section 2114 of this title. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and

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<sup>39</sup> Aug. 1, 1946, ch. 724, title I, §68, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 934 ; amended Pub. L. 85–681, §3, Aug. 19, 1958, 72 Stat. 632 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>40</sup> Aug. 1, 1946, ch. 724, title I, §69, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 934 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

(b) Requirements

(1) In general

Except as provided in paragraph (2), byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, may only be transferred to and disposed of in a disposal facility that—

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

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

(ii) is licensed by a State that has entered into an agreement with the Commission under section 2021(b) of this title, if the licensing requirements of the State are compatible with the licensing requirements of the Commission.

(2) Effect of subsection

Nothing in this subsection affects the authority of any entity to dispose of byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(c) Treatment as low-level radioactive waste

Byproduct material, as defined in paragraphs (3) and (4) of section 2014(e) of this title, disposed of under this section shall not be considered to be low-level radioactive waste for the purposes of—

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

(2) carrying out a compact that is—

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

(B) approved by Congress.<sup>41</sup>

**42 USC 2112. Sec. 82. Foreign Distribution of Byproduct Material**

(a) Cooperation with other Nations

The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 2153 of this title.

<sup>41</sup> Aug. 1, 1946, ch. 724, title I, §81, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 935; amended Pub. L. 93–377, §4, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95–604, title II, §205(b), Nov. 8, 1978, 92 Stat. 3039; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, §651(c)(3)(A), Aug. 8, 2005, 119 Stat. 807.

(b) Distribution to individuals

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

(c) Distributor's license

The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.<sup>42</sup>

42 USC 2113.

**Sec. 83. Ownership and Custody of Certain Byproduct Material and Disposal Sites**

(a) Specific assurances in license for pretermination actions

Any license issued or renewed after the effective date of this section under section 2092 or section 2111 of this title for any activity which results in the production of any byproduct material, as defined in section 2014(e)(2) of this title, shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

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

(2) ownership of any byproduct material, as defined in section 2014(e)(2) of this title, which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection (b)(1) to acquire land used for the disposal of byproduct material.

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

(b) Transfer of title; health and environmental protection through maintenance of property and materials; use of surface or subsurface estates: first refusal rights of transferor; maintenance, monitoring, and emergency measures and other authorized action; licensee-transferor

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<sup>42</sup> Aug. 1, 1946, ch. 724, title I, §82, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 935; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



liability for fraud or negligence; administrative and legal costs limitation; government retransfers under section 7914(h) of this title

(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 2014(e)(2) of this title, pursuant to such license shall be transferred to—

(i) the United States, or

(ii) the State in which such land is located, at the option of such State, unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 2231 of this title. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 2111 of this title in such manner as will protect the public health, safety, and the environment.

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

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

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

(4) In the case of any such license under section 2092 of this title, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land

and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 2114 of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after November 8, 1978.

(6) The transfer of title to land or byproduct materials, as defined in section 2014(e)(2) of this title, to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 7914(h) of this title.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 2014(e)(2) of this title, the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

(c) Compliance with applicable standards and license requirements; determination upon termination of license

Upon termination on any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.<sup>43</sup>

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<sup>43</sup> Aug. 1, 1946, ch. 724, title I, §83, as added Pub. L. 95–604, title II, §202(a), Nov. 8, 1978, 92 Stat. 3033; amended Pub. L. 96–106, §22(c), (e), Nov. 9, 1979, 93 Stat. 800; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

42 USC 2114.

**Sec. 84. Authorities of Commission Respecting Certain Byproduct Material****(a) Management function**

The Commission shall insure that the management of any byproduct material, as defined in section 2014(e)(2) of this title, is carried out in such manner as—

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

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 2022 of this title, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.].

**(b) Rules, regulations, or orders for certain activities; civil penalty**

In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 2111 of this title to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

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

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 2113 of this title shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 2282 of this title. Nothing in this section affects any authority of the Commission under any other provision of this chapter.

**(c) Alternative requirements or proposals**

In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 2014(e)(2) of this title, a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this chapter. Such alternative proposals may take into account local or regional conditions, including geology, topography,

hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 2022 of this title.<sup>44</sup>

## **Chapter 9—Military Application of Atomic Energy**

### **42 USC 2121. Sec. 91. Authority of Commission**

(a) Research and development; weapons production; hazardous wastes; transfers of technologies

The Commission is authorized to-

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

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year;

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

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

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

(b) Material for Department of Defense use

The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the

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<sup>44</sup> Aug. 1, 1946, ch. 724, title I, §84, as added Pub. L. 95–604, title II, §205(a), Nov. 8, 1978, 92 Stat. 3039; amended Pub. L. 97–415, §§20, 22(a), Jan. 4, 1983, 96 Stat. 2079, 2080; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

(c) Sale, lease, or loan to other Nations of materials for military applications

The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of [section 2077, 2092, or 2111 of this title](#), to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President-

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

(2) utilization facilities for military applications; and

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

(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has made substantial progress in the development of atomic weapons, whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with [section 2153 of this title](#): *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in

accordance with the terms and conditions of this subsection and of the agreement for cooperation.<sup>45</sup>

**42 USC 2122. Sec. 92. Prohibition Governing Atomic Weapons**

(a) It shall be unlawful, except as provided in section 2121 of this title, for any person, inside or outside of the United States, to knowingly participate in the development of, manufacture, produce, transfer, acquire, receive, possess, import, export, or use, or possess and threaten to use, any atomic weapon. Nothing in this section shall be deemed to modify the provisions of section 2051(a) or 2131 of this title.

(b) Conduct prohibited by subsection (a) is within the jurisdiction of the United States if-

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

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

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

(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.<sup>46</sup>

**Sec. 93. Congressional Oversight of Special Access Programs.  
Repealed**

**Pub. L. 106–65, div. C, title XXXII, §3294(e)(1)(A), Oct. 5, 1999, 113 Stat. 970.<sup>47</sup>**

**Chapter 10—Atomic Energy Licenses**

**42 USC 2131. Sec. 101. License Required**

It shall be unlawful, except as provided in section 2121 of this title, for any person within the United States to transfer or receive in interstate

<sup>45</sup> Aug. 1, 1946, ch. 724, title I, §91, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 936 ; amended Pub. L. 85–479, §1, July 2, 1958, 72 Stat. 276 ; Pub. L. 101–189, div. C, title XXXI, §3157, Nov. 29, 1989, 103 Stat. 1684 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>46</sup> Aug. 1, 1946, ch. 724, title I, §92, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 936 ; amended Pub. L. 85–479, §2, July 2, 1958, 72 Stat. 277 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 108–458, title VI, §§6803(b), 6904(a), Dec. 17, 2004, 118 Stat. 3768 , 3771.

<sup>47</sup> Section, act Aug. 1, 1946, ch. 724, title I, §93, as added Pub. L. 103–160, div. C, title XXXI, §3156(a), Nov. 30, 1993, 107 Stat. 1953 , related to congressional oversight of special access programs. See section 2426 of Title 50, War and National Defense.

commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 2133 or 2134 of this title.<sup>48</sup>

**42 USC 2132. Sec. 102. Utilization and Production Facilities for Industrial or Commercial Purposes**

**(a) Issuance of licenses**

Except as provided in subsections (b) and (c), or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 2133 of this title.

**(b) Facilities constructed or operated under section 2134(b)**

Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to section 2134(b) of this title prior to enactment into law of this subsection, shall be issued under section 2134(b) of this title.

**(c) Cooperative Power Reactor Demonstration facilities**

Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under section 2134(b) of this title.<sup>49</sup>

**42 USC 2133. Sec. 103. Commercial Licenses**

**(a) Conditions**

The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

**(b) Nonexclusive basis**

The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and

<sup>48</sup> Aug. 1, 1946, ch. 724, title I, §101, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 936; amended Aug. 6, 1956, ch. 1015, §11, 70 Stat. 1071; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>49</sup> Aug. 1, 1946, ch. 724, title I, §102, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 936; amended Pub. L. 91–560, §3, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

(c) License period

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

(d) Limitations

No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any<sup>50</sup> corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

(f)<sup>51</sup> Accident notification condition; license revocation; license amendment to include condition

Each license issued for a utilization facility under this section or section 2134(b) of this title shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 2237 of this title, the Commission shall promptly amend each license for a utilization facility issued under this section or section 2134(b) of this title which is in effect on June 30, 1980, to include the provisions required under this subsection.<sup>52</sup>

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<sup>50</sup> As amended by Pub. L. 118-67, div. B, title III, §301(c), 138 Stat 1467. Removed extra "any" in section 103d.

<sup>51</sup> So in original. Probably should be "e".

<sup>52</sup> Aug. 1, 1946, ch. 724, title I, §103, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 936; amended Aug. 6, 1956, ch. 1015, §§12, 13, 70 Stat. 1071; Pub. L. 91-560, §4, Dec. 19, 1970, 84 Stat. 1472; Pub. L. 96-295, title II, §201, June 30, 1980, 94 Stat. 786; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109-58, title VI, §621, Aug. 8, 2005, 119 Stat. 782, Pub. L. 118-67, div. B, title III, §301(c), July 9, 2024, 138 Stat. 1466.



**42 USC 2134. Sec. 104. Medical Industrial, and Commercial Licenses**

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

(b) Industrial and commercial purposes. As provided for in subsection (b) or (c) of section 2132 of this title, or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this chapter.

(c) Research and development activities

(1) In general. Subject to paragraphs (2) and (3), the Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 2051 of this title.

(2) Regulation. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

(3) Limitation on utilization facilities. The Commission may issue a license under this section for a utilization facility useful in the conduct of research and development activities of the types specified in section 2051 of this title if-

(A) not more than 75 percent of the annual costs to the licensee of owning and operating the facility are devoted to the sale, other than for research and development or education and training, of-

(i) nonenergy services;

(ii) energy; or

(iii) a combination of nonenergy services and energy; and

(B) not more than 50 percent of the annual costs to the licensee of owning and operating the facility are devoted to the sale of energy.

(d) Limitations. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title or except under the provisions of section 2139 of this

title. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.<sup>53</sup>

**42 USC 2135. Sec. 105. Antitrust Provisions Governing Licenses**

**(a) Violations of antitrust laws**

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

**(b) Reports to Attorney General**

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

**(c) Transmissions to Attorney General of copies of license applications; publication of advice; factors considered; exceptions**

- (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such

<sup>53</sup> Aug. 1, 1946, ch. 724, title I, §104, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 937; amended Pub. L. 91–560, §5, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 115–439, title I, §106(b), Jan. 14, 2019, 132 Stat. 5577; Pub. L. 118–67, div. B, title VI, §601, July 9, 2024, 138 Stat. 1481

advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 2133 of this title: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 2133 of this title unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection (b) of section 2134 of this title prior to December 19, 1970, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or December 19, 1970, whichever is later.

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

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

(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission

in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

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

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 2133 of this title, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

(9) Applicability.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 2133 or 2134(b) of this title that is filed on or after August 8, 2005.<sup>54</sup>

#### 42 USC 2136. Sec. 106. Classes of Facilities

The Commission may—

(a) group the facilities licensed either under section 2133 or 2134 of this title into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

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

(c) designate the amounts of special nuclear material available for use by each such facility.<sup>55</sup>

<sup>54</sup> Aug. 1, 1946, ch. 724, title I, §105, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 938; amended Pub. L. 88–489, §14, Aug. 26, 1964, 78 Stat. 606; Pub. L. 91–560, §6, Dec. 19, 1970, 84 Stat. 1473; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 107–273, div. C, title IV, §14102(c)(2)(D), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 109–58, title VI, §625, Aug. 8, 2005, 119 Stat. 784.

<sup>55</sup> Aug. 1, 1946, ch. 724, title I, §106, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 938; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2137. Sec. 107. Operators' Licenses**

The Commission shall—

- (a) prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this chapter;
- (b) determine the qualifications of such individuals;
- (c) issue licenses to such individuals in such form as the Commission may prescribe; and
- (d) suspend such licenses for violations of any provision of this chapter or any rule or regulation issued thereunder whenever the Commission deems such action desirable.<sup>56</sup>

**42 USC 2138. Sec. 108. Suspension of Licenses During War or National Emergency**

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this chapter if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 2133 or 2134 of this title, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.<sup>57</sup>

**42 USC 2139. Sec. 109. Component and Other Parts of Facilities**

(a) Licenses for domestic activities

With respect to those utilization and production facilities which are so determined by the Commission pursuant to section 2014(v)(2) or 2014(cc)(2) of this title the Commission may issue general licenses for domestic activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

(b) Export licenses

After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in section 2014(v)(2) or 2014(cc)(2) of this title 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 2155(b)(2) of this title, no such component, substance, or item which is so determined by the

<sup>56</sup> Aug. 1, 1946, ch. 724, title I, §107, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>57</sup> Aug. 1, 1946, ch. 724, title I, §108, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939; amended Pub. L. 86–373, §2, Sept. 23, 1959, 73 Stat. 691; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

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 2155 of this title.

(c) Exports inimical to common defense and security of United States

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 section 2155(a) of this title, that the export would be inimical to the common defense and security of the United States.<sup>58</sup>

**42 USC 2140.**

**Sec. 110. Exclusions From License Requirement**

Nothing in this subchapter shall be deemed—

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

(b) to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 2121 of this title, or for the use of such facility by the Department of Defense or a contractor thereof.<sup>59</sup>

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<sup>58</sup> Aug. 1, 1946, ch. 724, title I, §109, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939; amended Pub. L. 87–615, §9, Aug. 29, 1962, 76 Stat. 411; Pub. L. 89–645, §1(b), Oct. 13, 1966, 80 Stat. 891; Pub. L. 95–242, title III, §309(a), Mar. 10, 1978, 92 Stat. 141; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–277, div. G, title XII, §1225(d)(2), Oct. 21, 1998, 112 Stat. 2681–774.

<sup>59</sup> Aug. 1, 1946, ch. 724, title I, §110, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

42 USC 2141.

**Sec. 111. Licensing by Nuclear Regulatory Commission of Distribution of Special Nuclear Material, Source Material, and Byproduct Material by Department of Energy**

(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 2074, 2094, and 2112 of this title, 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 2112 of this title.

(b) The Department of Energy shall not distribute any special nuclear material or source material under section 2074 or 2094 of this title 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 Nuclear Regulatory Commission and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after March 10, 1978, 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 2156 of this title or their equivalent and any applicable criteria in section 2157 of this title are met, and that the proposed distribution would not be inimical to the common defense and security.<sup>60</sup>

42 USC 2142.

**Sec. 112. Domestic Medical Isotope Production**

(a) The Commission may issue a license, or grant an amendment to an existing license, for the use in the United States of highly enriched uranium as a target for medical isotope production in a nuclear reactor, only if, in addition to any other requirement of this chapter—

(1) the Commission determines that—

(A) there is no alternative medical isotope production target that can be used in that reactor; and

(B) the proposed recipient of the medical isotope production target has provided assurances that, whenever an alternative medical isotope production target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(2) the Secretary of Energy has certified that the United States Government is actively supporting the development of an alternative medical isotope production target that can be used in that reactor.

<sup>60</sup> Aug. 1, 1946, ch. 724, title I, §111, as added Pub. L. 95–242, title III, §301(c), Mar. 10, 1978, 92 Stat. 125; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 105–277, div. G, title XII, §1225(d)(3), Oct. 21, 1998, 112 Stat. 2681–774.)

(b) As used in this section—

(1) the term "alternative medical isotope production target" means a nuclear reactor target which is enriched to less than 20 percent of the isotope U–235;

(2) a target "can be used" in a nuclear research or test reactor if—

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

(B) use of the target will permit the large majority of ongoing and planned experiments and medical isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor;

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

(4) the term "medical isotope" includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.<sup>61</sup>

## Chapter 11—International Activities

### 42 USC 2151. Sec. 121. Effect of International Arrangements

Any provision of this chapter or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangements made after August 30, 1954 shall be deemed to be of no force or effect.<sup>62</sup>

### 42 USC 2152. Sec. 122. Policies Contained in International Arrangements

In the performance of its functions under this chapter, the Commission shall give maximum effect to the policies contained in any international arrangement made after August 30, 1954.<sup>63</sup>

### 42 USC 2153. Sec. 123. Cooperation with Other Nations

Cooperative  
agreements,  
submitted to  
President.  
Contents.

No cooperation with any nation, group of nations or regional defense organization pursuant to sections 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164 of this title shall be undertaken until—

(a) Terms, conditions, duration, nature, scope, and other requirements of proposed agreements for cooperation; Presidential exemptions; negotiations; Nuclear Proliferation Assessment Statement

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<sup>61</sup> Aug. 1, 1946, ch. 724, title I, §112, as added Pub. L. 112–239, div. C, title XXXI, §3176(a), Jan. 2, 2013, 126 Stat. 2215; Pub. L. 113–66, div. C, title XXXI, §3144, Dec. 26, 2013, 127 Stat. 1071.

<sup>62</sup> Aug. 1, 1946, ch. 724, title I, §121, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>63</sup> Aug. 1, 1946, ch. 724, title I, §122, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 939 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to [section 2121\(c\) of this title](#), 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 [section 2121\(c\) of this title](#) and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\) of this title](#), any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

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

production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title, 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 [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title, 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 [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title, 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.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title) 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 [section 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title, 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 the proposed agreement for cooperation with all the requirements of this chapter, 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 chapter 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 [section 2121\(c\), 2164\(b\), 2164\(c\), or 2164\(d\) of this title](#), 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 [section 2121\(c\), 2164\(b\), or 2164\(d\) of this title](#) which are to be implemented by the Department of Defense, by the Secretary of Defense;

(b) Presidential approval and authorization for execution of proposed agreements for cooperation

the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to [section 2121\(c\), 2164\(b\), 2164\(c\), or 2164\(d\) of this title](#)), together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in [section 2159\(g\) of this title](#)) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

(c) Submittal of proposed agreements for cooperation to Congressional committees

the proposed agreement for cooperation (if not an agreement subject to subsection (d)), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs 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 [section 2159\(g\) of this title](#)): *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

(d) Congressional action

the proposed agreement for cooperation (if arranged pursuant to [section 2121\(c\), 2164\(b\), 2164\(c\), or 2164\(d\) of this title](#), or if entailing implementation of [section 2073, 2074\(a\), 2133, or 2134 of this title](#) 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 [section 2159\(g\) of this title](#)) 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 [section 2121\(c\), 2164\(b\), 2164\(c\), or 2164\(d\) of this title](#), 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 (a), have been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection (a) from any requirement contained in that subsection, or an agreement exempted pursuant to [section 8003\(a\)\(1\) of title 22](#), shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in [section 2159\(i\) of this title](#).

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to [section 2121\(c\), 2164\(b\), 2164\(c\), or 2164\(d\) of this title](#)) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection (a)(2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to [section 2157\(b\)\(3\) of this title](#) for purposes of the Commission's consideration of applications and requests under [section 2155\(a\)\(2\) of this title](#) and there shall be no congressional review pursuant to [section 2157 of this title](#) 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.  
(e) Congressional committees informed of initiatives or negotiations relating to cooperation agreements

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 2121\(c\)](#), [2164\(b\)](#), [2164\(c\)](#), or [2164\(d\)](#) of this title, or an amendment thereto).<sup>64</sup>

#### 42 USC 2154. **Sec. 124. International Atomic Pool**

The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to [sections 2074\(a\)](#), [2077](#), [2094](#), [2112](#), [2133](#), [2134](#), or [2164\(a\)](#) of this title: *Provided, however*, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with [section 2153](#) of this title.<sup>65</sup>

#### 42 USC 2153 note. **Sec. 125. Cooperation with Berlin**

Act Aug. 1, 1946, ch. 724, title I, §125, as added by Apr. 12, 1957, Pub. L. 85–14, 71 Stat. 11 ; amended by Aug. 17, 1974, Pub. L. 93–377, §5, 88 Stat. 475 ; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944, provided that: the President could authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with this section, on behalf of Berlin, which for the purposes of this chapter comprised those areas over which the Berlin Senate exercised jurisdiction (the United States, British, and French sectors) and the Commission could thereafter cooperate with Berlin pursuant to [section 2074\(a\)](#), [2077](#), [2094](#), [2112](#), [2133](#), or [2134](#) of this title, with provision that the guaranties required by this section were to be made by Berlin with the approval of the allied commandants.

<sup>64</sup> Aug. 1, 1946, ch. 724, title I, §123, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 940 ; amended Pub. L. 85–479, §§3, 4, July 2, 1958, 72 Stat. 277 ; Pub. L. 85–681, §4, Aug. 19, 1958, 72 Stat. 632 ; Pub. L. 88–489, §15, Aug. 26, 1964, 78 Stat. 606 ; Pub. L. 93–377, §5, Aug. 17, 1974, 88 Stat. 475 ; Pub. L. 93–485, §1, Oct. 26, 1974, 88 Stat. 1460 ; Pub. L. 95–242, title IV, §401, Mar. 10, 1978, 92 Stat. 142 ; Pub. L. 99–64, title III, §301(a), (b), July 12, 1985, 99 Stat. 159 , 160 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 103–337, div. C, title XXXI, §3155(c)(1), Oct. 5, 1994, 108 Stat. 3092 ; Pub. L. 103–437, §15(f)(5), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 104–106, div. A, title XV, §1505(g), Feb. 10, 1996, 110 Stat. 515 ; Pub. L. 105–277, div. G, title XII, §1225(d)(4), Oct. 21, 1998, 112 Stat. 2681–774 ; Pub. L. 109–401, title I, §104(e), Dec. 18, 2006, 120 Stat. 2734 ; Pub. L. 110–369, title II, §202, Oct. 8, 2008, 122 Stat. 4033.  
<sup>65</sup> Aug. 1, 1946, ch. 724, title I, §124, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 940 ; amended Pub. L. 93–377, §5, Aug. 17, 1974, 88 Stat. 475 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2155. Sec. 126. Export Licensing Procedures**

Executive  
branch  
judgment  
notice to  
commission.  
Exemption.

(a) Executive branch judgment on export applications; criteria governing United States nuclear exports

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 2074, 2094, or 2112 of this title, 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 March 10, 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 Energy, Defense, and Commerce, and the Nuclear Regulatory Commission, for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow

such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(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 2153b or 2153c\(a\) of this title](#);

(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 2156 of this title](#) 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.

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 2156 of this title](#) 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 2154 of this title](#) shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of [section 2156 of this title](#) for a period of thirty days after March 10, 1978, 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 2153c\(a\) of this title](#); 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 March 10, 1978: *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 2156 of this title](#), 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 2159 of this title](#): *And additionally provided*, That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

(b) Requests to be given timely consideration; Presidential review if Commission is unable to make required statutory determinations; Commission review

(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.

(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 chapter, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of



United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in [section 2159\(g\) of this title](#)) and shall be referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in [section 2159 of this title](#) for the consideration of Presidential submissions: *And provided further*, That the procedures established pursuant to subsection (b) of [section 2155a of this title](#) 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 authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of [section 2155a of this title](#), 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.

(c) Additional export criteria

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 chapter, 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 2159 of this title](#).<sup>66</sup>

**42 USC 2156. Sec. 127. Criteria Governing United States Nuclear Exports**

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

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

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

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to [section 2156a of this title](#), 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

<sup>66</sup> Aug. 1, 1946, ch. 724, title I, §126, as added Pub. L. 95–242, title III, §304(a), Mar. 10, 1978, 92 Stat. 131 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–437, §15(f)(5), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 105–277, div. G, title XII, §1225(d)(5), Oct. 21, 1998, 112 Stat. 2681–774.

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.<sup>67</sup>

**42 USC 2157. Sec. 128. Additional Export Criterion and Procedures**

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

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

(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 March 10, 1978, or for any such application under which the first export would occur at least twenty-four months after March 10, 1978, except as provided in the following paragraphs:

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of the law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed

<sup>67</sup> Aug. 1, 1946, ch. 724, title I, §127, as added Pub. L. 95–242, title III, §305, Mar. 10, 1978, 92 Stat. 136 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

assessment of the reasons underlying the President's determination, the judgment of the executive branch required under [section 2155 of this title](#), and any Commission opinion and views) for a period of sixty days of continuous session (as defined in [section 2159\(g\) of this title](#)) and referred to the Committee on Foreign Affairs 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 2159 of this title](#) for the consideration of Presidential submissions.

(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.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection (a) shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection (a) to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*, That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.<sup>68</sup>

#### 42 USC 2158. **Sec. 129. Conduct Resulting in Termination of Nuclear Exports**

Export  
terminations,  
criterion.

(a) No nuclear materials and equipment or sensitive nuclear technology shall be exported to-

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

(A) detonated a nuclear explosive device; or

<sup>68</sup> Aug. 1, 1946, ch. 724, title I, §128, as added Pub. L. 95–242, title III, §306, Mar. 10, 1978, 92 Stat. 137 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–437, §15(f)(5), Nov. 2, 1994, 108 Stat. 4592.

(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 March 10, 1978,

(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 2153a\(a\) of this title](#); or

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

(C) entered into an agreement after March 10, 1978, for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs 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 [section 2159\(g\) of this title](#)), but any such determination shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in [section 2159 of this title](#) for the consideration of Presidential submissions.

(b)(1) Notwithstanding any other provision of law, including specifically [section 2151 of this title](#), and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by [section 2077\(b\) of this title](#) and regulated under part 810 of title 10, Code of

Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under [section 2371\(a\) of title 22](#), [section 4605\(j\)\(1\)](#) <sup>1</sup> of title 50, or [section 2780\(d\) of title 22](#) to have repeatedly provided support for acts of international terrorism).

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

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

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

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

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

(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.<sup>69</sup>

<sup>69</sup> Aug. 1, 1946, ch. 724, title I, §129, as added Pub. L. 95–242, title III, §307, Mar. 10, 1978, 92 Stat. 138 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–437, §15(f)(5), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 109–58, title VI, §632(a), Aug. 8, 2005, 119 Stat. 788 ; Pub. L. 110–369, title II, §203, Oct. 8, 2008, 122 Stat. 4033.

## 42 USC 2159.

Congressional  
committee  
reports.**Sec. 130. Congressional Review Procedures****(a) Committee consideration of Presidential submissions; reports**

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 section 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A) of this title, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives 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. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection (f), which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

**(b) Consideration of resolution by respective Houses of Congress**

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

**(c) Debate**

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) Vote on final approval**

Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and



(3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

(e) Appeals from decisions of Chair

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.

(f) Resolution

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.

(g) Continuity of Congressional sessions; computation of time

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

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

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

(2) For purposes of this section insofar as it applies to [section 2153 of this title-](#)

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

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

(h) Supersedure or change in rules

This section is enacted by Congress-

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

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

(i) Joint resolutions

(1) For the purposes of this subsection, the term "joint resolution" means-



(A) for an agreement for cooperation pursuant to [section 2153 of this title](#), 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 2158 of this title](#), 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 of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under [section 2153\(d\) of this title](#), a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to [section 2121\(c\), 2164\(b\), or 2164\(c\) of this title](#), the Committee on Armed Services.

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

before the end of that 45-day period (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15-day period) one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

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

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

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

(B) the vote on final passage shall be on the joint resolution of the other House.<sup>70</sup>

#### 42 USC 2160. Sec. 131. Subsequent Arrangements

(a) Consultation and concurrence; negotiations of a policy nature; notice of proposed subsequent arrangements; Nuclear Proliferation Assessment Statement; reprocessing of material

(1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization

<sup>70</sup> Aug. 1, 1946, ch. 724, title I, §130, as added Pub. L. 95–242, title III, §308, Mar. 10, 1978, 92 Stat. 139 ; amended Pub. L. 99–64, title III, §301(c), July 12, 1985, 99 Stat. 160 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 103–437, §15(f)(5), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 110–369, title II, §205, Oct. 8, 2008, 122 Stat. 4033.

facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Secretary of State is required to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the requirement to prepare a Nuclear Proliferation Assessment Statement 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) If in the view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission a proposed subsequent arrangement might significantly contribute to proliferation, the Secretary of State, in consultation with such Secretary or the Commission, shall prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving-

(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 chapter which is not subject to the procedures set forth in section 2141(b), section 2155, or section 2139(b) of this title;

(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 chapter, 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 2153](#) of this title.

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

(b) Reports to Congressional committees; increase in risk of proliferation

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-

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in [section 2159\(g\)](#) of this title) 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 March 10, 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 March 10, 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).

(c) Procedures for consideration of requests for subsequent arrangements

The Secretary of Energy shall, within ninety days after March 10, 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 subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial 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 assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State shall so declare in his response to the Department of Energy. If the Secretary of State declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Secretary of State's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

(d) Activities not prohibited, precluded, or limited

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 3224 of title 22](#); 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.

(e) Jurisdiction of Secretary of Energy

Notwithstanding [section 7172\(d\) of this title](#), 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.

(f) Subsequent arrangements involving direct or indirect commitment of United States for storage or other disposition of foreign spent nuclear fuel in United States

(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 [section 2159\(g\) of this title](#)) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in [section 2159 of this title](#) 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 a period of sixty days of continuous session (as defined in [section 2159\(g\) of this title](#)), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been 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 2159 of this title](#) 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 chapter, under [sections 2074 and 2075 of this title](#) and any other applicable sections, and any other requirements of law.

(2) Paragraph (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under [section 2074 or 2075 of this title](#) of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action,

and (C) he notifies the Committees on Foreign Affairs and Science, Space, and Technology 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.

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

(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 reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.<sup>71</sup>

**42 USC 2160b.**

**Sec. 132. Authority to Suspend Nuclear Cooperation with Nations Which Have Not Ratified the Convention on the Physical Security of Nuclear Material**

The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.<sup>72</sup>

**42 USC 2160c.**

**Sec. 133. Consultation with the Department of Defense Concerning Certain Exports and Subsequent Arrangements**

(a) In addition to other applicable requirements-

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

(2) approval may be granted by the Secretary of Energy under section 2160 of this title for the transfer of special nuclear material described in subsection (b);

only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the

<sup>71</sup> Aug. 1, 1946, ch. 724, title I, §131, as added Pub. L. 95–242, title III, §303(a), Mar. 10, 1978, 92 Stat. 127 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–437, §15(f)(6), Nov. 2, 1994, 108 Stat. 4592 ; Pub. L. 105–277, div. G, title XII, §1225(d)(6), (7), Oct. 21, 1998, 112 Stat. 2681–774.

<sup>72</sup> Aug. 1, 1946, ch. 724, title I, §132, as added Pub. L. 99–399, title VI, §602, Aug. 27, 1986, 100 Stat. 875 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

(b) Subsection (a) applies to the export or transfer of more than 2 kilograms of plutonium or more than 5 kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.<sup>73</sup>

**42 USC 2160d. Sec. 134. Further Restrictions on Exports**

**(a) In general**

Except as provided in subsection (b), the Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this chapter, the Commission determines that-

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

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

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

**(b) Medical isotope production**

**(1) Definitions**

In this subsection:

**(A) Highly enriched uranium**

The term "highly enriched uranium" means uranium enriched to include concentration of U-235 above 20 percent.

**(B) Medical isotope**

The term "medical isotope" includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

**(C) Radiopharmaceutical**

The term "radiopharmaceutical" means a radioactive isotope that-

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

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

<sup>73</sup> Aug. 1, 1946, ch. 724, title I, §133, as added Pub. L. 99–399, title VI, §603, Aug. 27, 1986, 100 Stat. 875 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 103–236, title VIII, §829, Apr. 30, 1994, 108 Stat. 521.



## (D) Recipient country

The term "recipient country" means Canada, Belgium, France, Germany, and the Netherlands.

## (2) Licenses

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

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

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

(i) uses an alternative nuclear reactor fuel; or

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

## (3) Review of physical protection requirements

## (A) In general

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

## (B) Imposition of additional requirements

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

## (4) First report to Congress

## (A) NAS study

The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine-

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

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

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

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the

products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) Feasibility

For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if-

- (i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;
- (ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and
- (iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

(C) Report by the Secretary

Not later than 5 years after August 8, 2005, the Secretary shall submit to Congress a report that-

- (i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and
- (ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) Second report to Congress

If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after August 8, 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) Certification

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

(7) Sunset provision

After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.

(c) Medical production license sunset

Effective 7 years after January 2, 2013, the Commission may not issue a license for the export of highly enriched uranium from the United States for the purposes of medical isotope production.

(d) Medical production license extension

The period referred to in subsection (c) may be extended for no more than 6 years if, no earlier than 6 years after January 2, 2013, the Secretary of Energy certifies to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate that-

(1) there is insufficient global supply of molybdenum-99 produced without the use of highly enriched uranium available to satisfy the domestic United States market; and

(2) the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the most effective temporary means to increase the supply of molybdenum-99 to the domestic United States market.

(e) Public notice

To ensure public review and comment, the development of the certification described in subsection (d) shall be carried out through announcement in the Federal Register.

(f) Joint certification

(1) In general

In accordance with paragraph (2), the ban on the export of highly enriched uranium for purposes of medical isotope production referred to in subsections (c) and (d) shall not go into effect unless the Secretary of Energy and the Secretary of Health and Human Services have jointly certified that-

(A) there is a sufficient supply of molybdenum-99 produced without the use of highly enriched uranium available to meet the needs of patients in the United States; and

(B) it is not necessary to export United States-origin highly enriched uranium for the purposes of medical isotope production in order to meet United States patient needs.

(2) Time of certification

The joint certification under paragraph (1) shall be made not later than 7 years after January 2, 2013, except that, if the period referred to in subsection (c) is extended under subsection (d), the 7-year deadline under this paragraph shall be extended by a period equal to the period of such extension under subsection (d).

(g) Suspension of medical production license

At any time after the restriction of export licenses provided for in subsection (c) becomes effective, if there is a critical shortage in the supply of molybdenum-99 available to satisfy the domestic United States medical isotope needs, the restriction of export licenses may be suspended for a period of no more than 12 months, if-

(1) the Secretary of Energy certifies to the Congress that the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the only effective temporary means to

increase the supply of molybdenum-99 necessary to meet United States medical isotope needs during that period; and

(2) the Congress enacts a Joint Resolution approving the temporary suspension of the restriction of export licenses.

(h) Definitions

As used in this section-

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

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

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

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

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

(4) the term "medical isotope" includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.<sup>74</sup>

42 USC 2160e.

**Sec. 135. Congressional Review and Oversight of Agreements with Iran**

(a) Transmission to Congress of nuclear agreements with Iran and verification assessment with respect to such agreements

(1) Transmission of agreements

Not later than 5 calendar days after reaching an agreement with Iran relating to the nuclear program of Iran, the President shall transmit to the appropriate congressional committees and leadership-

(A) the agreement, as defined in subsection (h)(1), including all related materials and annexes;

(B) a verification assessment report of the Secretary of State prepared under paragraph (2) with respect to the agreement; and

(C) a certification that-

(i) the agreement includes the appropriate terms, conditions, and duration of the agreement's requirements with respect to Iran's nuclear activities and provisions describing any sanctions to be waived, suspended, or otherwise reduced by the United States, and any other nation or entity, including the United Nations; and

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<sup>74</sup> Aug. 1, 1946, ch. 724, title I, §134, as added Pub. L. 102–486, title IX, §903(a)(1), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 109–58, title VI, §630, Aug. 8, 2005, 119 Stat. 785 ; Pub. L. 112–239, div. C, title XXXI, §3174, Jan. 2, 2013, 126 Stat. 2214.

(ii) the President determines the agreement meets United States non-proliferation objectives, does not jeopardize the common defense and security, provides an adequate framework to ensure that Iran's nuclear activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security, and ensures that Iran's nuclear activities permitted thereunder will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose.

(2) Verification assessment report

(A) In general

The Secretary of State shall prepare, with respect to an agreement described in paragraph (1), a report assessing-

(i) the extent to which the Secretary will be able to verify that Iran is complying with its obligations and commitments under the agreement;

(ii) the adequacy of the safeguards and other control mechanisms and other assurances contained in the agreement with respect to Iran's nuclear program to ensure Iran's activities permitted thereunder will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose; and

(iii) the capacity and capability of the International Atomic Energy Agency to effectively implement the verification regime required by or related to the agreement, including whether the International Atomic Energy Agency will have sufficient access to investigate suspicious sites or allegations of covert nuclear-related activities and whether it has the required funding, manpower, and authority to undertake the verification regime required by or related to the agreement.

(B) Assumptions

In preparing a report under subparagraph (A) with respect to an agreement described in paragraph (1), the Secretary shall assume that Iran could-

(i) use all measures not expressly prohibited by the agreement to conceal activities that violate its obligations and commitments under the agreement; and

(ii) alter or deviate from standard practices in order to impede efforts to verify that Iran is complying with those obligations and commitments.

(C) Classified annex

A report under subparagraph (A) shall be transmitted in unclassified form, but shall include a classified annex prepared in consultation with the Director of National Intelligence, summarizing relevant classified information.

(3) Exception

(A) In general

Neither the requirements of subparagraphs (B) and (C) of paragraph (1), nor subsections (b) through (g) of this section, shall apply to an agreement described in subsection (h)(5) or to the EU-Iran Joint Statement made on April 2, 2015.

(B) Additional requirement

Notwithstanding subparagraph (A), any agreement as defined in subsection (h)(1) and any related materials, whether concluded before or after May 22, 2015, shall not be subject to the exception in subparagraph (A).

(b) Period for review by Congress of nuclear agreements with Iran

(1) In general

During the 30-calendar day period following transmittal by the President of an agreement pursuant to subsection (a), the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives shall, as appropriate, hold hearings and briefings and otherwise obtain information in order to fully review such agreement.

(2) Exception

The period for congressional review under paragraph (1) shall be 60 calendar days if an agreement, including all materials required to be transmitted to Congress pursuant to subsection (a)(1), is transmitted pursuant to subsection (a) between July 10, 2015, and September 7, 2015.

(3) Limitation on actions during initial congressional review period

Notwithstanding any other provision of law, except as provided in paragraph (6), prior to and during the period for transmission of an agreement in subsection (a)(1) and during the period for congressional review provided in paragraph (1), including any additional period as applicable under the exception provided in paragraph (2), the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a).

(4) Limitation on actions during presidential consideration of a joint resolution of disapproval

Notwithstanding any other provision of law, except as provided in paragraph (6), if a joint resolution of disapproval described in subsection (c)(2)(B) passes both Houses of Congress, the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a) for a period of 12 calendar days following the date of such passage.

(5) Limitation on actions during congressional reconsideration of a joint resolution of disapproval

Notwithstanding any other provision of law, except as provided in paragraph (6), if a joint resolution of disapproval described in

subsection (c)(2)(B) passes both Houses of Congress, and the President vetoes such joint resolution, the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a) for a period of 10 calendar days following the date of the President's veto.

(6) Exception

The prohibitions under paragraphs (3) through (5) do not apply to any new deferral, waiver, or other suspension of statutory sanctions pursuant to the Joint Plan of Action if that deferral, waiver, or other suspension is made-

(A) consistent with the law in effect on May 22, 2015; and

(B) not later than 45 calendar days before the transmission by the President of an agreement, assessment report, and certification under subsection (a).

(7) Definition

In the House of Representatives, for purposes of this subsection, the terms "transmittal," "transmitted," and "transmission" mean transmittal, transmitted, and transmission, respectively, to the Speaker of the House of Representatives.

(c) Effect of congressional action with respect to nuclear agreements with Iran

(1) Sense of Congress

It is the sense of Congress that-

(A) the sanctions regime imposed on Iran by Congress is primarily responsible for bringing Iran to the table to negotiate on its nuclear program;

(B) these negotiations are a critically important matter of national security and foreign policy for the United States and its closest allies;

(C) this section does not require a vote by Congress for the agreement to commence;

(D) this section provides for congressional review, including, as appropriate, for approval, disapproval, or no action on statutory sanctions relief under an agreement; and

(E) even though the agreement may commence, because the sanctions regime was imposed by Congress and only Congress can permanently modify or eliminate that regime, it is critically important that Congress have the opportunity, in an orderly and deliberative manner, to consider and, as appropriate, take action affecting the statutory sanctions regime imposed by Congress.

(2) In general

Notwithstanding any other provision of law, action involving any measure of statutory sanctions relief by the United States pursuant to an agreement subject to subsection (a) or the Joint Plan of Action-

(A) may be taken, consistent with existing statutory requirements for such action, if, during the period for review

provided in subsection (b), there is enacted a joint resolution stating in substance that the Congress does favor the agreement;

(B) may not be taken if, during the period for review provided in subsection (b), there is enacted a joint resolution stating in substance that the Congress does not favor the agreement; or

(C) may be taken, consistent with existing statutory requirements for such action, if, following the period for review provided in subsection (b), there is not enacted any such joint resolution.

(3) Definition

For the purposes of this subsection, the phrase "action involving any measure of statutory sanctions relief by the United States" shall include waiver, suspension, reduction, or other effort to provide relief from, or otherwise limit the application of statutory sanctions with respect to, Iran under any provision of law or any other effort to refrain from applying any such sanctions.

(d) Congressional oversight of Iranian compliance with nuclear agreements

(1) In general

The President shall keep the appropriate congressional committees and leadership fully and currently informed of all aspects of Iranian compliance with respect to an agreement subject to subsection (a).

(2) Potentially significant breaches and compliance incidents

The President shall, within 10 calendar days of receiving credible and accurate information relating to a potentially significant breach or compliance incident by Iran with respect to an agreement subject to subsection (a), submit such information to the appropriate congressional committees and leadership.

(3) Material breach report

Not later than 30 calendar days after submitting information about a potentially significant breach or compliance incident pursuant to paragraph (2), the President shall make a determination whether such potentially significant breach or compliance issue constitutes a material breach and, if there is such a material breach, whether Iran has cured such material breach, and shall submit to the appropriate congressional committees and leadership such determination, accompanied by, as appropriate, a report on the action or failure to act by Iran that led to the material breach, actions necessary for Iran to cure the breach, and the status of Iran's efforts to cure the breach.

(4) Semi-annual report

Not later than 180 calendar days after entering into an agreement described in subsection (a), and not less frequently than once every 180 calendar days thereafter, the President shall submit to the appropriate congressional committees and leadership a report on Iran's nuclear program and the compliance of Iran with the agreement during the period covered by the report, including the following elements:

(A) Any action or failure to act by Iran that breached the agreement or is in noncompliance with the terms of the agreement.



(B) Any delay by Iran of more than one week in providing inspectors access to facilities, people, and documents in Iran as required by the agreement.

(C) Any progress made by Iran to resolve concerns by the International Atomic Energy Agency about possible military dimensions of Iran's nuclear program.

(D) Any procurement by Iran of materials in violation of the agreement or which could otherwise significantly advance Iran's ability to obtain a nuclear weapon.

(E) Any centrifuge research and development conducted by Iran that-

(i) is not in compliance with the agreement; or

(ii) may substantially reduce the breakout time of acquisition of a nuclear weapon by Iran, if deployed.

(F) Any diversion by Iran of uranium, carbon-fiber, or other materials for use in Iran's nuclear program in violation of the agreement.

(G) Any covert nuclear activities undertaken by Iran, including any covert nuclear weapons-related or covert fissile material activities or research and development.

(H) An assessment of whether any Iranian financial institutions are engaged in money laundering or terrorist finance activities, including names of specific financial institutions if applicable.

(I) Iran's advances in its ballistic missile program, including developments related to its long-range and inter-continental ballistic missile programs.

(J) An assessment of-

(i) whether Iran directly supported, financed, planned, or carried out an act of terrorism against the United States or a United States person anywhere in the world;

(ii) whether, and the extent to which, Iran supported acts of terrorism, including acts of terrorism against the United States or a United States person anywhere in the world;

(iii) all actions, including in international fora, being taken by the United States to stop, counter, and condemn acts by Iran to directly or indirectly carry out acts of terrorism against the United States and United States persons;

(iv) the impact on the national security of the United States and the safety of United States citizens as a result of any Iranian actions reported under this paragraph; and

(v) all of the sanctions relief provided to Iran, pursuant to the agreement, and a description of the relationship between each sanction waived, suspended, or deferred and Iran's nuclear weapon's program.

(K) An assessment of whether violations of internationally recognized human rights in Iran have changed, increased, or decreased, as compared to the prior 180-day period.

## (5) Additional reports and information

## (A) Agency reports

Following submission of an agreement pursuant to subsection (a) to the appropriate congressional committees and leadership, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of any of those committees or leadership, promptly furnish to those committees or leadership their views as to whether the safeguards and other controls contained in the agreement with respect to Iran's nuclear program provide an adequate framework to ensure that Iran's activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security.

## (B) Provision of information on nuclear initiatives with Iran

The President shall keep the appropriate congressional committees and leadership fully and currently informed of any initiative or negotiations with Iran relating to Iran's nuclear program, including any new or amended agreement.

## (6) Compliance certification

After the review period provided in subsection (b), the President shall, not less than every 90 calendar days-

## (A) determine whether the President is able to certify that-

(i) Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements;

(ii) Iran has not committed a material breach with respect to the agreement or, if Iran has committed a material breach, Iran has cured the material breach;

(iii) Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program; and

(iv) suspension of sanctions related to Iran pursuant to the agreement is-

(I) appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and

(II) vital to the national security interests of the United States; and

(B) if the President determines he is able to make the certification described in subparagraph (A), make such certification to the appropriate congressional committees and leadership.

## (7) Sense of Congress

It is the sense of Congress that-

(A) United States sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under an agreement, as defined in subsection (h)(1);

(B) issues not addressed by an agreement on the nuclear program of Iran, including fair and appropriate compensation for Americans who were terrorized and subjected to torture while held in captivity for 444 days after the seizure of the United States

Embassy in Tehran, Iran, in 1979 and their families, the freedom of Americans held in Iran, the human rights abuses of the Government of Iran against its own people, and the continued support of terrorism worldwide by the Government of Iran, are matters critical to ensure justice and the national security of the United States, and should be expeditiously addressed;

(C) the President should determine the agreement in no way compromises the commitment of the United States to Israel's security, nor its support for Israel's right to exist; and

(D) in order to responsibly implement any long-term agreement reached between the P5+1 countries and Iran, it is critically important that Congress have the opportunity to review any agreement and, as necessary, take action to modify the statutory sanctions regime imposed by Congress.

(e) Expedited consideration of legislation

(1) Initiation

(A) In general

In the event the President does not submit a certification pursuant to subsection (d)(6) during each 90-day period following the review period provided in subsection (b), or submits a determination pursuant to subsection (d)(3) that Iran has materially breached an agreement subject to subsection (a) and the material breach has not been cured, qualifying legislation introduced within 60 calendar days of such event shall be entitled to expedited consideration pursuant to this subsection.

(B) Definition

In the House of Representatives, for purposes of this paragraph, the terms "submit" and "submits" mean submit and submits, respectively, to the Speaker of the House of Representatives.

(2) Qualifying legislation defined

For purposes of this subsection, the term "qualifying legislation" means only a bill of either House of Congress-

(A) the title of which is as follows: "A bill reinstating statutory sanctions imposed with respect to Iran."; and

(B) the matter after the enacting clause of which is: "Any statutory sanctions imposed with respect to Iran pursuant to \_\_\_\_\_ that were waived, suspended, reduced, or otherwise relieved pursuant to an agreement submitted pursuant to section 135(a) of the Atomic Energy Act of 1954 are hereby reinstated and any action by the United States Government to facilitate the release of funds or assets to Iran pursuant to such agreement, or provide any further waiver, suspension, reduction, or other relief pursuant to such agreement is hereby prohibited.", with the blank space being filled in with the law or laws under which sanctions are to be reinstated.

(3) Introduction

During the 60-calendar day period provided for in paragraph (1), qualifying legislation may be introduced-

(A) in the House of Representatives, by the majority leader or the minority leader; and

(B) in the Senate, by the majority leader (or the majority leader's designee) or the minority leader (or the minority leader's designee).

(4) Floor consideration in House of Representatives

(A) Reporting and discharge

If a committee of the House to which qualifying legislation has been referred has not reported such qualifying legislation within 10 legislative days after the date of referral, that committee shall be discharged from further consideration thereof.

(B) Proceeding to consideration

Beginning on the third legislative day after each committee to which qualifying legislation has been referred reports it to the House or has been discharged from further consideration thereof, it shall be in order to move to proceed to consider the qualifying legislation in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the qualifying legislation with regard to the same agreement. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) Consideration

The qualifying legislation shall be considered as read. All points of order against the qualifying legislation and against its consideration are waived. The previous question shall be considered as ordered on the qualifying legislation to final passage without intervening motion except two hours of debate equally divided and controlled by the sponsor of the qualifying legislation (or a designee) and an opponent. A motion to reconsider the vote on passage of the qualifying legislation shall not be in order.

(5) Consideration in the Senate

(A) Committee referral

Qualifying legislation introduced in the Senate shall be referred to the Committee on Foreign Relations.

(B) Reporting and discharge

If the Committee on Foreign Relations has not reported such qualifying legislation within 10 session days after the date of referral of such legislation, that committee shall be discharged from further consideration of such legislation and the qualifying legislation shall be placed on the appropriate calendar.

(C) Proceeding to consideration

Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time after the committee authorized to consider qualifying legislation reports it to the Senate or has been discharged from its consideration (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of qualifying legislation, and all points of order

against qualifying legislation (and against consideration of the qualifying legislation) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. 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 qualifying legislation is agreed to, the qualifying legislation shall remain the unfinished business until disposed of.

(D) Debate

Debate on qualifying legislation, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the qualifying legislation is not in order.

(E) Vote on passage

The vote on passage shall occur immediately following the conclusion of the debate on the qualifying legislation and a single quorum call at the conclusion of the debate, if requested in accordance with the rules of the Senate.

(F) Rulings of the Chair on procedure

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to qualifying legislation shall be decided without debate.

(G) Consideration of veto messages

Debate in the Senate of any veto message with respect to qualifying legislation, including all debatable motions and appeals in connection with such qualifying legislation, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(6) Rules relating to Senate and House of Representatives

(A) Coordination with action by other House

If, before the passage by one House of qualifying legislation of that House, that House receives qualifying legislation from the other House, then the following procedures shall apply:

(i) The qualifying legislation of the other House shall not be referred to a committee.

(ii) With respect to qualifying legislation of the House receiving the legislation-

(I) the procedure in that House shall be the same as if no qualifying legislation had been received from the other House; but

(II) the vote on passage shall be on the qualifying legislation of the other House.

(B) Treatment of a bill of other House

If one House fails to introduce qualifying legislation under this section, the qualifying legislation of the other House shall be entitled to expedited floor procedures under this section.

(C) Treatment of companion measures

If, following passage of the qualifying legislation in the Senate, the Senate then receives a companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) Application to revenue measures

The provisions of this paragraph shall not apply in the House of Representatives to qualifying legislation which is a revenue measure.

(f) Rules of House of Representatives and Senate

Subsection (e) is enacted by Congress-

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of legislation described in those sections, and supersede other rules only to the extent that they are inconsistent with such rules; and

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

(g) Rules of construction

Nothing in the section shall be construed as-

(1) modifying, or having any other impact on, the President's authority to negotiate, enter into, or implement appropriate executive agreements, other than the restrictions on implementation of the agreements specifically covered by this section;

(2) allowing any new waiver, suspension, reduction, or other relief from statutory sanctions with respect to Iran under any provision of law, or allowing the President to refrain from applying any such sanctions pursuant to an agreement described in subsection (a) during the period for review provided in subsection (b);

(3) revoking or terminating any statutory sanctions imposed on Iran; or

(4) authorizing the use of military force against Iran.

(h) Definitions

In this section:

(1) Agreement

The term "agreement" means an agreement related to the nuclear program of Iran that includes the United States, commits the United States to take action, or pursuant to which the United States commits or otherwise agrees to take action, regardless of the form it takes, whether a political commitment or otherwise, and regardless of whether it is legally binding or not, including any joint comprehensive plan of action entered into or made between Iran and any other parties, and any additional materials related thereto, including annexes,

appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future.

(2) Appropriate congressional committees

The term "appropriate congressional committees" means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs of the House of Representatives.

(3) Appropriate congressional committees and leadership

The term "appropriate congressional committees and leadership" means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on Foreign Relations, and the Majority and Minority Leaders of the Senate and the Committee on Ways and Means, the Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs, and the Speaker, Majority Leader, and Minority Leader of the House of Representatives.

(4) Iranian financial institution

The term "Iranian financial institution" has the meaning given the term in [section 8513b\(d\) of title 22](#).

(5) Joint Plan of Action

The term "Joint Plan of Action" means the Joint Plan of Action, signed at Geneva November 24, 2013, by Iran and by France, Germany, the Russian Federation, the People's Republic of China, the United Kingdom, and the United States, and all implementing materials and agreements related to the Joint Plan of Action, including the technical understandings reached on January 12, 2014, the extension thereto agreed to on July 18, 2014, the extension agreed to on November 24, 2014, and any materially identical extension that is agreed to on or after May 22, 2015.

(6) EU-Iran Joint Statement

The term "EU-Iran Joint Statement" means only the Joint Statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif made on April 2, 2015, at Lausanne, Switzerland.

(7) Material breach

The term "material breach" means, with respect to an agreement described in subsection (a), any breach of the agreement, or in the case of non-binding commitments, any failure to perform those commitments, that substantially-

(A) benefits Iran's nuclear program;

(B) decreases the amount of time required by Iran to achieve a nuclear weapon; or

(C) deviates from or undermines the purposes of such agreement.

(8) Noncompliance defined

The term "noncompliance" means any departure from the terms of an agreement described in subsection (a) that is not a material breach.

(9) P5+1 countries

The term "P5+1 countries" means the United States, France, the Russian Federation, the People's Republic of China, the United Kingdom, and Germany.

(10) United States person

The term "United States person" has the meaning given that term in [section 8511 of title 22](#).<sup>75</sup>

## **Chapter 12—Control of Information**

### **42 USC 2161. Sec. 141. Policy of Commission**

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

(a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by [section 2164](#) of this title; and

(b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.<sup>76</sup>

### **42 USC 2162. Sec. 142. Classification and Declassification of Restricted Data**

(a) Periodic determination

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

(b) Continuous review

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

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<sup>75</sup> Aug. 1, 1946, ch. 724, title I, §135, as added Pub. L. 114–17, §2, May 22, 2015, 129 Stat. 201.

<sup>76</sup> Aug. 1, 1946, ch. 724, title I, §141, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 940; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



(c) Joint determination on atomic weapons; Presidential determination on disagreement

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

(d) Removal from Restricted Data category

(1) The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection (b) or (d) of section 2164 of this title.

(2) The Commission may restore to the Restricted Data category any information related to the design of nuclear weapons removed under paragraph (1) if the Commission and the Department of Defense jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information related to the design of nuclear weapons shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.

(e) Joint determination on atomic energy programs

(1) The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of National Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended,<sup>1</sup> and can be adequately safeguarded as defense information.

(2) The Commission may restore to the Restricted Data category any information concerning atomic energy programs of other nations removed under paragraph (1) if the Commission and the Director of National Intelligence jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information concerning atomic energy programs of other nations shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.<sup>77</sup>

**42 USC 2163. Sec. 143. Access to Restricted Data**

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under section 2165(b) and (c) of this title to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: Provided, however, That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: And provided further, That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 2165 of this title.<sup>78</sup>

**42 USC 2164. Sec. 144. International Cooperation**

(a) By Commission

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

- (1) refining, purification, and subsequent treatment of source material;
- (2) civilian reactor development;
- (3) production of special nuclear material;
- (4) health and safety;
- (5) industrial and other applications of atomic energy for peaceful purposes; and

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<sup>77</sup> Aug. 1, 1946, ch. 724, title I, §142, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 941; amended Pub. L. 102–484, div. C, title XXXI, §3152, Oct. 23, 1992, 106 Stat. 2644; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–337, div. A, title XXXI, §3155(c)(2), (3), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 112–239, div. C, title XXXI, §3163, Jan. 2, 2013, 126 Stat. 2205.

<sup>78</sup> Aug. 1, 1946, ch. 724, title I, §143, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 941; amended Aug. 6, 1956, ch. 1015, §14, 70 Stat. 1071; Pub. L. 87–206, §5, Sept. 6, 1961, 75 Stat. 476; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

(6) research and development relating to the foregoing:

*Provided, however,* That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title, or is undertaken pursuant to an agreement existing on August 30, 1954.

(b) By Department of Defense

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

(1) the development of defense plans;

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

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

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

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(c) Exchange of information concerning atomic weapons; research, development, or design, of military reactors

In addition to the cooperation authorized in subsections (a) and (b), the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

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

(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors, whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(d) By Department of Energy

(1) In addition to the cooperation authorized in subsections (a), (b), and (c), the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with another nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 2162 of this title, as is necessary for—

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

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

(C) the verification of a treaty; and

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

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

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

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

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title.

(e) Communication of data by other Government agencies

The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), (c), or (d), such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.<sup>79</sup>

**42 USC 2165. Sec. 145. Security Restrictions**

(a) On contractors and licensees

No arrangement shall be made under section 2051 of this title, no contract shall be made or continued in effect under section 2061 of this title, and no license shall be issued under section 2133 or 2134 of this title, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in

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<sup>79</sup> Aug. 1, 1946, ch. 724, title I, §144, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 942; amended Pub. L. 85–479, §§5–7, July 2, 1958, 72 Stat. 278; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–337, div. C, title XXXI, §3155(a), (c)(4), Oct. 5, 1994, 108 Stat. 3091, 3092.

writing not to permit any individual to have access to Restricted Data until the Director of the Office of Personnel Management shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Employment of personnel; access to Restricted Data

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

(c) Acceptance of investigation and clearance granted by other Government agencies

In lieu of the investigation and report to be made by the Director of the Office of Personnel Management pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) Investigations by FBI

In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Director of the Office of Personnel Management shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Director of the Office of Personnel Management for his information and appropriate action.

(e) Presidential investigation

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

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

(f) Performance of personnel security investigations by FBI

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

by the Federal Bureau of Investigation rather than by the Civil Service Commission.

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

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

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

(g) Investigation standards

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

(h) War time clearance

Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by subsection (b), to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.<sup>80</sup>

#### **42 USC 2166. Sec. 146. Applicability of Other Laws**

(a) Sections 2161 to 2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.<sup>81</sup>

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<sup>80</sup> Aug. 1, 1946, ch. 724, title I, §145, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 942; amended Pub. L. 85–681, §5, Aug. 19, 1958, 72 Stat. 633; Pub. L. 87–206, §6, Sept. 6, 1961, 75 Stat. 476; Pub. L. 87–615, §10, Aug. 29, 1962, 76 Stat. 411; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, §3144(a), Oct. 5, 1999, 113 Stat. 934; Pub. L. 108–136, div. C, title XXXI, §3131, Nov. 24, 2003, 117 Stat. 1749.

<sup>81</sup> Aug. 1, 1946, ch. 724, title I, §146, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 943; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2167. Sec. 147. Safeguards Information**

(a) Confidentiality of certain types of information; issuance of regulations and orders; considerations for exercise of Commission's authority; disclosure of routes and quantities of shipment; civil penalties; withholding of information from Congressional committees

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

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

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

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2) <sup>1</sup> if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

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

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

Nothing in this chapter shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 2282 of this title. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(b) Regulations or orders issued under this section and section 2201(b) of this title for purposes of section 2273 of this title

For the purposes of section 2273 of this title, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(c) Judicial review

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

(d) Reports to Congress; contents

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

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

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

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.<sup>82</sup>

#### 42 USC 2168. Sec. 148. Dissemination of Unclassified Information

(a) Dissemination prohibited; rules and regulations; determinations of Secretary prerequisite to issuance of prohibiting regulations or orders; criteria

(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Energy (hereinafter in this section referred to as the "Secretary"), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

<sup>82</sup> Aug. 1, 1946, ch. 724, title I, §147, as added Pub. L. 96–295, title II, §207(a)(1), June 30, 1980, 94 Stat. 788; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 2162 of this title.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1) of this subsection—

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

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

**(b) Civil penalties**

(1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections (b) and (c) of section 2282 of this title, shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection (a) of such section.

(c) Criminal penalties

For the purposes of section 2273 of this title, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(d) Judicial review

Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.<sup>83</sup>

**42 USC 2169. Sec. 149. Fingerprinting for Criminal History Record Checks**

(a) In general

(1)(A)(i) The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).

(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)—

(I) are licensed or certified to engage in an activity subject to regulation by the Commission;

(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

(III) have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

(B) The Commission shall require to be fingerprinted any individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

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

(ii) is permitted access to safeguards information under section 2167 of this title.

(2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.

(3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

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<sup>83</sup> Aug. 1, 1946, ch. 724, title I, §148, as added Pub. L. 97–90, title II, §210(a)(1), Dec. 4, 1981, 95 Stat. 1169; amended Pub. L. 97–415, §17, Jan. 4, 1983, 96 Stat. 2076; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 112–239, div. C, title XXXI, §3134(c), Jan. 2, 2013, 126 Stat. 2193.

(4) Notwithstanding any other provision of law—

(A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and

(B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

(b) Waiver

The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

(c) Regulations

For purposes of administering this section, the Commission shall prescribe requirements—

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to a utilization facility, radioactive material, or other property described in subsection (a)(1)(B) or shall be permitted access to safeguards information under section 2167 of this title;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

(d) Use of biometric methods

The Commission may require a person or individual to conduct fingerprinting under subsection (a)(1) by authorizing or requiring the use of any alternative biometric method for identification that has been approved by—

(1) the Attorney General; and

(2) the Commission, by regulation.

(e) Processing fees; use of amounts collected

(1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.<sup>84</sup>

### **Chapter 13—Patents and Inventions**

42 USC 2181.

#### **Sec. 151. Inventions Relating to Atomic Weapons, and Filing of Reports**

(a) Denial of patent; revocation of prior patents

No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is revoked, and just compensation shall be made therefor.

(b) Denial of rights; revocation of prior rights

No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

(c) Report of invention to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office  
Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

(d) Report to Commission by Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

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<sup>84</sup> Aug. 1, 1946, ch. 724, title I, §149, as added Pub. L. 99–399, title VI, §606(a), Aug. 27, 1986, 100 Stat. 876; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, §652, Aug. 8, 2005, 119 Stat. 810.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection (c), and shall provide the Commission access to all such applications.

(e) Confidential information; circumstances permitting disclosure Reports filed pursuant to subsection (c) of this section, and applications to which access is provided under subsection (d) of this section, shall be kept in confidence by the Commission, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission.<sup>85</sup>

**42 USC 2182. Sec. 152. Inventions Made or Conceived During Commission Contracts; Ownership; Waiver; Hearings**

Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the

<sup>85</sup> Aug. 1, 1946, ch. 724, title I, §151, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 943 ; amended Pub. L. 87–206, §§7–9, Sept. 6, 1961, 75 Stat. 477 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(18)], Nov. 29, 1999, 113 Stat. 1536 , 1501A-585.

application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Patent Trial and Appeal Board. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference and derivation cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Patent Trial and Appeal Board.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.<sup>86</sup>

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<sup>86</sup> Aug. 1, 1946, ch. 724, title I, §152, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 944 ; amended Pub. L. 87–206, §10, Sept. 6, 1961, 75 Stat. 477 ; Pub. L. 87–615, §11, Aug. 29, 1962, 76 Stat. 411 ; Pub. L. 97–164, title I, §162(2), Apr. 2, 1982, 96 Stat. 49 ; Pub. L. 98–

**42 USC 2183. Sec. 153. Nonmilitary Utilization****(a) Declaration of public interest**

The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this chapter.

**(b) Action by Commission**

Whenever any patent has been declared affected with the public interest, pursuant to subsection (a)-

(1) the Commission is licensed to use the invention or discovery covered by such patent in performing any of its powers under this chapter; and

(2) any person may apply to the Commission for a nonexclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this chapter.

**(c) Application for patent**

Any person-

(1) who has made application to the Commission for a license under sections 2073, 2092, 2093, 2111, 2133 or 2134 of this title, or a permit or lease under section 2097 of this title;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 2092 or 2111 of this title; or

(4) whose activities or proposed activities are authorized under section 2051 of this title,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

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622, title II, §205(b), Nov. 8, 1984, 98 Stat. 3388 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(19)], Nov. 29, 1999, 113 Stat. 1536 , 1501A-585; Pub. L. 112–29, §7(d)(1), Sept. 16, 2011, 125 Stat. 315.

(d) Hearings

Whenever any person has made an application to the Commission for a patent license pursuant to subsection (c)-

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

(e) Commission's findings

If, after any hearing conducted pursuant to subsection (d), the Commission finds that-

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this chapter; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant, the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

(f) Limitations on issuance of patent

The Commission shall not grant any patent license pursuant to subsection (e) for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection (c), and without separate notification and hearing as provided in subsection (d), and without a separate finding as provided in subsection (e).

(g) Royalty fees

The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection (b) or (e) shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such



agreement shall be determined for each patent license by the Commission pursuant to [section 2187\(c\) of this title](#).

(h) Effective period

The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.<sup>87</sup>

**42 USC 2184. Sec. 154. Injunctions; Measure of Damages**

No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by section 2183(b) or 2183(e) of this title. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to section 2187(c) of this title, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to [section 2187\(c\) of this title](#). If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.<sup>88</sup>

**42 USC 2185. Sec. 155. Prior Art**

In connection with applications for patents covered by this subchapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.<sup>89</sup>

**42 USC 2186. Sec. 156. Commission Patent Licenses**

The Commission shall establish standard specifications upon which it may grant a patent license to use any patent declared to be affected with the public interest pursuant to section 2183(a) of this title. Such a patent license shall not waive any of the other provisions of this chapter.<sup>90</sup>

<sup>87</sup> Aug. 1, 1946, ch. 724, title I, §153, as added Aug. 20, 1954, ch. 1073, §1, 68 Stat. 945 ; amended Pub. L. 86–50, §114, June 23, 1959, 73 Stat. 87 ; Pub. L. 88–394, §1, Aug. 1, 1964, 78 Stat. 376 ; Pub. L. 91–161, §1, Dec. 24, 1969, 83 Stat. 444 ; Pub. L. 93–377, §6, Aug. 17, 1974, 88 Stat. 475 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>88</sup> Aug. 1, 1946, ch. 724, title I, §154, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 946 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>89</sup> Aug. 1, 1946, ch. 724, title I, §155, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>90</sup> Aug. 1, 1946, ch. 724, title I, §156, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947 ; amended Pub. L. 96–517, §7(a), Dec. 12, 1980, 94 Stat. 3027 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2187. Sec. 157. Compensation, Awards, and Royalties****(a) Patent Compensation Board**

The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284 of title 18, except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

**(b) Eligibility**

(1) Any owner of a patent licensed under [section 2188 or 2183\(b\) or 2183\(e\) of this title](#), or any patent licensee thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in [section 2181 of this title](#) shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this chapter and who has complied with the provisions of [section 2181\(c\) of this title](#) may make application to the Commission for, and the Commission may grant, an award. The Commission may also, after consultation with the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

**(c) Standards**

(1) In determining a reasonable royalty fee as provided for in [section 2183\(b\) or 2183\(e\) of this title](#), the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in [section 2181 of this title](#), or in determining the amount of any award under subsection (b)(3), the Commission shall take into account the considerations set forth in paragraph (1) of this subsection and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

(d) Limitations

Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed.<sup>91</sup>

**42 USC 2188. Sec. 158. Monopolistic Use of Patents**

Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production of special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in section 2135(a) of this title, there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 2187 of this title.<sup>92</sup>

**42 USC 2189. Sec. 159. Federally Financed Research**

Nothing in this chapter shall affect the right of the Commission to require that patents granted on inventions, made or conceived during the course of federally financed research or operations, be assigned to the United States.<sup>93</sup>

**42 USC 2190. Sec. 160. Saving Clause**

Any patent application on which a patent was denied by the United States Patent and Trademark Office under sections 1811(a)(1), 1811(a)(2), or 1811(b) of this title, and which is not prohibited by [section 2181 or 2185 of this title](#) may be reinstated upon application to the Commissioner of Patents and Trademarks within one year after August 30, 1954 and shall then be deemed to have been continuously pending since its original filing date: *Provided, however,* That no patent issued

<sup>91</sup> Aug. 1, 1946, ch. 724, title I, §157, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947 ; amended Pub. L. 87–206, §11, Sept. 6, 1961, 75 Stat. 478 ; Pub. L. 93–276, title II, §201, May 10, 1974, 88 Stat. 119 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>92</sup> Aug. 1, 1946, ch. 724, title I, §158, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947 ; amended Pub. L. 87–206, §12, Sept. 6, 1961, 75 Stat. 478 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>93</sup> Aug. 1, 1946, ch. 724, title I, §159, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.<sup>94</sup>

## Chapter 14—General Authority

### 42 USC 2201. Sec. 161. General Duties of Commission

In the performance of its functions the Commission is authorized to—

(a) Establishment of advisory boards

establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Standards governing use and possession of material

establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

(c) Studies and investigations

make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this chapter, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

(d) Employment of personnel

appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation

<sup>94</sup> Aug. 1, 1946, ch. 724, title I, §160, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948 ; amended Pub. L. 93–596, §3, Jan. 2, 1975, 88 Stat. 1949 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule) whose position would be subject to chapter 51 and subchapter III of chapter 53 of title 5, if such provisions were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such provisions for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by chapter 51 and subchapter III of chapter 53 of title 5, as of the same date such rates are authorized for positions subject to such provisions. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

(e) Acquisition of material, property, etc.; negotiation of commercial leases

acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 2224 of this title: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising <sup>1</sup> and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

(f) Utilization of other Federal agencies

with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

(g) Acquisition of real and personal property

acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 2224 of this title, and to sell, lease, grant, and dispose of such real and personal property as provided in this chapter;

(h) Consideration of license applications

consider in a single application one or more of the activities for which a license is required by this chapter, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

(i) Regulations governing Restricted Data

prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this chapter, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 2073 of this title or produced by any person in connection with any activity authorized pursuant to this chapter, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, (3) to govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 2133 or 2134(b) of this title, including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this chapter that has control over any fund for the decommissioning of the facility;

(j) Disposition of surplus materials

without regard to the provisions of chapters 1 to 11 (except section 559) of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection (m) shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

(k) Carrying of firearms; authority to make arrests without warrant authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or

contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable ground to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this chapter that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

(l) Repealed. Pub. L. 87–456, title III, §303(c), May 24, 1962, 76 Stat. 78.

(m) Agreements regarding production

enter into agreements with persons licensed under section 2133, 2134, 2073(a)(4), or 2093(a)(4) of this title for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this chapter, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

(n) Delegation of functions

delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this chapter except those specified in sections 2071, 2077(b) (with respect to enrichment and reprocessing of



special nuclear material or with respect to transfers to any covered foreign country (as defined in section 2077a(i) of this title)), 2091, 2138, 2153, 2165(b) of this title (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 2165(f) of this title and subsection (a) of this section;

(o) Reports

require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 2051 of this title and of activities under licenses issued pursuant to sections 2073, 2093, 2111, 2133, and 2134 of this title, as may be necessary to effectuate the purposes of this chapter, including section 2135 of this title; and

(p) Rules and regulations

make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter.

(q) Easements for rights-of-way

The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

(r) Sale of utilities and related services

Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:



- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

(s) Succession of authority

establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this chapter, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

(t) Contracts

enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 2133 or 2134 of this title: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to subsection (m);

(u) Additional contracts; guiding principles; appropriations

(1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial

sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

(v) Support of United States Enrichment Corporation  
provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 2297c-2(d) <sup>2</sup> of this title) incurred by the Department of Energy after October 24, 1992, in performing such services;

(w) License fees for nuclear power reactors  
prescribe and collect from any other Government agency, which applies to the Commission for, or is issued by the Commission, a license or certificate, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of title 31 or any other law.

(x) Standards and instructions for bonding, surety, or other financial arrangements, including performance bonds

Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after November 8, 1978, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on November 8, 1978, or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.<sup>95</sup>

<sup>95</sup> Aug. 1, 1946, ch. 724, title I, §161, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948; amended July 14, 1956, ch. 608, 70 Stat. 553; Aug. 6, 1956, ch. 1015, §4, 70 Stat. 1069; Pub. L. 85–162, title II, §§201, 204, Aug. 21, 1957, 71 Stat. 410; Pub. L. 85–287, §4, Sept. 4, 1957, 71 Stat. 613; Pub. L. 85–507, §21(b)(1), July 7, 1958, 72 Stat. 337; Pub. L. 85–681, §§6, 7, Aug. 19, 1958, 72 Stat. 633; Pub. L. 86–300, §1, Sept. 21, 1959, 73 Stat. 574; Pub. L. 87–206, §13, Sept. 6, 1961, 75 Stat. 478; Pub. L. 87–456, title III, §303(c), May 24, 1962, 76 Stat. 78; Pub. L. 87–615, §12, Aug. 29, 1962, 76 Stat. 411; Pub. L. 87–793, title VI, §1001(g), Oct. 11, 1962, 76 Stat. 864; Pub. L. 88–489, §16, Aug. 26, 1964, 78 Stat. 606; Pub. L. 90–190, §11, Dec. 14, 1967, 81 Stat. 578; Pub. L. 91–452, title II, §237, Oct. 15, 1970, 84 Stat. 930; Pub. L. 91–560, §§7, 8, Dec. 19, 1970, 84 Stat. 1474; Pub. L. 92–314, title III, §301, June 16, 1972, 86 Stat. 227; Pub. L. 93–377, §7, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95–604, title II, §203, Nov. 8, 1978, 92 Stat. 3036; Pub. L. 97–90, title II, §211, Dec. 4, 1981, 95 Stat. 1170; Pub. L. 99–661, div. C, title I, §3134, Nov. 14, 1986, 100 Stat. 4064; Pub. L. 100–449, title III, §305(b), Sept. 28, 1988, 102 Stat. 1876; Pub. L. 101–575,

**42 USC 2201a. Sec. 161A. Use of Firearms by Security Personnel****(a) Definitions**

In this section, the terms "handgun", "rifle", "shotgun", "firearm", "ammunition", "machinegun", "short-barreled shotgun", and "short-barreled rifle" have the meanings given the terms in section 921(a) of title 18.

**(b) Authorization**

Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title 18, section 925(d)(3) of title 18, section 5844 of title 26, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission, the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices, if the Commission determines that—

(1) the authorization is necessary to the discharge of the official duties of the security personnel; and

(2) the security personnel—

(A) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws relating to possession of firearms by a certain category of persons;

(B) have successfully completed any requirement under this section for training in the use of firearms and tactical maneuvers;

(C) are engaged in the protection of—

(i) a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission; or

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

(D) are discharging the official duties of the security personnel in transferring, receiving, possessing, transporting, or importing the weapons, ammunition, or devices.

§5(b), Nov. 15, 1990, 104 Stat. 2835; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(4), (5), (8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 109–58, title VI, §§623, 626, Aug. 8, 2005, 119 Stat. 783, 784; Pub. L. 115–232, div. C, title XXXI, §3116(a), Aug. 13, 2018, 132 Stat. 2291, . Pub. L. 117–263, div. C, title XXXI, §3131(c), Dec. 23, 2022, 136 Stat. 3059.

## (c) Background checks

A person that receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under subsection (b) shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103–159; 18 U.S.C. 922 note) <sup>1</sup> to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

## (d) Effective date

This section takes effect on the date on which guidelines are issued by the Commission, with the approval of the Attorney General, to carry out this section.<sup>96</sup>

**42 USC 2201b.****Sec. 161B. Commission Workforce<sup>97</sup>**

## (a) Direct Hire Authority.—

(1) In General.— Notwithstanding section 161 d. of this Act and any provision of Reorganization Plan No. 1 of 1980 (94 Stat. 3585; 5 U.S.C. app.), and without regard to any provision of title 5 (except section 3328), United States Code, governing appointments in the civil service, the Chairman of the Nuclear Regulatory Commission (in this section referred to as the ‘Chairman’) may, in order to carry out the Nuclear Regulatory Commission’s (in this section referred to as the ‘Commission’) responsibilities and activities in a timely, efficient, and effective manner and subject to the limitations described in paragraphs (2), (3), and (4)—

(A) recruit and directly appoint exceptionally well-qualified individuals into the excepted service for covered positions; and

(B) establish in the excepted service term-limited covered positions and recruit and directly appoint exceptionally well-qualified individuals into such term-limited covered positions, which may not exceed a term of 4 years.

## (2) Limitations.—

## (A) Number.—

(i) In General.— The number of exceptionally well-qualified individuals serving in covered positions pursuant to paragraph (1)(A) may not exceed 210 at any one time.

(ii) Term-Limited Covered Positions.— The Chairman may not appoint more than 20 exceptionally well-qualified individuals into term-limited covered positions pursuant to paragraph (1)(B) during any fiscal year.

## (B) Compensation.—

(i) Annual Rate.— The annual basic rate of pay for any individual appointed under paragraph (1)(A) or paragraph (1)(B) may not

<sup>96</sup> Aug. 1, 1946, ch. 724, title I, §161A, as added Pub. L. 109–58, title VI, §653, Aug. 8, 2005, 119 Stat. 811.

<sup>97</sup> As added by Pub. L. 118–67, div. B, title V, §502. July 9, 2024, 138 Stat. 1471. Added entire section 161B.

exceed the annual basic rate of pay for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(ii) Experience and Qualifications.— Any individual recruited and directly appointed into a covered position or a term-limited covered position shall be compensated at a rate of pay that is commensurate with such individual's experience and qualifications.

(C) Senior Executive Service Position.— The Chairman may not, under paragraph (1)(A) or paragraph (1)(B), appoint exceptionally well-qualified individuals to any Senior Executive Service position, as defined in section 3132 of title 5, United States Code.

(3) Level of Positions.— To the extent practicable, in carrying out paragraph (1) the Chairman shall recruit and directly appoint exceptionally well-qualified individuals into the excepted service to entry, mid, and senior level covered positions, including term-limited covered positions.

(4) Consideration of Future Workforce Needs.— When recruiting and directly appointing exceptionally well-qualified individuals to covered positions pursuant to paragraph (1)(A), to maintain sufficient flexibility under the limitations of paragraph (2)(A)(i), the Chairman shall consider the future workforce needs of the Commission to carry out its responsibilities and activities in a timely, efficient, and effective manner.

(b) Addressing Insufficient Compensation of Employees and Other Personnel of the Commission.—

(1) In General.— Notwithstanding any other provision of law, the Chairman may fix the compensation for employees or other personnel serving in a covered position without regard to any provision of title 5, United States Code, governing General Schedule classification and pay rates.

(2) Applicability.— The authority under this subsection to fix the compensation of employees or other personnel shall apply with respect to an employee or other personnel serving in a covered position regardless of when the employee or other personnel was hired.

(3) Limitations on Compensation.—

(A) Annual Rate.— The Chairman may not use the authority under paragraph (1) to fix the compensation of employees or other personnel

(i) at an annual rate of basic pay higher than the annual basic rate of pay for level III of the Executive Schedule under section 5314 of title 5, United States Code; or

(ii) at an annual rate of basic pay that is not commensurate with such an employee or other personnel's experience and qualifications.

(B) Senior Executive Service Positions.— The Chairman may not use the authority under paragraph (1) to fix the compensation of an employee serving in a Senior Executive Service position, as defined in section 3132 of title 5, United States Code.

(c) Additional Compensation Authority.—

(1) For New Employees.— The Chairman may pay an individual recruited and directly appointed under subsection (a) a 1-time hiring bonus in an amount not to exceed \$25,000.

(2) For Existing Employees.—

(A) In General.— Subject to subparagraphs (B) and (C), an employee or other personnel who the Chairman determines exhibited exceptional performance in a fiscal year may be paid a performance bonus in an amount not to exceed the least of

(i) \$25,000; and

(ii) the amount of the limitation that is applicable for a calendar year under section 5307(a)(1) of title 5, United States Code.

(B) Exceptional Performance.— Exceptional performance under subparagraph (A) includes

(i) leading a project team in a timely and efficient licensing review to enable the safe use of nuclear technology;

(ii) making significant contributions to a timely and efficient licensing review to enable the safe use of nuclear technology;

(iii) the resolution of novel or first-of-a-kind regulatory issues;

(iv) developing or implementing licensing or regulatory oversight processes to improve the effectiveness of the Commission; and

(v) other performance, as determined by the Chairman.

(C) Limitations.—

(i) Subsequent Bonuses.— Any person who receives a performance bonus under subparagraph (A) may not receive another performance bonus under that subparagraph for a period of 5 years thereafter.

(ii) Hiring Bonuses.— Any person who receives a 1-time hiring bonus under paragraph (1) may not receive a performance bonus under subparagraph (A) unless more than one year has elapsed since the payment of such 1-time hiring bonus.

(iii) No Bonus for Senior Executive Service Positions.— No person serving in a Senior Executive Service position, as defined in section 3132 of title 5, United States Code, may receive a performance bonus under subparagraph (A).

(d) Implementation Plan and Report.—

(1) In General.— Not later than 180 days after the date of enactment of this section, the Chairman shall develop and implement a plan to carry out this section. Before implementing such plan, the Chairman shall submit to the Committee on Energy and Commerce of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Office of Personnel Management a report on the details of the plan.

(2) Report Content.— The report submitted under paragraph (1) shall include

(A) evidence and supporting documentation justifying the plan;

and

(B) budgeting projections on costs and benefits resulting from the plan.

(3) Consultation.— The Chairman may consult with the Office of Personnel Management, the Office of Management and Budget, and the Comptroller General of the United States in developing the plan under paragraph (1).

(e) Delegation.— The Chairman shall delegate, subject to the direction and supervision of the Chairman, the authority provided by subsections (a), (b), and (c) to the Executive Director for Operations of the Commission.

(f) Information on Hiring, Vacancies, and Compensation.—

(1) In General.— The Commission shall include in its budget materials submitted in support of the budget of the President (submitted to Congress pursuant to section 1105 of title 31, United States Code), for fiscal year 2026 and each fiscal year thereafter, information relating to hiring, vacancies, and compensation at the Commission.

(2) Inclusions.— The information described in paragraph (1) shall include—

(A) an analysis of any trends with respect to hiring, vacancies, and compensation at the Commission;

(B) a description of the efforts to retain and attract employees or other personnel to serve in covered positions at the Commission;

(C) information that describes—

(i) how the authority provided by subsection (a) is being used to address the hiring needs of the Commission;

(ii) the total number of exceptionally well-qualified individuals serving in—

(I) covered positions described in subsection (g)(1) pursuant to subsection (a)(1)(A);

(II) covered positions described in subsection (g)(2) pursuant to subsection (a)(1)(A);

(III) term-limited covered positions described in subsection (g)(1) pursuant to subsection (a)(1)(B); and

(IV) term-limited covered positions described in subsection (g)(2) pursuant to subsection (a)(1)(B);

(iii) how the authority provided by subsection (b) is being used to address the hiring or retention needs of the Commission;

(iv) the total number of employees or other personnel serving in a covered position that have their compensation fixed pursuant to subsection (b); and

(v) the attrition levels with respect to term-limited covered positions appointed under subsection (a)(1)(B), including the number of individuals leaving a term-limited covered position before completion of the applicable term of service and the average length of service for such individuals as a percentage of the applicable term of service; and

(D) an assessment of—

(i) the current critical workforce needs of the Commission and any critical workforce needs that the Commission anticipates in the next five years; and



(ii) additional skillsets that are or likely will be needed for the Commission to fulfill the licensing and oversight responsibilities of the Commission.

(g) Covered Position.— In this section, the term ‘covered position’ means—

(1) a position in which an employee or other personnel is responsible for conducting work of a highly-specialized scientific, technical, engineering, mathematical, or otherwise skilled nature to address a critical licensing or regulatory oversight need for the Commission; or

(2) a position that the Executive Director for Operations of the Commission determines is necessary to fulfill the responsibilities of the Commission in a timely, efficient, and effective manner.

(h) Sunset.—

(1) In General.— Except as provided in paragraph (2), the authorities provided by subsections (a) and (b) shall terminate on September 30, 2034.

(2) Certification.— If, no later than the date referenced in paragraph (1), the Commission issues a certification that the authorities provided by subsection (a), subsection (b), or both subsections are necessary for the Commission to carry out its responsibilities and activities in a timely, efficient, and effective manner, the authorities provided by the applicable subsection shall terminate on September 30, 2039.

(3) Compensation.— The termination of the authorities provided by subsections (a) and (b) shall not affect the compensation of an employee or other personnel serving in a covered position whose compensation was fixed by the Chairman in accordance with subsection (a) or (b).

#### **42 USC 2202. Sec. 162. Contracts**

The President may, in advance, exempt any specific action of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.<sup>98</sup>

#### **42 USC 2203. Sec. 163. Advisory Committees**

The members of the General Advisory Committee established pursuant to section 2036 of this title and the members of advisory boards established pursuant to section 2201(a) of this title may serve as such without regard to the provisions of sections 281, 283, or 284<sup>1</sup> of title 18, except insofar as such sections may prohibit any such member from receiving compensation from a source other than a nonprofit educational

<sup>98</sup> Aug. 1, 1946, ch. 724, title I, §162, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

institution in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.<sup>99</sup>

**42 USC 2204. Sec. 164. Electric Utility Contracts; Authority to Enter Into; Cancellation; Submission to Energy Committees**

The Commission is authorized in connection with the construction or operation of the Oak Ridge, Paducah, and Portsmouth installations of the Commission, without regard to sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31, to enter into new contracts or modify or confirm existing contracts to provide for electric utility services for periods not exceeding twenty-five years, and such contracts shall be subject to termination by the Commission upon payment of cancellation costs as provided in such contracts, and any appropriation presently or hereafter made available to the Commission shall be available for the payment of such cancellation costs. Any such cancellation payments shall be taken into consideration in determination of the rate to be charged in the event the Commission or any other agency of the Federal Government shall purchase electric utility services from the contractor subsequent to the cancellation and during the life of the original contract. The authority of the Commission under this section to enter into new contracts or modify or confirm existing contracts to provide for electric utility services includes, in case such electric utility services are to be furnished to the Commission by the Tennessee Valley Authority, authority to contract with any person to furnish electric utility services to the Tennessee Valley Authority in replacement thereof. Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: *Provided, however*, That the Energy Committees, after having received the proposed contract, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.<sup>100</sup>

**42 USC 2205. Sec. 165. Contract Practices**

(a) In carrying out the purposes of this chapter the Commission shall not use the cost-plus-percentage-of-cost system of contracting.

(b) No contract entered into under the authority of this chapter shall provide, and no contract entered into under the authority of the Atomic Energy Act of 1946, as amended, shall be modified or amended after

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<sup>99</sup> Aug. 1, 1946, ch. 724, title I, § 163, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; amended Pub. L. 86–300, § 2, Sept. 21, 1959, 73 Stat. 574; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>100</sup> Aug. 1, 1946, ch. 724, title I, § 164, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103–437, § 15(f)(7), Nov. 2, 1994, 108 Stat. 4593.

August 30, 1954, to provide, for direct payment or direct reimbursement by the Commission of any Federal income taxes on behalf of any contractor performing such contract for profit.<sup>101</sup>

**42 USC 2206. Sec. 166. Comptroller General Audit**

No moneys appropriated for the purposes of this chapter shall be available for payments under any contract with the Commission, negotiated without advertising, except contracts with any foreign government or any agency thereof and contracts with foreign producers, unless such contract includes a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to such contracts or subcontracts: *Provided, however,* That no moneys so appropriated shall be available for payment under such contract which includes any provision precluding an audit by the Government Accountability Office of any transaction under such contract: *And provided further,* That nothing in this section shall preclude the earlier disposal of contractor and subcontractor records in accordance with records disposal schedules agreed upon between the Commission and the Government Accountability Office.<sup>102</sup>

**42 USC 2207. Sec. 167. Claims Settlements; Reports to Congress**

The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of \$5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of any program undertaken by the Commission involving the detonation of an explosive device, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however,* That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. If the Commission considers that a claim in excess of \$5,000 is meritorious and would otherwise be covered by

<sup>101</sup> Aug. 1, 1946, ch. 724, title I, §165, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 951; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>102</sup> Aug. 1, 1946, ch. 724, title I, §166, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 951; amended Pub. L. 85–681, §8, Aug. 19, 1958, 72 Stat. 634; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.

this section, the Commission may report the facts and circumstances thereof to the Congress for its consideration.<sup>103</sup>

**42 USC 2208. Sec. 168. Payments in Lieu of Taxes**

In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.<sup>104</sup>

**42 USC 2209. Sec. 169. No Subsidy**

No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 2133 or 2134 of this title except under contract or other arrangement entered into pursuant to section 2051 of this title.<sup>105</sup>

**42 USC 2210. Sec. 170. Indemnification and Limitation of Liability**

(a) Requirement of financial protection for licensees  
Each license issued under section 2133 or 2134 of this title and each construction permit issued under section 2235 of this title shall, and each license issued under section 2073, 2093, or 2111 of this title may, for the public purposes cited in section 2012(i) of this title, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission") in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection (b) to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection (c). The

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<sup>103</sup> Aug. 1, 1946, ch. 724, title I, §167, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 952; amended Pub. L. 87–206, §14, Sept. 6, 1961, 75 Stat. 478; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>104</sup> Aug. 1, 1946, ch. 724, title I, §168, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 952; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>105</sup> Aug. 1, 1946, ch. 724, title I, §169, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 952; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

(b) Amount and type of financial protection for licensees

(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further*, That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than \$95,800,000 (subject to adjustment for inflation under subsection (t)), but not more than \$15,000,000 in any 1 year (subject to adjustment for inflation under subsection (t)), for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection (o)(1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this chapter shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such

terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is two or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

(c) Indemnification of licensees by Nuclear Regulatory Commission  
The Commission shall, with respect to licenses issued between August 30, 1954, and December 31, 2025, for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each



nuclear incident shall not exceed \$500,000,000 excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

(d) Indemnification of contractors by Department of Energy

(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the "Secretary") may have, the Secretary shall, until December 31, 2025, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection (b) or agreements of indemnification under subsection (c) or (k).

(B)(i)(I) Beginning 60 days after August 20, 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85–804 [50 U.S.C. 1431 et seq.] entered into between August 1, 1987, and August 20, 1988.

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection (n)(1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 10222 of this title shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection (b).

(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of \$10,000,000,000 (subject to adjustment for inflation under subsection (t)), in the aggregate, for all persons indemnified in



connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on August 8, 2005, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 5842 of this title.

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed \$500,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(e) Limitation on aggregate public liability

(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection (o)(1)(D), shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection (b) (plus any surcharge assessed under subsection (o)(1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection (d), the amount of indemnity and financial protection that may be required under paragraph (2) of subsection (d); and

(C) in the case of all other licensees of the Commission required to maintain financial protection under this section—

(i) \$500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds \$60,000,000, \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in subsection (i) and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection (b), to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection (d) is applicable, such aggregate public liability shall not exceed the amount of \$500,000,000, together with the amount of financial protection required of the contractor.

(f) Collection of fees by Nuclear Regulatory Commission

The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 2133 of this title: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed under section 2134 of this title, and for construction permits under section 2235 of this title, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 2134 of this title, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

(g) Use of services of private insurers

In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 6101 of title 41 upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

(h) Conditions of agreements of indemnification

The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when

the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this chapter. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

(i) Compensation plans

(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1), the Secretary or the Commission,<sup>1</sup> as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection (o), that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection (e)(1);

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection (e)(2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6<sup>2</sup> of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

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

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

(6)(A) This paragraph is enacted—

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term "resolution" means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: "That the                      approves the compensation plan numbered                      submitted to the Congress on                      , 19                      .", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

(j) Contracts in advance of appropriations

In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31.

(k) Exemption from financial protection requirement for nonprofit educational institutions

With respect to any license issued pursuant to section 2073, 2093, 2111, 2134(a), or 2134(c) of this title, for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection (a). With respect to licenses issued between August 30, 1954, and December 31, 2025, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of \$250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

(l) Presidential commission on catastrophic nuclear accidents

(1) Not later than 90 days after August 20, 1988, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Administrator of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on August 20, 1988.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.



(m) Coordinated procedures for prompt settlement of claims and emergency assistance

The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

(n) Waiver of defenses and judicial procedures

(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a),

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a), or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date



on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection (e).

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on August 20, 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28 or within the 30-day period beginning on August 20, 1988, whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

- (i) a court, acting pursuant to subsection (o), determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection (b) (or an equivalent amount in the case of a contractor indemnified under subsection (d)); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;  
(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

(o) Plan for distribution of funds

(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1):

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property

damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection (b).

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection (b), any licensee required to pay a standard deferred premium under subsection (b)(1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

(i) that such costs are reasonable and equitable; and

(ii) that such person has—

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

(p) Reports to Congress

The Commission and the Secretary shall submit to the Congress by December 31, 2021, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

## (q) Limitation on awarding of precautionary evacuation costs

No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

## (r) Limitation on liability of lessors

No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

## (s) Limitation on punitive damages

No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

## (t) Inflation adjustment

(1) The Commission shall adjust the amount of the maximum total and annual standard deferred premium under subsection (b)(1) not less than once during each 5-year period following August 20, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) August 20, 2003, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection (d) not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) that date, in the case of the first adjustment under this paragraph; or

(B) the previous adjustment under this paragraph.

(3) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.<sup>106</sup>

<sup>106</sup> Aug. 1, 1946, ch. 724, title I, §170, as added Pub. L. 85–256, §4, Sept. 2, 1957, 71 Stat. 576; amended Pub. L. 85–602, §§2, 2[3], Aug. 8, 1958, 72 Stat. 525; Pub. L. 85–744, Aug. 23, 1958, 72 Stat. 837; Pub. L. 87–206, §15, Sept. 6, 1961, 75 Stat. 479; Pub. L. 87–615, §§6, 7, Aug. 29, 1962, 76 Stat. 410; Pub. L. 88–394, §§2, 3, Aug. 1, 1964, 78 Stat. 376; Pub. L. 89–210, §§1–5, Sept. 29, 1965, 79 Stat. 855–857; Pub. L. 89–645, §§2, 3, Oct. 13, 1966, 80 Stat. 891; Pub. L. 94–197, §§2–14, Dec. 31, 1975, 89 Stat. 1111–1115; Pub. L. 100–408, §§2–4(a), 5(c)–11(a), (c), (d)(1), 12–15, 16(a)(2), (b)(3)–(c), (d)(4)–(e), Aug. 20, 1988, 102 Stat. 1066–1068, 1070–1080; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105–362, title XII, §1201(b), Nov. 10, 1998, 112 Stat. 3292; Pub. L. 107–314, div. C, title XXXI, §3171, Dec. 2, 2002, 116 Stat. 2743; Pub. L. 108–7, div. O, §101, Feb. 20, 2003, 117 Stat. 551; Pub. L. 108–375, div. C, title XXXI, §3141, Oct. 28, 2004, 118 Stat. 2171; Pub. L. 109–58, title VI, §§602–608, Aug. 8, 2005, 119 Stat. 779–781; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410, Pub. L. 117–286, §4(a)(260), Dec. 27, 2022, 136 Stat. 4334.

**42 USC 2210a. Sec. 170A. Conflicts of Interest Relating to Contracts and Other Arrangements**

**(a) Disclosure requirements**

The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this chapter or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than \$10,000.

**(b) Evaluation**

**(1) In general**

Except as provided in paragraph (2), the Nuclear Regulatory Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection (a) and any other information otherwise available to the Commission that—

(A) it is unlikely that a conflict of interest would exist, or

(B) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

**(2) Nuclear Regulatory Commission**

Notwithstanding any conflict of interest, the Nuclear Regulatory Commission may enter into a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, if the Nuclear Regulatory Commission determines that—

(A) the conflict of interest cannot be mitigated; and

(B) adequate justification exists to proceed without mitigation of the conflict of interest.

**(c) Promulgation and publication of rules**

The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5 (without regard to

subsection (a)(2) thereof) as soon as practicable after November 6, 1978, but in no event later than 120 days after such date.<sup>107</sup>

**42 USC 2210b. Sec. 170B. Uranium Supply**

(a) Assessment of domestic uranium industry viability; monitoring and reporting requirements; criteria; implementation by rules and regulations  
The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 2231 of this title, within 9 months of January 4, 1983, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

(b) Disclosure of information

Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(c) Criteria for monitoring and reporting requirements

The criteria referred to in subsection (a) shall also include, but not be limited to—

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

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<sup>107</sup> Aug. 1, 1946, ch. 724, title I, §170A, as added Pub. L. 95–601, §8(a), Nov. 6, 1978, 92 Stat. 2950; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 109–58, title VI, §639, Aug. 8, 2005, 119 Stat. 794.

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

(d) Excessive imports; investigation by United States International Trade Commission

The Secretary of Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 2251 <sup>2</sup> of title 19.

(e) Excessive imports for contracts or options as threatening national security; investigation by Secretary of Commerce; recommendation for further investigation

(1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 1862 of title 19 an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the

Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.<sup>108</sup>

**42 USC 2210c. Sec. 170C. Elimination of Pension Offset for Certain Rehired Federal Retirees**

(a) In general

The Commission may waive the application of section 8344 or 8468 of title 5 on a case-by-case basis for employment of an annuitant—

- (1) in a position of the Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or
- (2) when a temporary emergency hiring need exists.

(b) Procedures

The Commission shall prescribe procedures for the exercise of authority under this section, including—

- (1) criteria for any exercise of authority; and
- (2) procedures for a delegation of authority.

(c) Effect of waiver

An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5.<sup>109</sup>

**42 USC 2210d. Sec. 170D. Security Evaluations**

(a) Security response evaluations

Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate, to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat.

(b) Force-on-force exercises

- (1) The security evaluations shall include force-on-force exercises.
- (2) The force-on-force exercises shall, to the maximum extent practicable, simulate security threats in accordance with any design basis threat applicable to a facility.
- (3) In conducting a security evaluation, the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.

(c) Action by licensees

The Commission shall ensure that an affected licensee corrects those material defects in performance that adversely affect the ability of a private security force at that facility to defend against any applicable design basis threat.

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<sup>108</sup> Aug. 1, 1946, ch. 724, title I, §170B, as added Pub. L. 97–415, §23(b)(1), Jan. 4, 1983, 96 Stat. 2081; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>109</sup> Aug. 1, 1946, ch. 724, title I, §170C, as added Pub. L. 109–58, title VI, §624(a), Aug. 8, 2005, 119 Stat. 783.



(d) Facilities under heightened threat levels

The Commission may suspend a security evaluation under this section if the Commission determines that the evaluation would compromise security at a nuclear facility under a heightened threat level.

(e) Report

Not less often than once each year, the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report, in classified form and unclassified form, that describes the results of each security response evaluation conducted and any relevant corrective action taken by a licensee during the previous year.<sup>110</sup>

**42 USC 2210e. Sec. 170E. Design Basis Threat Rulemaking**

(a) Rulemaking

The Commission shall—

(1) not later than 90 days after the date of enactment of this section, initiate a rulemaking proceeding, including notice and opportunity for public comment, to be completed not later than 18 months after that date, to revise the design basis threats of the Commission; or

(2) not later than 18 months after the date of enactment of this section, complete any ongoing rulemaking to revise the design basis threats.

(b) Factors

When conducting its rulemaking, the Commission shall consider the following, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration;

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

<sup>110</sup> Aug. 1, 1946, ch. 724, title I, §170D, as added Pub. L. 109–58, title VI, §651(a)(1), Aug. 8, 2005, 119 Stat. 799.

(12) the potential for theft and diversion of nuclear materials from such facilities.<sup>111</sup>

**42 USC 2210f. Sec. 170F. Recruitment Tools**

The Commission may purchase promotional items of nominal value for use in the recruitment of individuals for employment.<sup>112</sup>

**42 USC 2210g. Sec. 170G. Expenses Authorized to be Paid by the Commission**

The Commission may—

(1) pay transportation, lodging, and subsistence expenses of employees who—

(A) assist scientific, professional, administrative, or technical employees of the Commission; and

(B) are students in good standing at an institution of higher education (as defined in section 1002 of title 20) pursuing courses related to the field in which the students are employed by the Commission; and

(2) pay the costs of health and medical services furnished, pursuant to an agreement between the Commission and the Department of State, to employees of the Commission and dependents of the employees serving in foreign countries.<sup>113</sup>

**42 USC 2210h. Sec. 170H. Radiation Source Protection**

(a) Definitions

In this section:

(1) Code of conduct

The term "Code of Conduct" means the code entitled the "Code of Conduct on the Safety and Security of Radioactive Sources", approved by the Board of Governors of the International Atomic Energy Agency and dated September 8, 2003.

(2) Radiation source

The term "radiation source" means—

(A) a Category 1 Source or a Category 2 Source, as defined in the Code of Conduct; and

(B) any other material that poses a threat such that the material is subject to this section, as determined by the Commission, by regulation, other than spent nuclear fuel and special nuclear materials.

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<sup>111</sup> Aug. 1, 1946, ch. 724, title I, §170E, as added Pub. L. 109–58, title VI, §651(a)(1), Aug. 8, 2005, 119 Stat. 799.

<sup>112</sup> Aug. 1, 1946, ch. 724, title I, §170F, as added Pub. L. 109–58, title VI, §651(c)(2), Aug. 8, 2005, 119 Stat. 801.

<sup>113</sup> Aug. 1, 1946, ch. 724, title I, §170G, as added Pub. L. 109–58, title VI, §651(c)(3), Aug. 8, 2005, 119 Stat. 801.

(b) Commission approval

Not later than 180 days after August 8, 2005, the Commission shall issue regulations prohibiting a person from—

(1) exporting a radiation source, unless the Commission has specifically determined under section 2077 or 2112 of this title, consistent with the Code of Conduct, with respect to the exportation, that—

(A) the recipient of the radiation source may receive and possess the radiation source under the laws and regulations of the country of the recipient;

(B) the recipient country has the appropriate technical and administrative capability, resources, and regulatory structure to ensure that the radiation source will be managed in a safe and secure manner; and

(C) before the date on which the radiation source is shipped—

(i) a notification has been provided to the recipient country; and

(ii) a notification has been received from the recipient country; as the Commission determines to be appropriate;

(2) importing a radiation source, unless the Commission has determined, with respect to the importation, that—

(A) the proposed recipient is authorized by law to receive the radiation source; and

(B) the shipment will be made in accordance with any applicable Federal or State law or regulation; and

(3) selling or otherwise transferring ownership of a radiation source, unless the Commission—

(A) has determined that the licensee has verified that the proposed recipient is authorized under law to receive the radiation source; and

(B) has required that the transfer shall be made in accordance with any applicable Federal or State law or regulation.

(c) Tracking system

(1)(A) Not later than 1 year after August 8, 2005, the Commission shall issue regulations establishing a mandatory tracking system for radiation sources in the United States.

(B) In establishing the tracking system under subparagraph (A), the Commission shall coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources.

(2) The tracking system under paragraph (1) shall—

(A) enable the identification of each radiation source by serial number or other unique identifier;

(B) require reporting within 7 days of any change of possession of a radiation source;

(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and

(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

(d) Penalty

A violation of a regulation issued under subsection (a) or (b) shall be punishable by a civil penalty not to exceed \$1,000,000.

(e) National Academy of Sciences study

(1) Not later than 60 days after August 8, 2005, the Commission shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study of industrial, research, and commercial uses for radiation sources.

(2) The study under paragraph (1) shall include a review of uses of radiation sources in existence on the date on which the study is conducted, including an identification of any industrial or other process that—

(A) uses a radiation source that could be replaced with an economically and technically equivalent (or improved) process that does not require the use of a radiation source; or

(B) may be used with a radiation source that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source.

(3) Not later than 2 years after August 8, 2005, the Commission shall submit to Congress the results of the study under paragraph (1).

(f) Task force on radiation source protection and security

(1) There is established a task force on radiation source protection and security (referred to in this section as the "task force").

(2)(A) The chairperson of the task force shall be the Chairperson of the Commission (or a designee).

(B) The membership of the task force shall consist of the following:

(i) The Secretary of Homeland Security (or a designee).

(ii) The Secretary of Defense (or a designee).

(iii) The Secretary of Energy (or a designee).

(iv) The Secretary of Transportation (or a designee).

(v) The Attorney General (or a designee).

(vi) The Secretary of State (or a designee).

(vii) The Director of National Intelligence (or a designee).

(viii) The Director of the Central Intelligence Agency (or a designee).

(ix) The Administrator of the Federal Emergency Management Agency (or a designee).

(x) The Director of the Federal Bureau of Investigation (or a designee).

(xi) The Administrator of the Environmental Protection Agency (or a designee).

(3)(A) The task force, in consultation with Federal, State, and local agencies, the Conference of Radiation Control Program Directors, and the Organization of Agreement States, and after public notice and an opportunity for comment, shall evaluate, and provide recommendations relating to, the security of radiation sources in the United States from

potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device.

(B) Not later than 1 year after August 8, 2005, and not less than once every 4 years thereafter, the task force shall submit to Congress and the President a report, in unclassified form with a classified annex if necessary, providing recommendations, including recommendations for appropriate regulatory and legislative changes, for—

(i) a list of additional radiation sources that should be required to be secured under this chapter, based on the potential attractiveness of the sources to terrorists and the extent of the threat to public health and safety of the sources, taking into consideration—

(I) radiation source radioactivity levels;

(II) radioactive half-life of a radiation source;

(III) dispersability;

(IV) chemical and material form;

(V) for radioactive materials with a medical use, the availability of the sources to physicians and patients for medical treatment; and

(VI) any other factor that the Chairperson of the Commission determines to be appropriate;

(ii) the establishment of, or modifications to, a national system for recovery of lost or stolen radiation sources;

(iii) the storage of radiation sources that are not used in a safe and secure manner as of the date on which the report is submitted;

(iv) modifications to the national tracking system for radiation sources;

(v) the establishment of, or modifications to, a national system (including user fees and other methods) to provide for the proper disposal of radiation sources secured under this chapter;

(vi) modifications to export controls on radiation sources to ensure that foreign recipients of radiation sources are able and willing to adequately control radiation sources from the United States;

(vii)(I) any alternative technologies available as of the date on which the report is submitted that may perform some or all of the functions performed by devices or processes that employ radiation sources; and

(II) the establishment of appropriate regulations and incentives for the replacement of the devices and processes described in subclause (I)—

(aa) with alternative technologies in order to reduce the number of radiation sources in the United States; or

(bb) with radiation sources that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source; and

(viii) the creation of, or modifications to, procedures for improving the security of use, transportation, and storage of radiation sources, including—

(I) periodic audits or inspections by the Commission to ensure that radiation sources are properly secured and can be fully accounted for;

- (II) evaluation of the security measures by the Commission;
- (III) increased fines for violations of Commission regulations relating to security and safety measures applicable to licensees that possess radiation sources;
- (IV) criminal and security background checks for certain individuals with access to radiation sources (including individuals involved with transporting radiation sources);
- (V) requirements for effective and timely exchanges of information relating to the results of criminal and security background checks between the Commission and any State with which the Commission has entered into an agreement under section 2021(b) of this title;
- (VI) assurances of the physical security of facilities that contain radiation sources (including facilities used to temporarily store radiation sources being transported); and
- (VII) the screening of shipments to facilities that the Commission determines to be particularly at risk for sabotage of radiation sources to ensure that the shipments do not contain explosives.

(g) Action by Commission

Not later than 60 days after the date of receipt by Congress and the President of a report under subsection (f)(3)(B), the Commission, in accordance with the recommendations of the task force, shall—

- (1) take any action the Commission determines to be appropriate, including revising the system of the Commission for licensing radiation sources; and
- (2) ensure that States that have entered into agreements with the Commission under section 2021(b) of this title take similar action in a timely manner.<sup>114</sup>

**42 USC 2210i. Sec. 170I. Secure Transfer of Nuclear Materials**

(a) The Commission shall establish a system to ensure that materials described in subsection (b), when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this chapter, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

(b) Except as otherwise provided by the Commission by regulation, the materials referred to in subsection (a) are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent

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<sup>114</sup> Aug. 1, 1946, ch. 724, title I, §170H, as added Pub. L. 109–58, title VI, §651(d)(1), Aug. 8, 2005, 119 Stat. 802; amended Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.

nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 10101(16) of this title).<sup>115</sup>

## **Chapter 15—Compensation for Private Property Acquired**

### **42 USC 2221. Sec. 171. Just Compensation for Requisitioned Property**

The United States shall make just compensation for any property or interests therein taken or requisitioned pursuant to sections 2063, 2075, 2096, and 2138 of this title. Except in case of real property or any interest therein, the Commission shall determine and pay such just compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Court of Federal Claims or in any district court of the United States for the district in which such claimant is a resident in the manner provided by section 1346 of title 28 to recover such further sum as added to said 75 per centum will constitute just compensation.<sup>116</sup>

### **42 USC 2222. Sec. 172. Condemnation of Real Property**

Proceedings for condemnation shall be instituted pursuant to the provisions of section 3113 of title 40, and section 1403 of title 28. Sections 3114 to 3116 and 3118 of title 40 shall be applicable to any such proceedings.<sup>117</sup>

### **42 USC 2223. Sec. 173. Patent Application Disclosures**

In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Court of Federal Claims or in any district court of the United States for the district in which such claimant is a resident in a

<sup>115</sup> Aug. 1, 1946, ch. 724, title I, §170I, as added Pub. L. 109–58, title VI, §656(a), Aug. 8, 2005, 119 Stat. 813.

<sup>116</sup> Aug. 1, 1946, ch. 724, title I, §171, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 952 ; amended Pub. L. 88–489, §17, Aug. 26, 1964, 78 Stat. 606 ; Pub. L. 97–164, title I, §160(a)(16), Apr. 2, 1982, 96 Stat. 48 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.

<sup>117</sup> Aug. 1, 1946, ch. 724, title I, §172, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

manner provided by section 1346 of title 28 to recover such further sum as added to such 75 per centum will constitute just compensation.<sup>118</sup>

**42 USC 2224. Sec. 174. Attorney General Approval of Title**

All real property acquired under this chapter shall be subject to the provisions of sections 3111 and 3112 of title 40: *Provided, however*, That real property acquired by purchase or donation, or other means of transfer may also be occupied, used, and improved for the purposes of this chapter prior to approval of title by the Attorney General in those cases where the President determines that such action is required in the interest of the common defense and security.<sup>119</sup>

**Chapter 16—Judicial Review and Administrative Procedure**

**42 USC 2231. Sec. 181. General**

(a) In general

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all agency action taken under this chapter, and the terms "agency" and "agency action" shall have the meaning specified in section 551 of title 5: *Provided, however*, That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 2167 of this title or information protected from dissemination under the authority of section 2168 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title were not involved.

(b) Efficient licensing reviews

The Commission shall provide for efficient and timely reviews and proceedings for the granting, suspending, revoking, or amending of any-

- (1) license or construction permit; or
- (2) application to transfer control.<sup>120</sup>

<sup>118</sup> Aug. 1, 1946, ch. 724, title I, §173, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953 ; amended Pub. L. 97–164, title I, §160(a)(16), Apr. 2, 1982, 96 Stat. 48 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.

<sup>119</sup> Aug. 1, 1946, ch. 724, title I, §174, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>120</sup> Aug. 1, 1946, ch. 724, title I, §181, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953 ; amended Pub. L. 96–295, title II, §207(b), June 30, 1980, 94 Stat. 789 ; Pub. L. 97–90, title II, §210(b), Dec. 4, 1981, 95 Stat. 1170 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 118–67, div. B, title V, §505(b), July 9, 2024, 138 Stat. 1478.



**42 USC 2232. Sec. 182. License Applications****(a) Contents and form**

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 2133 and 2134 of this title shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

**(b) Review of applications by Advisory Committee on Reactor Safeguards; report**

The Advisory Committee on Reactor Safeguards shall review each application under section 2133 or section 2134(b) of this title for a construction permit or an operating license for a facility, any application under section 2134(c) of this title for a construction permit or an operating license for a testing facility, any application under subsection (a) or (c) of section 2134 of this title specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 2133 or 2134(a), (b), or (c) of this title specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

**(c) Commercial power; publication**

The Commission shall not issue any license under section 2133 of this title for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to

give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

(d) Preferred consideration

The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 2133 of this title, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.<sup>121</sup>

**42 USC 2233. Sec. 183. Terms of Licenses**

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this chapter, including the following provisions:

(a) Repealed. Pub. L. 88–489, §18, Aug. 26, 1964, 78 Stat. 607.

(b) No right to the special nuclear material shall be conferred by the license except as defined by the license.

(c) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter.

(d) Every license issued under this chapter shall be subject to the right of recapture or control reserved by section 2138 of this title, and to all of the other provisions of this chapter, now or hereafter in effect and to all valid rules and regulations of the Commission.<sup>122</sup>

**42 USC 2234. Sec. 184. Inalienability of Licenses**

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing. The Commission may give such consent to the

<sup>121</sup> Aug. 1, 1946, ch. 724, title I, §182, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953; amended Aug. 6, 1956, ch. 1015, §5, 70 Stat. 1069; Pub. L. 85–256, §6, Sept. 2, 1957, 71 Stat. 579; Pub. L. 87–615, §3, Aug. 29, 1962, 76 Stat. 409; Pub. L. 91–560, §9, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>122</sup> Aug. 1, 1946, ch. 724, title I, §183, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 954; amended Pub. L. 88–489, §18, Aug. 26, 1964, 78 Stat. 607; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest to such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security.<sup>123</sup>

**42 USC 2235. Sec. 185. Construction Permits and Operating Licenses**

(a) All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this chapter and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this chapter, the Commission shall thereupon issue a license to the applicant. For all other purposes of this chapter, a construction permit is deemed to be a "license".

(b) After holding a public hearing under section 2239(a)(1)(A) of this title, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this

<sup>123</sup> Aug. 1, 1946, ch. 724, title I, §184, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 954; amended Pub. L. 88–489, §19, Aug. 26, 1964, 78 Stat. 607; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

subsection shall not require a hearing except as provided in section 2239(a)(1)(B) of this title.<sup>124</sup>

(c) Application Reviews for Production and Utilization Facilities of an Existing Site.— In reviewing an application for an early site permit, construction permit, operating license, or combined construction permit and operating license for a production facility or utilization facility located at the site of a production facility or utilization facility licensed by the Commission, the Commission shall, to the extent practicable, use information that was part of the licensing basis of the licensed production facility or utilization facility.<sup>125</sup>

**42 USC 2236. Sec. 186. Revocation of Licenses**

**(a) False applications; failure of performance**

Any license may be revoked for any material false statement in the application or any statement of fact required under section 2232 of this title, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

**(b) Procedure**

The Commission shall follow the provisions of section 558(c) of title 5 in revoking any license.

**(c) Repossession of material**

Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under subchapter II of chapter 5 and chapter 7 of title 5. Just compensation shall be paid for the use of the facility.<sup>126</sup>

**42 USC 2237. Sec. 187. Modification of License**

The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this

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<sup>124</sup> Aug. 1, 1946, ch. 724, title I, §185, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 955; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(8), title XXVIII, §2801, Oct. 24, 1992, 106 Stat. 2944, 3120.

<sup>125</sup> As amended by Pub. L. 118–67, div. B, title V, §505(c), July 9, 2024, 138 Stat. 1447. Added para (c).

<sup>126</sup> Aug. 1, 1946, ch. 724, title I, §186, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

chapter or by reason of rules and regulations issued in accordance with the terms of this chapter.<sup>127</sup>

**42 USC 2238. Sec. 188. Continued Operation of Facilities**

Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 2236 of this title, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.<sup>128</sup>

**42 USC 2239. Sec. 189. Hearings and Judicial Review**

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the *Federal Register*, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the *Federal Register* of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

<sup>127</sup> Aug. 1, 1946, ch. 724, title I, §187, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>128</sup> Aug. 1, 1946, ch. 724, title I, §188, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 955; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 2235(b) of this title, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' *prima facie* showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment.

Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(b) The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28 and chapter 7 of title 5:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C. 2297h et seq.].

(4) Any final determination under section 2297f(c) of this title relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C. 2297h et seq.], are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.<sup>129</sup>

#### **42 USC 2240. Sec. 190. Licensee Incident Reports**

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.<sup>130</sup>

<sup>129</sup> Aug. 1, 1946, ch. 724, title I, §189, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 955; amended Pub. L. 85–256, §7, Sept. 2, 1957, 71 Stat. 579; Pub. L. 87–615, §2, Aug. 29, 1962, 76 Stat. 409; Pub. L. 97–415, §12(a), Jan. 4, 1983, 96 Stat. 2073; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(8), title XXVIII, §§2802, 2804, 2805, Oct. 24, 1992, 106 Stat. 2944, 3120, 3121; Pub. L. 104–134, title III, §3116(c), Apr. 26, 1996, 110 Stat. 1321–349.

<sup>130</sup> Aug. 1, 1946, ch. 724, title I, §190, as added Pub. L. 87–206, §16, Sept. 6, 1961, 75 Stat. 479; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



**42 USC 2241. Sec. 191. Atomic Safety and Licensing Board; Establishment; Membership; Functions; Compensation**

(a) Notwithstanding the provisions of sections 556(b) and 557(b) of title 5, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this chapter, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

(b) Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 2203 of this title shall be applicable to board members appointed from private life.<sup>131</sup>

**42 USC 2242. Sec. 192. Temporary Operating License**

(a) Fuel loading, testing, and operation at specific power level; petition, affidavit, etc.

Temporary  
licensing  
authority.

In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 2133 or 2134(b) of this title, in which a hearing is otherwise required pursuant to section 2239(a) of this title, the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application.

Initial petition.

The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such

<sup>131</sup> Aug. 1, 1946, ch. 724, title I, §191, as added Pub. L. 87–615, §1, Aug. 29, 1962, 76 Stat. 409; amended Pub. L. 91–560, §10, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 2232(b) of this title; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 4332(2)(C) of this title; and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

(b) Operation at greater power level; criteria, effect, terms and conditions, etc.; procedures applicable

With respect to any petition filed pursuant to subsection (a) of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this chapter.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the

Committees on Natural Resources and on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28. The requirements of section 2239(a) of this title with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

(c) Hearing for final operating license; suspension, issuance, compliance, etc., with temporary operating license

Any hearing on the application for the final operating license for a facility required pursuant to section 2239(a) of this title shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection (b) of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 2239(a) of this title; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 2239(a) of this title on the final operating license for a facility for which a temporary operating license has been issued under subsection (b), and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection (b).

(d) Administrative remedies for minimization of need for license

The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

(e) Expiration of issuing authority

The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.<sup>132</sup>

#### **42 USC 2243. Sec. 193. Licensing of Uranium Enrichment Facilities**

(a) Environmental impact statement

(1) Major Federal action

The issuance of a license under sections 2073 and 2093 of this title for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of

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<sup>132</sup> Aug. 1, 1946, ch. 724, title I, §192, as added Pub. L. 92–307, June 2, 1972, 86 Stat. 191; amended Pub. L. 97–415, §11, Jan. 4, 1983, 96 Stat. 2071; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 103–437, §15(f)(8), Nov. 2, 1994, 108 Stat. 4593.

the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Timing

An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.

(b) Adjudicatory hearing

(1) In general

The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 2073 and 2093 of this title.

(2) Timing

Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.

(3) Single proceeding

No further Commission licensing action shall be required to authorize operation.

(c) Inspection and operation

Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.

(d) Insurance and decommissioning

(1) The Commission shall require, as a condition of the issuance of a license under sections 2073 and 2093 of this title for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

(2) The Commission shall require, as a condition for the issuance of a license under sections 2073 and 2093 of this title for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

(A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).

(B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.

(C) External sinking fund in which deposits are made at least annually.

(e) No Price-Anderson coverage

Section 2210 of this title shall not apply to any license under section 2073 or 2093 of this title for a uranium enrichment facility constructed after November 15, 1990.

(f) Limitation

No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections <sup>1</sup> 2073, 2093, or 2297f of this title, if the Commission determines that—

(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(2) the issuance of such a license or certificate of compliance would be inimical to—

(A) the common defense and security of the United States; or

(B) the maintenance of a reliable and economical domestic source of enrichment services.<sup>133</sup>

42 USC 2251-  
2257 Repealed.

**Chapter 17—Joint Committee on Atomic. Repealed**

Aug. 1, 1946, ch. 724, title I, §302(a), as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884 ; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944.

**Chapter 18—Enforcement**

42 USC 2271.

**Sec. 221. General Provisions**

(a) Authority of President to utilize Government agencies

To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

(b) Criminal violations

The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this chapter.

(c) Violations of this chapter

No action shall be brought against any individual or person for any violation under this chapter unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however,* That nothing in this subsection

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<sup>133</sup> Aug. 1, 1946, ch. 724, title I, §193, as added Pub. L. 101–575, §5(e), Nov. 15, 1990, 104 Stat. 2835; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 104–134, title III, §3116(b)(2), Apr. 26, 1996, 110 Stat. 1321–349.

shall be construed as applying to administrative action taken by the Commission.<sup>134</sup>

**42 USC 2272.****Sec. 222. Violations of Specific Sections**

(a) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 2077 or 2131 of this title, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 2138 of this title, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

(b) Any person who violates, or attempts or conspires to violate, section 2122 of this title shall be fined not more than \$2,000,000 and sentenced to a term of imprisonment not less than 25 years or to imprisonment for life. Any person who, in the course of a violation of section 2122 of this title, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life. If the death of another results from a person's violation of section 2122 of this title, the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.<sup>135</sup>

**42 USC 2273.****Sec. 223. Violation of Sections****(a) Generally**

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 2095 or 2201(b), (i), or (o) of this title shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

(b) Construction or supply of components for utilization facilities; impairment of basic components; "basic component" defined; posting at

<sup>134</sup> Aug. 1, 1946, ch. 724, title I, §221, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 958; amended Pub. L. 91–161, §5, Dec. 24, 1969, 83 Stat. 445; Pub. L. 101–647, title XII, §1211, Nov. 29, 1990, 104 Stat. 4833; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>135</sup> Aug. 1, 1946, ch. 724, title I, §222, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 958; amended Pub. L. 91–161, §§2, 3(a), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 108–458, title VI, §6904(b), Dec. 17, 2004, 118 Stat. 3771.

construction sites of utilization facilities and on premises of component fabrication plants

Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 2133 or 2134(b) of this title who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this chapter, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

- (1) the integrity of the reactor coolant pressure boundary,
- (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
- (3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission. The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 2133 or 2134(b) of this title is under construction and on the premises of each plant where components for such a facility are fabricated.

(c) Criminal penalties

Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 2210(d) of this title (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this chapter or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in section 2014(q) of this title shall, upon conviction, notwithstanding section 3571 of title 18, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, punishment shall be a fine of not more than \$50,000, or imprisonment for not more than five years, or both.<sup>136</sup>

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<sup>136</sup> Aug. 1, 1946, ch. 724, title I, §223, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 958; amended Pub. L. 90–190, §12, Dec. 14, 1967, 81 Stat. 578; Pub. L. 91–161, §6, Dec. 24,

**42 USC 2274. Sec. 224. Communication of Restricted Data**

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

(a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both;

(b) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$50,000 or imprisonment for not more than ten years, or both.<sup>137</sup>

**42 USC 2275. Sec. 225. Receipt of Restricted Data**

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data, shall upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both.<sup>138</sup>

**42 USC 2276. Sec. 226. Tampering with Restricted Data**

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States,

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1969, 83 Stat. 445; Pub. L. 96–295, title II, §203, June 30, 1980, 94 Stat. 786; Pub. L. 100–408, §18, Aug. 20, 1988, 102 Stat. 1083; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>137</sup> Aug. 1, 1946, ch. 724, title I, §224, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 958; amended Pub. L. 91–161, §3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, §3148(a), Oct. 5, 1999, 113 Stat. 938; Pub. L. 106–398, §1 [[div. A], title X, §1087(g)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294.

<sup>138</sup> Aug. 1, 1946, ch. 724, title I, §225, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; amended Pub. L. 91–161, §3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106–65, div. C, title XXXI, §3148(b), Oct. 5, 1999, 113 Stat. 938.

or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.<sup>139</sup>

**42 USC 2277. Sec. 227. Disclosure of Restricted Data**

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$12,500.<sup>140</sup>

**42 USC 2278. Sec. 228. Statute of Limitations**

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 2274 to 2276 of this title unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.<sup>141</sup>

**42 USC 2278a. Sec. 229. Trespass on Commission Installations**

(a) Issuance and posting of regulations

(1) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the

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<sup>139</sup> Aug. 1, 1946, ch. 724, title I, §226, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; amended Pub. L. 91–161, §3(b), Dec. 24, 1969, 83 Stat. 444; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>140</sup> Aug. 1, 1946, ch. 724, title I, §227, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 106–65, div. C, title XXXI, §3148(c), Oct. 5, 1999, 113 Stat. 938.

<sup>141</sup> Aug. 1, 1946, ch. 724, title I, §228, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



Commission, or subject to the licensing authority of the Commission or certification by the Commission under this chapter or any other Act.

(2) Every such regulation of the Commission shall be posted conspicuously at the location involved.

(b) Penalty for violation of regulations

Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

(c) Penalty for violation of regulations regarding enclosed property

Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.<sup>142</sup>

**42 USC 2278b. Sec. 230. Photographing, etc., of Commission Installations; Penalty**

It shall be an offense, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both—

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.<sup>143</sup>

**42 USC 2279. Sec. 231. Other Laws**

Sections 2274 to 2278b of this title shall not exclude the applicable provisions of any other laws.<sup>144</sup>

<sup>142</sup> Aug. 1, 1946, ch. 724, title I, §229, as added Aug. 6, 1956, ch. 1015, §6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 109–58, title VI, §654, Aug. 8, 2005, 119 Stat. 812.

<sup>143</sup> Aug. 1, 1946, ch. 724, title I, §230, as added Aug. 6, 1956, ch. 1015, §6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>144</sup> Aug. 1, 1946, ch. 724, title I, §231, formerly §229, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; renumbered §231 and amended Aug. 6, 1956, ch. 1015, §§6, 7, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

**42 USC 2280. Sec. 232. Injunction Proceedings**

Whenever in the judgment of the Commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.<sup>145</sup>

**42 USC 2281. Sec. 233. Contempt Proceedings**

In case of failure or refusal to obey a subpoena served upon any person pursuant to section 2201(c) of this title, the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.<sup>146</sup>

**42 USC 2282. Sec. 234. Civil Penalties****(a) Violations of licensing requirements**

Any person who (1) violates any licensing or certification provision of section 2073, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139, or 2297f of this title or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, (2) violates any provision of section 2077 of this title, or (3) commits any violation for which a license may be revoked under section 2236 of this title, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

**(b) Notice**

Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the

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<sup>145</sup> Aug. 1, 1946, ch. 724, title I, §232, formerly §230, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 959; renumbered §232, Aug. 6, 1956, ch. 1015, §6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>146</sup> Aug. 1, 1946, ch. 724, title I, §233, formerly §231, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960; renumbered §233, Aug. 6, 1956, ch. 1015, §6, 70 Stat. 1070; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

(c) Collection of penalties

On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.<sup>147</sup>

**42 USC 2282a. Sec. 234A. Civil Monetary Penalties for Violations of Department of Energy Safety Regulations**

(a) Persons subject to penalty

Any person who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this chapter (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), or who violates any applicable law, rule, regulation, or order related to nuclear safety whistleblower protections, shall be subject to a civil penalty of not to exceed \$100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Secretary of Energy may carry out this section with respect to the National Nuclear Security Administration by acting through the Administrator for Nuclear Security.

(b) Determination of amount

(1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature,

<sup>147</sup> Aug. 1, 1946, ch. 724, title I, §234, as added Pub. L. 91–161, §4, Dec. 24, 1969, 83 Stat. 444; amended Pub. L. 96–295, title II, §206, June 30, 1980, 94 Stat. 787; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 104–134, title III, §3116(d), Apr. 26, 1996, 110 Stat. 1321–350; Pub. L. 115–232, div. C, title XXXI, §3116(b), Aug. 13, 2018, 132 Stat. 2291.

circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(c) Assessment and payment

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(d) Limitation for not-for-profit institutions

(1) Notwithstanding subsection (a), in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection (a) may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

(2) For purposes of this section, the term "not-for-profit" means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

(e) Nuclear safety whistleblower protections

In this section, the term "nuclear safety whistleblower protections" means the protections for employees of contractors or subcontractors from reprisals pursuant to section 4712 of title 41, section 5851 of this title, or other provisions of Federal law (including rules, regulations, or orders) affording such protections, with respect to disclosures or other activities covered by such protections that relate to nuclear safety.<sup>148</sup>

**42 USC 2282b. Sec. 234B. Civil Monetary Penalties for Violations of Department of Energy Regulations Regarding Security of Classified or Sensitive Information or Data**

(a) Persons subject to penalty

Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

(b) Fee or payment reductions for violations

The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

(c) Powers and limitations

The powers and limitations applicable to the assessment of civil penalties under section 2282a of this title, except for subsection (d) of that section, shall apply to the assessment of civil penalties under this section.

<sup>148</sup> Aug. 1, 1946, ch. 724, title I, §234A, as added Pub. L. 100–408, §17, Aug. 20, 1988, 102 Stat. 1081; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 106–65, div. C, title XXXI, §3147(c), Oct. 5, 1999, 113 Stat. 938; Pub. L. 109–58, title VI, §610(a), (b), Aug. 8, 2005, 119 Stat. 781; Pub. L. 116–92, div. C, title XXXI, §3131, Dec. 20, 2019, 133 Stat. 1958.

(d) Application to certain entities

In the case of an entity specified in subsection (d) of section 2282a of this title—

(1) the assessment of any civil penalty under subsection (a) against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection (a) in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.<sup>149</sup>

**42 USC 2282c. Sec. 234C. Worker Health and Safety Rules for Department of Energy Nuclear Facilities**

(a) Regulations required

(1) In general

The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d) of this title, after public notice and opportunity for comment under section 553 of title 5 (commonly known as the "Administrative Procedure Act"). Such regulations shall, subject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

(2) Applicability

The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525)).

(3) Flexibility

In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

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<sup>149</sup> Aug. 1, 1946, ch. 724, title I, §234B, as added Pub. L. 106–65, div. C, title XXXI, §3147(a), Oct. 5, 1999, 113 Stat. 937.

(4) No effect on health and safety enforcement

This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

(b) Civil penalties

(1) In general

A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection (a) shall be subject to a civil penalty of not more than \$70,000 for each such violation.

(2) Continuing violations

If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

(c) Contract penalties

(1) In general

The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 2210(d) of this title provisions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection (a).

(2) Contents

The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

(d) Coordination of penalties

(1) Choice of penalties

For any violation by a person of a regulation promulgated under subsection (a), the Secretary shall pursue either civil penalties under subsection (b) or contract penalties under subsection (c), but not both.

(2) Maximum amount

In the case of an entity described in subsection (d) of section 2282a of this title, the total amount of civil penalties under subsection (b) and contract penalties under subsection (c) in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(3) Coordination with section 2282a of this title

The Secretary shall ensure that a contractor of the Department is not penalized both under this section and under section 2282a of this title for the same violation.<sup>150</sup>

<sup>150</sup> Aug. 1, 1946, ch. 724, title I, §234C, as added Pub. L. 107–314, div. C, title XXXI, §3173(a), Dec. 2, 2002, 116 Stat. 2743.

**42 USC 2282c**  
note.

**Promulgation of Initial Regulations**

Pub. L. 107–314, div. C, title XXXI, §3173(b), Dec. 2, 2002, 116 Stat. 2745, provided that:

"(1) Deadline for promulgating regulations.—The Secretary of Energy shall promulgate the regulations required by subsection a. of section 234C of the Atomic Energy Act of 1954 [42 U.S.C. 2282c(a)] (as added by subsection (a)) not later than one year after the date of the enactment of this Act [Dec. 2, 2002].

"(2) Effective date.—The regulations promulgated under paragraph (1) shall take effect on the date that is one year after the promulgation date of the regulations."

**42 USC 2282c**  
note.

**Prohibition**

Pub. L. 107–314, div. C, title XXXI, §3173(c), Dec. 2, 2002, 116 Stat. 2745, provided that:

"The Secretary of Energy shall not participate in or otherwise support any study or other project relating to a modification in the scope of the regulations enforceable by civil penalties under section 234A or 234C of the Atomic Energy Act of 1954 [42 U.S.C. 2282a, 2282c], or the responsibility of the Secretary to implement and enforce such regulations, until after the date on which the regulations for such purposes under such section 234C take effect in accordance with subsection (b) [set out as a note above]."

**42 USC 2283.**

**Sec. 235. Protection of Nuclear Inspectors**

(a) Homicide

Whoever kills any person who performs any inspections which—

(1) are related to any activity or facility licensed by the Commission, and

(2) are carried out to satisfy requirements under this chapter or under any other Federal law governing the safety of utilization facilities required to be licensed under section 2133 or 2134(b) of this title, or the safety of radioactive materials, shall be punished as provided under sections 1111 and 1112 of title 18. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

(b) Assault

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection (a) of this section, while such person is engaged in such



inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18.<sup>151</sup>

**42 USC 2284. Sec. 236. Sabotage of Nuclear Facilities or Fuel**

(a) Physical damage to facilities, etc.

Any person who knowingly destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this chapter;

(2) any nuclear waste treatment, storage, or disposal facility licensed under this chapter;

(3) any nuclear fuel for a utilization facility licensed under this chapter, or any spent nuclear fuel from such a facility;

(4) any uranium enrichment, uranium conversion, or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission;

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

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

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

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(b) Unauthorized use or tampering with facilities, etc.

Any person who knowingly causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.<sup>152</sup>

<sup>151</sup> Aug. 1, 1946, ch. 724, title I, §235, as added Pub. L. 96–295, title II, §202(a), June 30, 1980, 94 Stat. 786; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>152</sup> Aug. 1, 1946, ch. 724, title I, §236, as added Pub. L. 96–295, title II, §204(a), June 30, 1980, 94 Stat. 787; amended Pub. L. 97–415, §16, Jan. 4, 1983, 96 Stat. 2076; Pub. L. 101–575, §5(d), Nov. 15, 1990, 104 Stat. 2835; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 107–56, title VIII, §§810(f), 811(h), Oct. 26, 2001, 115 Stat. 380, 381; Pub. L. 109–58, title VI, §655, Aug. 8, 2005, 119 Stat. 813.

**Chapter 19—Miscellaneous**

**42 USC 2015. Sec. 241. Transfer of Property**

Nothing in this chapter shall be deemed to repeal, modify, amend, or alter the provisions of section 9(a) of the Atomic Energy Act of 1946, as heretofore amended.<sup>153</sup>

**42 USC 2015a. Sec. 242. Cold Standby**

The Secretary is authorized to expend such funds as may be necessary for the purposes of maintaining enrichment capability at the Portsmouth, Ohio, facility.<sup>154</sup>

**42 USC 2015b. Sec. 243. Scholarship and Fellowship Program**

(a) Scholarship program

To enable students to study, for at least 1 academic semester or equivalent term, science, engineering, or another field of study that the Commission determines is in a critical skill area related to the regulatory mission of the Commission, the Commission may carry out a program to-

(1) award scholarships to undergraduate students who-

(A) are United States citizens; and

(B) enter into an agreement under subsection (c) to be employed by the Commission in the area of study for which the scholarship is awarded.

(b) Fellowship program

To enable students to pursue education in science, engineering, or another field of study that the Commission determines is in a critical skill area related to its regulatory mission, in a graduate or professional degree program offered by an institution of higher education in the United States, the Commission may carry out a program to-

(1) award fellowships to graduate students who-

(A) are United States citizens; and

(B) enter into an agreement under subsection (c) to be employed by the Commission in the area of study for which the fellowship is awarded.

(c) Requirements

(1) In general

As a condition of receiving a scholarship or fellowship under subsection (a) or (b), a recipient of the scholarship or fellowship shall enter into an agreement with the Commission under which, in return for the assistance, the recipient shall-

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<sup>153</sup> Aug. 1, 1946, ch. 724, title I, §241, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>154</sup> Aug. 1, 1946, ch. 724, title I, §242, as added Pub. L. 107–222, §1(d)(1), Aug. 21, 2002, 116 Stat. 1336.

(A) maintain satisfactory academic progress in the studies of the recipient, as determined by criteria established by the Commission;

(B) agree that failure to maintain satisfactory academic progress shall constitute grounds on which the Commission may terminate the assistance;

(C) on completion of the academic course of study in connection with which the assistance was provided, and in accordance with criteria established by the Commission, engage in employment by the Commission for a period specified by the Commission, that shall be not less than 1 time and not more than 3 times the period for which the assistance was provided; and

(D) if the recipient fails to meet the requirements of subparagraph (A), (B), or (C), reimburse the United States Government for-

(i) the entire amount of the assistance provided the recipient under the scholarship or fellowship; and

(ii) interest at a rate determined by the Commission.

(2) Waiver or suspension

The Commission may establish criteria for the partial or total waiver or suspension of any obligation of service or payment incurred by a recipient of a scholarship or fellowship under this section.

(d) Competitive process

Recipients of scholarships or fellowships under this section shall be selected through a competitive process primarily on the basis of academic merit and such other criteria as the Commission may establish, with consideration given to financial need and the goal of promoting the participation of individuals identified in [section 1885a or 1885b of this title](#).

(e) Direct appointment

The Commission may appoint directly, with no further competition, public notice, or consideration of any other potential candidate, an individual who has-

(1) received a scholarship or fellowship awarded by the Commission under this section; and

(2) completed the academic program for which the scholarship or fellowship was awarded.<sup>155</sup>

**42 USC 2015c. Sec. 244. Partnership Program with Institutions of Higher Education**

(a) Definitions

In this section:

(1) Hispanic-serving institution

The term "Hispanic-serving institution" has the meaning given the term in section 1101a(a) of title 20.

(2) Historically Black college and university

<sup>155</sup> Aug. 1, 1946, ch. 724, title I, §243, as added Pub. L. 109–58, title VI, §622(a), Aug. 8, 2005, 119 Stat. 782.

The term "historically Black college or university" has the meaning given the term "part B institution" in section 1061 of title 20.

(3) Tribal college

The term "Tribal college" has the meaning given the term "tribally controlled college or university" in section 1801(a) of title 25.

(b) Partnership program

The Commission may establish and participate in activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-serving institutions, historically Black colleges or universities, and Tribal colleges, to strengthen the capacity of the institutions-

(1) to educate and train students (including present or potential employees of the Commission); and

(2) to conduct research in the field of science, engineering, or law, or any other field that the Commission determines is important to the work of the Commission.<sup>156</sup>

**42 USC 2016  
Repealed.**

**Sec. 251. Report to Congress. Repealed**

**Pub. L. 105–85, div. C, title XXXI, §3152(a)(1), Nov. 18, 1997, 111 Stat. 2042.<sup>157</sup>**

**42 USC 2017.**

**Sec. 261. Authorization of Appropriations**

(a) Congressional authorization

No appropriation shall be made to the Commission, nor shall the Commission waive charges for the use of materials under the Cooperative Power Reactor Demonstration Program, unless previously authorized by legislation enacted by the Congress.

(b) Accounting

Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

(c) Restoration or replacement of facilities

Notwithstanding the provisions of subsection (a), funds are hereby authorized to be appropriated for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

(d) Substituted construction projects

Funds authorized to be appropriated for any construction project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another construction

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<sup>156</sup> Aug. 1, 1946, ch. 724, title I, §244, as added Pub. L. 109–58, title VI, §651(c)(4)(A), Aug. 8, 2005, 119 Stat. 802 ; amended Pub. L. 110–315, title IX, §941(k)(2)(L), Aug. 14, 2008, 122 Stat. 3467.

<sup>157</sup> Section, act Aug. 1, 1946, ch. 724, title I, §251, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; amended June 11, 1959, Pub. L. 86–43, 73 Stat. 73 ; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944 , required Commission to submit to Congress annual report on its activities.

project not otherwise authorized if the substituted construction project is within the limit of cost of the construction project for which substitution is to be made, and the Commission certifies that-

- (1) the substituted project is essential to the common defense and security;
- (2) the substituted project is required by changes in weapon characteristics or weapon logistic operations; and
- (3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.<sup>158</sup>

**42 USC 2018. Sec. 271. Agency Jurisdiction**

Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.<sup>159</sup>

**42 USC 2019. Sec. 272. Applicability of Federal Power Act**

Every licensee under this chapter who holds a license from the Commission for a utilization or production facility for the generation of commercial electric energy under section 2133 of this title and who transmits such electric energy in interstate commerce or sells it at wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act [16 U.S.C. 791a et seq.].<sup>160</sup>

**42 USC 2020. Sec. 273. Licensing of Government Agencies**

Nothing in this chapter shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under [section 2133 of this title](#), if qualified under the provisions of said section, for the construction and operation of production or utilization facilities for the

<sup>158</sup> Aug. 1, 1946, ch. 724, title I, §261, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; amended Pub. L. 85–79, §1, July 3, 1957, 71 Stat. 274 ; Pub. L. 87–615, §8, Aug. 29, 1962, 76 Stat. 411 ; Pub. L. 88–72, §107, July 22, 1963, 77 Stat. 88 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>159</sup> Aug. 1, 1946, ch. 724, title I, §271, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; amended Pub. L. 89–135, Aug. 24, 1965, 79 Stat. 551 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>160</sup> Aug. 1, 1946, ch. 724, title I, §272, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

primary purpose of producing electric energy for disposition for ultimate public consumption.<sup>161</sup>

**42 USC 2021. Sec. 274. Cooperation with States**

**(a) Purpose**

It is the purpose of this section-

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

**(b) Agreements with States**

Except as provided in subsection (c), the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this division, and [section 2201 of this title](#), with respect to any one or more of the following materials within the State:

(1) Byproduct materials (as defined in [section 2014\(e\) of this title](#)).

(2) Source materials.

(3) Special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

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<sup>161</sup> Aug. 1, 1946, ch. 724, title I, §273, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

(c) Commission regulation of certain activities

No agreement entered into pursuant to subsection (b) shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of-

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#). Notwithstanding any agreement between the Commission and any State pursuant to subsection (b), the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

(d) Conditions

The Commission shall enter into an agreement under subsection (b) of this section with any State if-

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection (o) and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

(e) Publication in Federal Register; comment of interested persons

(1) Before any agreement under subsection (b) is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and

exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

(f) Exemptions

The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in subchapters V, VI, and VII, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

(g) Compatible radiation standards

The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

(h) Consultative, advisory, and miscellaneous functions of Administrator of Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings with, participate in the deliberations of, and to advise the Administrator. The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Administrator shall also perform such other functions as the President may assign to him by Executive order.

(i) Inspections and other functions; training and other assistance

The Commission in carrying out its licensing and regulatory responsibilities under this chapter is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection (b).

(j) Reserve power to terminate or suspend agreements; emergency situations; State nonaction on causes of danger; authority exercisable only during emergency and commensurate with danger

(1) The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under



this chapter, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

(k) State regulation of activities for certain purposes

Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

(l) Commission regulated activities; notice of filing; hearing

With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection (c), the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

(m) Limitation of agreements and exemptions

No agreement entered into under subsection (b), and no exemption granted pursuant to subsection (f), shall affect the authority of the Commission under section 2201(b) or (i) of this title to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of [section 2201\(i\) of this title](#), activities covered by exemptions granted pursuant to subsection (f) shall be deemed to constitute activities authorized pursuant to this chapter; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to [section 2073 of this title](#).

(n) "State" and "agreement" defined

As used in this section, the term "State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the

District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.

(o) State compliance requirements: compliance with [section 2113\(b\) of this title](#) and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction; alternative requirements

In the licensing and regulation of byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection (b), a State shall require-

(1) compliance with the requirements of subsection (b) of [section 2113 of this title](#) (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to [sections 2113, 2114, and 2022 of this title](#), and

(3) procedures which-

(A) in the case of licenses, provide procedures under State law which include-

- (i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,
- (ii) an opportunity for cross examination, and
- (iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include-

- (i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;
- (ii) an assessment of any impact on any waterway and groundwater resulting from such activities;
- (iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by [section 2014\(e\)\(2\) of this title](#); and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C). If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with [section 2113\(b\) of this title](#), such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to [section 2201\(x\) of this title](#). No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in [section 2014\(e\)\(2\) of this title](#), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with [section 2022 of this title](#). Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.<sup>162</sup>

<sup>162</sup> Aug. 1, 1946, ch. 724, title I, §274, as added Pub. L. 86–373, §1, Sept. 23, 1959, 73 Stat. 688 ; amended 1970 Reorg. Plan No. 3, §§2(a)(7), 6(2), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086; Pub. L. 95–604, title II, §204(a)–(e)(1), (f), Nov. 8, 1978, 92 Stat. 3036–3038 ; Pub. L. 96–295, title II, §205, June 30, 1980, 94 Stat. 787 ; Pub. L. 97–415, §19(a), Jan. 4, 1983, 96 Stat. 2078 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(6), (8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 109–58, title VI, §651(e)(2), Aug. 8, 2005, 119 Stat. 807.

**42 USC 2022. Sec. 275. Health and Environmental Standards for Uranium Mill Tailings**

(a) Promulgation and revision of rules for protection from hazards at inactive or depository sites

As soon as practicable, but not later than October 1, 1982, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7914(h)]) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7911]) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7911 et seq.]. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.]. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. The Administrator may periodically revise any standard promulgated pursuant to this subsection. After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.

(b) Promulgation and revision of rules for protection from hazards at processing or disposal sites

(1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 2014(e)(2) of this title, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material. If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this chapter without regard to any provision of this chapter requiring such actions to comply with, or be taken in

accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this chapter. Requirements established by the Commission under this chapter with respect to byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection (f)(3). Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) pending promulgation by the Commission of any such standard of general application. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended [42 U.S.C. 6921 et seq.], which are applicable to such hazards: *Provided, however,* That no permit issued by the Administrator is required under this chapter or the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.], for the processing, possession, transfer, or disposal of byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#). The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under [section 2021\(b\)\(2\) of this title](#) shall apply such revised standard in the case of any license for byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) or any revision thereof.

(c) Publication in Federal Register; notice and hearing; consultations; judicial review; time for petition; venue; copy to Administrator; record; administrative jurisdiction; review by Supreme Court; effective date of rule

(1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The

Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in [section 2112 of title 28](#). The court shall have jurisdiction to review the rule in accordance with [chapter 7 of title 5](#) and to grant appropriate relief as provided in such chapter. The judgement of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in [section 1254 of title 28](#).

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

(d) Federal and State implementation and enforcement

Implementation and enforcement of the standards promulgated pursuant to subsection (b) of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this chapter. States exercising authority pursuant to [section 2021\(b\)\(2\) of this title](#) shall implement and enforce such standards in accordance with subsection (o) of such section.

(e) Other authorities of Administrator unaffected

Nothing in this chapter applicable to byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended [[42 U.S.C. 7401 et seq.](#)], or the Federal Water Pollution Control Act, as amended [[33 U.S.C. 1251 et seq.](#)].

(f) Implementation or enforcement of Uranium Mill Licensing Requirements

(1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

(2) Following the proposal by the Administrator of standards under subsection (b), the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and

opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if—

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection (b). During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in [section 2014\(e\)\(2\) of this title](#)) under this chapter on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection (b) of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 2114 of this title to promulgate regulations to protect the public health and safety and the environment.<sup>163</sup>

**42 USC 2023. Sec. 276. State Authority to Regulate Radiation Below Level of Regulatory Concern of Nuclear Regulatory Commission**

(a) In general

No provision of this chapter, or of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b et seq.], may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after October 24, 1992, exempts such waste from regulation.

(b) Relation to other State authority

This section may not be construed to imply preemption of existing State authority. Except as expressly provided in subsection (a), this section may not be construed to confer on any State any additional authority to regulate activities licensed by the Nuclear Regulatory Commission.

<sup>163</sup> Aug. 1, 1946, ch. 724, title I, §275, as added Pub. L. 95–604, title II, §206(a), Nov. 8, 1978, 92 Stat. 3039 ; amended Pub. L. 97–415, §§18(a), 22(b), Jan. 4, 1983, 96 Stat. 2077 , 2080; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



(c) Definitions

For purposes of this section:

(1) The term "low-level radioactive waste" means radioactive material classified by the Nuclear Regulatory Commission as low-level radioactive waste on October 24, 1992.

(2) The term "off-site incineration" means any incineration of radioactive materials at a facility that is located off the site where such materials were generated.

(3) The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.<sup>164</sup>

**Sec. 281. Separability**

Act Aug. 1, 1946, ch. 724, title I, §281, as added by act Aug. 30, 1954, §1; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944, provided that:

"If any provision of this Act [see Short Title note above] or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

**Sec. 291. Short Title**

Act Aug. 1, 1946, ch. 724, title I, §291, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 960 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944, provided that:

"This Act [enacting this chapter, amending sections 190j and 622 of Title 2, The Congress, and repealing sections 2251 to 2257 and 2315 of this title] may be cited as the 'Atomic Energy Act of 1954'."

**Chapter 20—Joint Committee on Atomic Energy Abolished;  
Functions and Responsibilities Reassigned**

**42 USC 2258. Sec. 301. Joint Committee on Atomic Energy Abolished**

(a) Abolition

The Joint Committee on Atomic Energy is abolished.

(b) References in rules, etc., on and after September 20, 1977

Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after September 20, 1977, be considered as referring to the committees of the Senate and the

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<sup>164</sup> Aug. 1, 1946, ch. 724, title I, §276, as added Pub. L. 102–486, title XXIX, §2901(a), Oct. 24, 1992, 106 Stat. 3122.



House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

(c) Transfer of records, data, etc.; copies

All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.<sup>165</sup>

**Sec. 302. Transfer of Certain Functions of the Joint Committee on Atomic Energy and Conforming Amendments to Certain Other Laws**

**42 USC 2251–  
2257  
Repealed.**

(a) Repealed. Aug. 1, 1946, ch. 724, title I, §302(a), as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884 ; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944.<sup>166</sup>  
(b) Repealed. Aug. 1, 1946, ch. 724, title I, §302(b), as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, §902(a)(8), 106 Stat. 2944.<sup>167</sup>

<sup>165</sup> Aug. 1, 1946, ch. 724, title I, §301, as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>166</sup> Section 2251, act Aug. 1, 1946, ch. 724, §201, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 956 , provided for establishment of Joint Committee on Atomic Energy. Provisions similar to section 2251 were contained in section 1815(a) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919. Section 2252, act Aug. 1, 1946, ch. 724, §202, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 956 ; amended Sept. 6, 1961, Pub. L. 87–206, §17, 75 Stat. 479 ; Mar. 26, 1964, Pub. L. 88–294, 78 Stat. 172 ; Dec. 6, 1974, Pub. L. 93–514, 88 Stat. 1611 , set out authority and duties of Joint Committee. Provisions similar to section 2252 were contained in section 1815(b) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919. Section 2253, act Aug. 1, 1946, ch. 724, §203, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 956 , provided for a Chairman and a Vice Chairman of Committee. Provisions similar to section 2253 were contained in section 1815(c) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919. Section 2254, act Aug. 1, 1946, ch. 724, §204, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 957 ; amended Dec. 27, 1974, Pub. L. 93–554, title I, §101(2), 88 Stat. 1776 , related to the powers of Committee. Provisions similar to section 2254 were contained in section 1815(d) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919. Section 2255, act Aug. 1, 1946, ch. 724, §205, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 957 , related to staff and assistance for Committee. Provisions similar to section 2255 were contained in section 1815(e) of this title prior to the general amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919. Section 2256, act Aug. 1, 1946, ch. 724, §206, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 957 , related to classification of information originating in Committee. Section 2257, act Aug. 1, 1946, ch. 724, §207, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 957 , required that Committee keep records of all Committee actions.

<sup>167</sup> Section, act Aug. 4, 1955, ch. 543, ch. 10, §103, 69 Stat. 483 , provided that sections 2251 to 2257 of this title were applicable to all matters coming under this chapter.

2 USC 190j  
Repealed.

(c) Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended.

(d) 2 USC §§190i to 190k. Repealed. S. Res. 274, §2(b), Nov. 14, 1979.<sup>168</sup>

42 USC 2259.

### **Sec. 303. Information and Assistance to Congressional Committees**

(a) Secretary of Energy and Nuclear Regulatory Commission

The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

(b) Department of Defense and Department of State

The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

(c) Government agencies

Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

(d) Utilization of services, facilities, and personnel of Government agencies; reimbursement; prior written consent

The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however*, That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Oversight.<sup>169</sup>

<sup>168</sup> Section 190j, Pub. L. 91–510, title II, §252(a), Oct. 26, 1970, 84 Stat. 1173 ; Aug. 1, 1946, ch. 724, §302(d), as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884 , related to cost estimates in reports of Senate committees accompanying certain legislative measures and to other Senate committee operations. See Standing Rules of the Senate.

<sup>169</sup> Aug. 1, 1946, ch. 724, title I, §303, as added Pub. L. 95–110, §1, Sept. 20, 1977, 91 Stat. 884 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 104–186, title II, §222(1), Aug. 20, 1996, 110 Stat. 1751.

**Chapter 21—Defense Nuclear Facilities Safety Board****42 USC 2286. Sec. 311. Establishment****(a) Establishment**

There is hereby established an independent establishment in the executive branch, to be known as the "Defense Nuclear Facilities Safety Board" (hereafter in this subchapter referred to as the "Board").

**(b) Membership**

(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

(4) The President shall enter into an arrangement with the National Academy of Sciences under which the National Academy shall maintain a list of individuals who meet the qualifications described in paragraph (1) to assist the President in selecting individuals to nominate for positions as members of the Board.

**(c) Chairperson, Vice Chairperson, and members**

(1) The President shall designate a Chairperson and Vice Chairperson of the Board from among members of the Board.

(2) In accordance with paragraphs (5) and (6), the Chairperson shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to—

(A) the appointment and supervision of employees of the Board;

(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

(3)(A) The Chairperson may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

(B) In carrying out subparagraph (A), the Chairperson shall delegate to the Executive Director of Operations established under [section 2286b\(b\)\(3\) of this title](#) the following functions:

(i) Administrative functions of the Board.

(ii) Appointment and supervision of employees of the Board not specified under paragraph (6).

(iii) Distribution of business among the employees and administrative units and offices of the Board.

- (iv) Preparation of-
  - (I) proposals for the reorganization of the administrative units or offices of the Board;
  - (II) the budget estimate for the Board; and
  - (III) the proposed distribution of funds according to purposes approved by the Board.
- (4) The Vice Chairperson shall act as Chairperson in the event of the absence or incapacity of the Chairperson or in case of a vacancy in the office of Chairperson.
- (5) Each member of the Board, including the Chairperson and Vice Chairperson, shall-
  - (A) have equal responsibility and authority in establishing decisions and determining actions of the Board;
  - (B) have full access to all information relating to the performance of the Board's functions, powers, and mission; and
  - (C) have one vote.
- (6)(A) The Chairperson, subject to the approval of the Board, shall appoint the senior employees described in subparagraph (C). Any member of the Board may propose to the Chairperson an individual to be so appointed.
- (B) The Chairperson, subject to the approval of the Board, may remove a senior employee described in subparagraph (C). Any member of the Board may propose to the Chairperson an individual to be so removed.
- (C) The senior employees described in this subparagraph are the following senior employees of the Board:
  - (i) The Executive Director of Operations established under [section 2286b\(b\)\(3\) of this title](#).
  - (ii) The general counsel.
- (d) Terms
  - (1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. A member may be reappointed for a second term only if the member was confirmed by the Senate more than two years into the member's first term. A member may not be reappointed for a third term.
  - (2) Of the members first appointed-
    - (A) one shall be appointed for a term of one year;
    - (B) one shall be appointed for a term of two years;
    - (C) one shall be appointed for a term of three years;
    - (D) one shall be appointed for a term of four years; and
    - (E) one shall be appointed for a term of five years,as designated by the President at the time of appointment.
  - (3)(A) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term.
  - (B) A member may not serve after the expiration of the member's term, unless the departure of the member would result in the loss of a quorum for the Board. If more than one member is serving after the expiration of the member's term and a new member is appointed to the

Board so that one of the members serving after the expiration of the member's term is no longer necessary to maintain a quorum, the member whose term expired first may no longer serve on the Board.

(4)(A) Not later than 180 days after the expiration of the term of a member of the Board, the President shall-

(i) submit to the Senate the nomination of an individual to fill the vacancy; or

(ii) submit to the Committee on Armed Services of the Senate a report that includes-

(I) a description of the reasons the President did not submit such a nomination; and

(II) a plan for submitting such a nomination during the 90-day period following the submission of the report.

(B) If the President does not submit to the Senate the nomination of an individual to fill a vacancy during the 90-day period described in subclause (II) of subparagraph (A)(ii), the President shall submit to the Committee on Armed Services a report described in that subparagraph not less frequently than every 90 days until the President submits such a nomination.

(e) Quorum

(1) Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(2) In accordance with paragraph (4), during a covered period, the Chairperson, in consultation with an eligible member, may carry out the functions and powers of the Board under sections 2286a through 2286e of this title, notwithstanding that a quorum does not exist.

(3) Not later than 30 days after a covered period begins, the Chairperson shall notify the congressional defense committees that a quorum does not exist.

(4) The Chairperson may make recommendations to the Secretary of Energy and initiate investigations into defense nuclear facilities under section 2286a of this title pursuant to paragraph (2) only if-

(A) a period of 30 days elapses following the date on which the Chairperson submits the notification required under paragraph (3);

(B) not later than 30 days after making any such recommendation or initiating any such investigation, the Chairperson notifies the congressional defense committees of such recommendation or investigation; and

(C) any eligible member concurs with such recommendation or investigation.

(5) In this subsection:

(A) The term "congressional defense committees" has the meaning given such term in section 101(a) of title 10.

(B) The term "covered period" means a period beginning on the date on which a quorum specified in paragraph (1) does not exist by reason of either or both a vacancy in the membership of the Board or the incapacity of a member of the Board and ending on the earlier of-

(i) the date that is one year after such beginning date; or

(ii) the date on which a quorum exists.

(C) The term "eligible member" means a member of the Board, other than the Chairperson, serving during a covered period and who is not incapacitated.<sup>170</sup>

**42 USC 2286a. Sec. 312. Mission and Functions of the Board**

**(a) Mission**

The mission of the Board shall be to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities, including with respect to the health and safety of employees and contractors at such facilities.

**(b) Functions**

The Board shall perform the following functions:

**(1) Review and evaluation of standards**

The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

**(2) Investigations**

(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be-

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

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<sup>170</sup> Aug. 1, 1946, ch. 724, title I, §311, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2076 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 112–239, div. C, title XXXII, §3202(a), Jan. 2, 2013, 126 Stat. 2217 ; Pub. L. 114–92, div. C, title XXXII, §3202(a), (b)(1), Nov. 25, 2015, 129 Stat. 1217 ; Pub. L. 116–92, div. C, title XXXII, §3202(a)(1)(B)–(3), §3203(a), (b)(1), (c), Dec. 20, 2019, 133 Stat. 1964 , 1966; Pub. L. 117–81, div. C, title XXXII, §3202, Dec. 27, 2021, 135 Stat. 2235 Pub. L. 117–263, div. C, title XXXII, §3202, Dec. 23, 2022, 136 Stat. 3060.

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

(3) Analysis of design and operational data

The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) Review of facility design and construction

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) Recommendations

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider, and specifically assess risk (whenever sufficient data exists), the technical and economic feasibility of implementing the recommended measures.

(c) Excluded functions

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.<sup>171</sup>

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<sup>171</sup> Aug. 1, 1946, ch. 724, title I, §312, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2077 ; amended Pub. L. 102–190, div. C, title XXXII, §3202(b)(2), Dec. 5, 1991, 105 Stat. 1582 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 112–239, div. C, title XXXII, §3202(b)(1), Jan. 2, 2013, 126 Stat. 2218 ; Pub. L. 116–92, div. C, title XXXII, §3202(b), Dec. 20, 2019, 133 Stat. 1965.



**42 USC 2286b. Sec. 313. Powers of Board****(a) Hearings**

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairperson or any member of the Board designated by him and shall be served by any person designated by the Chairperson, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

**(b) Staff**

(1) The Board may, for the purpose of performing its responsibilities under this subchapter-

(A) in accordance with [section 2286\(c\)\(6\) of this title](#), hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 130 full-time employees; and

(B) procure the temporary and intermittent services of experts and consultants to the extent authorized by [section 3109\(b\) of title 5](#) at rates the Board determines to be reasonable.

(2) The authority and requirements provided in [section 2201\(d\) of this title](#) with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(3)(A) The Board shall have an Executive Director of Operations who shall be appointed under [section 2286\(c\)\(6\) of this title](#).



(B) The Executive Director of Operations shall report to the Chairperson.

(C) The Executive Director of Operations shall be the senior employee of the Board responsible for-

- (i) general administration and technical matters;
- (ii) ensuring that the members of the Board are fully and currently informed with respect to matters for which the members are responsible; and
- (iii) the functions delegated by the Chairperson pursuant to [section 2286\(c\)\(3\)\(B\) of this title](#).

(4) Subject to the approval of the Board, the Chairperson may organize the staff of the Board as the Chairperson considers appropriate to best accomplish the mission of the Board described in [section 2286a\(a\) of this title](#).

(c) Regulations

The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter.

(d) Reporting requirements

The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under [section 2167 or 2168 of this title](#).

(e) Use of Government facilities, etc.

The Board may, for the purpose of carrying out its responsibilities under this subchapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) Assistance from certain agencies of Federal Government

With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) Assistance from organizations outside Federal Government

Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this subchapter.

(h) Resident inspectors

The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

(i) Special studies

The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) Evaluation of information

The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to-

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 2286a(b)(1) of this title, the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

(k) Nonpublic collaborative discussions

(1) In general

Notwithstanding section 552b of title 5, a quorum of the members of the Board may hold a meeting that is not open to public observation to discuss official business of the Board if-

(A) no formal or informal vote or other official action is taken at the meeting;

(B) each individual present at the meeting is a member or an employee of the Board;

(C) at least one member of the Board from each political party is present at the meeting, unless all members of the Board are of the same political party at the time of the meeting; and

(D) the general counsel of the Board, or a designee of the general counsel, is present at the meeting.

(2) Disclosure of nonpublic collaborative discussions

(A) In general

Except as provided by subparagraph (B), not later than two business days after the conclusion of a meeting described in paragraph (1), the Board shall make available to the public, in a place easily accessible to the public-

(i) a list of the individuals present at the meeting; and

(ii) a summary of the matters, including key issues, discussed at the meeting, except for any matter the Board properly determines may be withheld from the public under section 552b(c) of title 5.

(B) Information about matters withheld from public

If the Board properly determines under subparagraph (A)(ii) that a matter may be withheld from the public under section 552b(c) of title 5, the Board shall include in the summary required by that subparagraph as much general information as possible with respect to the matter.

(3) Rules of construction

Nothing in this subsection may be construed-

(A) to limit the applicability of section 552b of title 5 with respect to-

(i) a meeting of the members of the Board other than a meeting described in paragraph (1); or

(ii) any information that is proposed to be withheld from the public under paragraph (2)(A)(ii); or

(B) to authorize the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5.<sup>172</sup>

**42 USC 2286c. Sec. 314. Responsibilities of the Secretary of Energy**

**(a) Cooperation**

Except as specifically provided by this section, the Secretary of Energy shall fully cooperate with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with prompt and unfettered access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this subchapter. The access provided to defense nuclear facilities, personnel, and information under this subsection shall be provided without regard to the hazard or risk category assigned to a facility by the Secretary.

**(b) Authority of Secretary to deny information**

(1) The Secretary may deny access to information under subsection (a) only to any person who-

(A) has not been granted an appropriate security clearance or access authorization by the Secretary; or

(B) does not need such access in connection with the duties of such person.

(2) If the Board requests access to information under subsection (a) in written form, and the Secretary denies access to such information pursuant to paragraph (1)-

(A) the Secretary shall provide the Board notice of such denial in written form; and

(B) not later than January 1 and July 1 of each year beginning in 2020-

(i) the Board shall submit to the congressional defense committees a report identifying each request for access to information under subsection (a) submitted to the Secretary in

<sup>172</sup> Aug. 1, 1946, ch. 724, title I, §313, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2079 ; amended Pub. L. 101–510, div. C, title XXXII, §3202, Nov. 5, 1990, 104 Stat. 1844 ; Pub. L. 102–190, div. C, title XXXII, §3202(a), Dec. 5, 1991, 105 Stat. 1582 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 112–239, div. C, title XXXII, §3202(g), Jan. 2, 2013, 126 Stat. 2220 ; Pub. L. 113–291, div. C, title XXXII, §3203(a), Dec. 19, 2014, 128 Stat. 3903 ; Pub. L. 114–92, div. C, title XXXII, §3202(b)(2), Nov. 25, 2015, 129 Stat. 1218 ; Pub. L. 116–92, div. C, title XXXII, §3202(a)(1)(A), (4), Dec. 20, 2019, 133 Stat. 1963 ; 1964; Pub. L. 116–283, div. C, title XXXII, §3202, Jan. 1, 2021, 134 Stat. 4394 ; Pub. L. 117–81, div. C, title XXXII, §3202(2), Dec. 27, 2021, 135 Stat. 2235.

written form during the preceding six-month period and denied by the Secretary; and

(ii) the Secretary shall submit to the congressional defense committees a report identifying-

(I) each such request denied by the Secretary during that period; and

(II) the reason for the denial.

(3) In this subsection, the term "congressional defense committees" has the meaning given that term in section 101(a) of title 10.

(c) Application of nondisclosure protections by Board

The Board may not publicly disclose information provided under this section if such information is otherwise protected from disclosure by law, including deliberative process information.<sup>173</sup>

#### 42 USC 2286d. Sec. 315. Board Recommendations

(a) Submission of recommendations

(1) Subject to subsections (h) and (i), not later than 30 days before the date on which the Board transmits a recommendation to the Secretary of Energy under section 2286a of this title, the Board shall transmit to the Secretary in writing a draft of such recommendation and any related findings, supporting data, and analyses to ensure the Secretary is adequately informed of a formal recommendation and to provide the Secretary an opportunity to provide input to the Board before such recommendation is finalized.

(2) The Secretary may provide to the Board comments on a draft recommendation transmitted by the Board under paragraph (1) by not later than 30 days after the date on which the Secretary receives the draft recommendation. The Board may grant, upon request by the Secretary, additional time for the Secretary to transmit comments to the Board.

(3) After the period of time in which the Secretary may provide comments under paragraph (2) elapses, the Board may transmit a final recommendation to the Secretary.

(b) Public availability and comment

Subject to subsections (h) and (i), after the Secretary of Energy receives a recommendation from the Board under subsection (a)(3), the Board shall promptly make available to the public such recommendation and any related correspondence from the Secretary by-

(1) providing such recommendation and correspondence to the public in the regional public reading rooms of the Department of Energy; and

(2) publishing in the Federal Register-

(A) such recommendation and correspondence; and

(B) a request for the submission to the Board of public comments on such recommendation that provides interested

<sup>173</sup> Aug. 1, 1946, ch. 724, title I, §314, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2080 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 116–92, div. C, title XXXII, §3202(c), Dec. 20, 2019, 133 Stat. 1965.

persons with 30 days after the date of the publication in which to submit comments, data, views, or arguments to the Board concerning the recommendation.

(c) Response by Secretary

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under [section 2286a of this title](#), a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (b), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (i), shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(d) Provision of information to Secretary

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (b) or (c).

(e) Final decision

If the Secretary of Energy, in a response under subsection (c)(1), rejects (in whole or part) any recommendation made by the Board under [section 2286a of this title](#), the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (i), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a written report containing that decision and reasoning.

(f) Implementation plan

The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such

recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

(g) Implementation

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (f), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate setting forth the reasons for the delay and when implementation will be completed.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 2121 of this title, the Secretary shall submit to the President and to such committees a report containing the recommendation and the Secretary's determination.

(h) Imminent or severe threat

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 2286a of this title relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (e).

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural

Resources of the Senate. The President shall promptly notify such committees of his decision and the reasons for that decision.

(i) Limitation

Notwithstanding any other provision of this section, the requirements to make information available to the public under this section-

- (1) shall not apply in the case of information that is classified; and
- (2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 2167 and 2168 of this title to prohibit dissemination of certain information.<sup>174</sup>

**42 USC 2286e. Sec. 316. Reports**

(a) Board report

(1) The Board shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of-

- (A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;
- (B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and
- (C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

(b) DOE report

The Secretary of Energy shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, a written report concerning the activities of the Department of Energy under this subchapter during the year preceding the year in which the report is submitted.<sup>175</sup>

<sup>174</sup> Aug. 1, 1946, ch. 724, title I, §315, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2080 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 112–239, div. C, title XXXII, §3202(c), Jan. 2, 2013, 126 Stat. 2218.

<sup>175</sup> Aug. 1, 1946, ch. 724, title I, §316, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2082 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; amended Pub. L. 112–239, div. C, title XXXII, §3202(d), Jan. 2, 2013, 126 Stat. 2220.

**42 USC 2286f. Sec. 317. Judicial Review**

Chapter 7 of title 5 shall apply to the activities of the Board under this subchapter.<sup>176</sup>

**42 USC 2286g. Sec. 318. "Department of Energy Defense Nuclear Facility" Defined**

As used in this subchapter, the term "Department of Energy defense nuclear facility" means any of the following:

(1) A production facility or utilization facility (as defined in section 2014 of this title) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include-

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.<sup>177</sup>

**42 USC 2286h. Sec. 319. Contract Authority Subject to Appropriations**

The authority of the Board to enter into contracts under this subchapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.<sup>178</sup>

**42 USC 2286h-1. Sec. 320. Transmittal of Certain Information to Congress**

Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative recommendation, or any statement or information in preparation of a report to be submitted to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of

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<sup>176</sup> Aug. 1, 1946, ch. 724, title I, §317, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2083 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>177</sup> Aug. 1, 1946, ch. 724, title I, §318, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2083 ; amended Pub. L. 102–190, div. C, title XXXII, §3202(b)(1), Dec. 5, 1991, 105 Stat. 1582 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(7), (8), Oct. 24, 1992, 106 Stat. 2944.

<sup>178</sup> Aug. 1, 1946, ch. 724, title I, §319, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2083 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate pursuant to section 2286e(a) of this title, the Board shall submit at the same time a copy thereof to such committees.<sup>179</sup>

**42 USC 2286i. Sec. 321. Annual Authorization of Appropriations**

Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorization Acts.<sup>180</sup>

**42 USC 2286k. Sec. 322. Inspector General**

(a) In general

The Inspector General of the Nuclear Regulatory Commission shall serve as the Inspector General of the Board, in accordance with chapter 4 of this title 5.

(b) Budget

In the budget materials submitted to the President by the Board in connection with the submission to Congress, pursuant to section 1105 of title 31, of the budget for each fiscal year, the Board shall ensure that a separate, dedicated procurement line item is designated for the services of an Inspector General under subsection (a).<sup>181</sup>

**Negotiated Rulemaking on Financial Protection for Radiopharmaceutical Licensees**

**42 USC 2210**  
**note.**

Pub. L. 100–408, §19, Aug. 20, 1988, 102 Stat. 1083, provided that:

"(a) Rulemaking Proceeding.-

"(1) Purpose.-The Nuclear Regulatory Commission (hereafter in this section referred to as the 'Commission') shall initiate a proceeding, in accordance with the requirements of this section, to determine whether to enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with persons licensed by the Commission under section 81, 104(a), or 104(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2111, 2134(a), and 2134(c)) or by a State under section 274(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) for the manufacture, production, possession, or use of

<sup>179</sup> Aug. 1, 1946, ch. 724, title I, §320, as added Pub. L. 103–160, div. C, title XXXII, §3202(a)(2), Nov. 30, 1993, 107 Stat. 1959 ; amended Pub. L. 112–239, div. C, title XXXII, §3202(e), Jan. 2, 2013, 126 Stat. 2220.

<sup>180</sup> Aug. 1, 1946, ch. 724, title I, §321, formerly §320, as added Pub. L. 100–456, div. A, title XIV, §1441(a)(1), Sept. 29, 1988, 102 Stat. 2084 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944 ; renumbered §321, Pub. L. 103–160, div. C, title XXXII, §3202(a)(1), Nov. 30, 1993, 107 Stat. 1959.

<sup>181</sup> Aug. 1, 1946, ch. 724, title I, §322, as added Pub. L. 112–239, div. C, title XXXII, §3202(f)(1), Jan. 2, 2013, 126 Stat. 2220 ; Pub. L. 113–291, div. C, title XXXII, §3202, Dec. 19, 2014, 128 Stat. 3902, Pub. L. 117–286, §4(b)(80), Dec. 27, 2022, 136 Stat. 4351.

radioisotopes or radiopharmaceuticals for medical purposes (hereafter in this section referred to as 'radiopharmaceutical licensees').

"(2) Final determination.-A final determination with respect to whether radiopharmaceutical licensees, or any class of such licensees, shall be indemnified pursuant to section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) and if so, the terms and conditions of such indemnification, shall be rendered by the Commission within 18 months of the date of the enactment of this Act [Aug. 20, 1988].

"(b) Negotiated Rulemaking.-

"(1) Administrative conference guidelines.-For the purpose of making the determination required under subsection (a), the Commission shall, to the extent consistent with the provisions of this Act [see Short Title of 1988 Amendment note set out under [section 2011 of this title](#)], conduct a negotiated rulemaking in accordance with the guidance provided by the Administrative Conference of the United States in Recommendation 82–4, 'Procedures for Negotiating Proposed Regulations' (42 Fed. Reg. 30708, July 15, 1982).

"(2) Designation of convener.-Within 30 days of the date of the enactment of this Act [Aug. 20, 1988], the Commission shall designate an individual or individuals recommended by the Administrative Conference of the United States to serve as a convener for such negotiations.

"(3) Submission of recommendations of the convener.-The convener shall, not later than 7 months after the date of the enactment of this Act, submit to the Commission recommendations for a proposed rule regarding whether the Commission should enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with radiopharmaceutical licensees and, if so, the terms and conditions of such indemnification. If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the proposed rule submitted by the convener shall set forth the procedures for the execution of indemnification agreements with radiopharmaceutical licensees.

"(4) Publication of recommendations and proposed rule.-If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the Commission shall publish the recommendations of the convener submitted under paragraph (3) as a notice of proposed rulemaking within 30 days of the submission of such recommendations under such paragraph.

"(5) Administrative procedures.-To the extent consistent with the provisions of this Act, the Commission shall conduct the proceeding required under subsection (a) in accordance with section 553 of title 5, United States Code."

**42 USC 2297-  
2297a  
Repealed.**

**Title II—United States Enrichment Corporation**

**Chapter 22—General Provisions. Repealed**

**Pub. L. 104–134, title III, §3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.**

**42 USC 2297b-  
2297b-15  
Repealed.**

**Chapter 23—Establishment, Powers, and Organization of Corporation. Repealed**

**Pub. L. 104–134, title III, §3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.**

**42 USC 2297c-  
2297c-7  
Repealed.**

**Chapter 24—Rights, Privileges, and Assets of the Corporation. Repealed**

**Pub. L. 104–134, title III, §3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.**

**42 USC 2297d-  
2297d-1  
Repealed.**

**Chapter 25—Privatization of the Corporation. Repealed**

**Pub. L. 104–134, title III, §3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.**

**42 USC 2297e-  
2297e-7  
Repealed.**

**Chapter 26—AVLIS and Alternative Technologies for Uranium Enrichment. Repealed**

**Pub. L. 104–134, title III, §3116(a)(1), Apr. 26, 1996, 110 Stat. 1321–349.**

**Chapter 27—Licensing and Regulation of Uranium Enrichment Facilities**

**42 USC 2297f.**

**Sec. 1701. Gaseous Diffusion Facilities**

**(a) Issuance of standards**

Within 2 years after October 24, 1992, the Nuclear Regulatory Commission shall establish by regulation such standards as are necessary to govern the gaseous diffusion uranium enrichment facilities of the Department in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Regulations promulgated pursuant to this subsection shall, among other things, require that adequate safeguards (within the meaning of section 2167 of this title) are in place.

**(b) Annual report**

**(1) In general**

Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear Regulatory Commission, in consultation with the Department and the Environmental Protection

Agency, shall report to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion uranium enrichment facilities of the Department.

(2) Required determination

Such report shall include a determination regarding whether the gaseous diffusion uranium enrichment facilities of the Department are in compliance with the standards established under subsection (a) and all applicable laws.

(c) Certification process

(1) Establishment

The Nuclear Regulatory Commission shall establish a certification process to ensure that the Corporation complies with standards established under subsection (a).

(2) Periodic application for certificate of compliance

The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.

(3) Treatment of certificate of compliance

The requirement for a certificate of compliance under paragraph (1) shall be in lieu of any requirement for a license for any gaseous diffusion facility of the Department leased by the Corporation.

(4) NRC review

(A) In general

The Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review the operations of the Corporation with respect to any gaseous diffusion uranium enrichment facilities of the Department leased by the Corporation to ensure that public health and safety are adequately protected.

(B) Access to facilities and information

The Corporation and the Department shall cooperate fully with the Nuclear Regulatory Commission and the Environmental Protection Agency and shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with the ready access to the facilities, personnel, and information the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection. A contractor operating a Corporation facility for the Corporation shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with ready access to the facilities, personnel, and information of the contractor as the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection.

(C) Limitation

The Nuclear Regulatory Commission shall limit its finding under subsection (b)(2) to a determination of whether the facilities

are in compliance with the standards established under subsection (a).

(d) Requirement for operation

The gaseous diffusion uranium enrichment facilities of the Department may not be operated by the Corporation unless the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, makes a determination of compliance under subsection (b) or approves a plan prepared by the Department for achieving compliance required under subsection (b).<sup>182</sup>

**42 USC 2297f-1. Sec. 1702. Licensing of Other Technologies**

(a) In general

Corporation facilities using alternative technologies for uranium enrichment, including AVLIS, shall be licensed under sections 2073, 2093, and 2243 of this title.

(b) Costs for decontamination and decommissioning

The Corporation shall provide for the costs of decontamination and decommissioning of any Corporation facilities described in subsection (a) in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.<sup>183</sup>

**42 USC 2297f-2. Sec. 1703. Regulation of Restricted Data**

The Corporation shall be subject to this Act with respect to the use of, or access to, Restricted Data to the same extent as any private corporation.<sup>184</sup>

**Chapter 28—Decontamination and Decommissioning**

**42 USC 2297g. Sec. 1801. Uranium Enrichment Decontamination and Decommissioning Fund**

(a) Establishment

There is established in the Treasury of the United States an account to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this subchapter as the "Fund"). The Fund, and any amounts deposited in it, including any interest earned thereon, shall be available to the Secretary subject to appropriations for the exclusive purpose of carrying out this subchapter.

<sup>182</sup> Aug. 1, 1946, ch. 724, title II, §1701, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2951; amended Pub. L. 104–134, title III, §3116(b)(3), Apr. 26, 1996, 110 Stat. 1321–349; Pub. L. 105–362, title XII, §1202, Nov. 10, 1998, 112 Stat. 3292.

<sup>183</sup> Aug. 1, 1946, ch. 724, title II, §1702, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2953; amended Pub. L. 104–134, title III, §3116(b)(4), Apr. 26, 1996, 110 Stat. 1321–349.

<sup>184</sup> Aug. 1, 1946, ch. 724, title II, §1703, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2953.

(b) Administration

(1) In general

The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) Investments

The Secretary of the Treasury shall invest amounts contained within the Fund in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate for what the Department determines to be the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to these obligations.<sup>185</sup>

**42 USC 2297g-1. Sec. 1802. Deposits**

(a) Amount

The Fund shall consist of deposits in the amount of \$518,233,333 per fiscal year (to be annually adjusted for inflation beginning on October 24, 1992, using the Consumer Price Index for all-urban consumers published by the Department of Labor) as provided in this section.

(b) Source

Deposits described in subsection (a) shall be from the following sources:

(1) Sums collected pursuant to subsection (c).

(2) Appropriations made pursuant to subsection (d).

(c) Special assessment

The Secretary shall collect a special assessment from domestic utilities.

The total amount collected for a fiscal year shall not exceed \$150,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor). The amount collected from each utility pursuant to this subsection for a fiscal year shall be in the same ratio to the amount required under subsection (a) to be deposited for such fiscal year as the total amount of separative work units such utility has purchased from the Department of Energy for the purpose of commercial electricity generation, before October 24, 1992, bears to the total amount of separative work units purchased from the Department of Energy for all purposes (including units purchased or produced for defense purposes) before October 24, 1992. For purposes of this subsection—

(1) a utility shall be considered to have purchased a separative work unit from the Department if such separative work unit was produced by the Department, but purchased by the utility from another source; and

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<sup>185</sup> Aug. 1, 1946, ch. 724, title II, §1801, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2953.

(2) a utility shall not be considered to have purchased a separative work unit from the Department if such separative work unit was purchased by the utility, but sold to another source.

(d) Authorization of appropriations

There are authorized to be appropriated to the Fund, for the period encompassing 15 years after October 24, 1992, such sums as are necessary to ensure that the amount required under subsection (a) is deposited for each fiscal year.

(e) Termination of assessments

The collection of amounts under subsection (c) shall cease after the earlier of—

(1) 15 years after October 24, 1992; or

(2) the collection of \$2,250,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) under such subsection.

(f) Continuation of deposits

Except as provided in subsection (e), deposits shall continue to be made into the Fund under subsection (d) for the period specified in such subsection.

(g) Treatment of assessment

Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.<sup>186</sup>

**42 USC 2297g-2. Sec. 1803. Department Facilities**

(a) Study by National Academy of Sciences

The National Academy of Sciences shall conduct a study and provide recommendations for reducing costs associated with decontamination and decommissioning, and shall report its findings to the Congress within 3 years after October 24, 1992. Such report shall include a determination of the decontamination and decommissioning required for each facility, shall identify alternative methods, using different technologies, shall include site-specific surveys of the actual contamination, and shall provide estimated costs of those activities.

(b) Payment of decontamination and decommissioning costs

The costs of all decontamination and decommissioning activities of the Department shall be paid from the Fund until such time as the Secretary certifies and the Congress concurs, by law, that such activities are complete.

(c) Payment of remedial action costs

The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount

<sup>186</sup> Aug. 1, 1946, ch. 724, title II, §1802, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2953; amended Pub. L. 105–388, §11(c), Nov. 13, 1998, 112 Stat. 3485; Pub. L. 107–222, §1(c), Aug. 21, 2002, 116 Stat. 1336.

available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the Department shall be responsible for the cost of remedial action. No provision of this division may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.<sup>187</sup>

**42 USC 2297g-3. Sec. 1804. Employee Provisions**

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of uranium enrichment facilities of the Department shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267) and section 3145 of title 40. This section may not be construed to require the contracting out of activities associated with the decontamination or decommissioning of uranium enrichment facilities.<sup>188</sup>

**42 USC 2297g-4. Sec. 1805. Reports to Congress**

Within 3 years after October 24, 1992, and at least once every 3 years thereafter, the Secretary shall report to the Congress on progress under this subchapter. The 5th report submitted under this section shall contain recommendations of the Secretary for the reauthorization of the program and Fund under this division.<sup>189</sup>

**Title III—Rescissions and Offsets**

**Chapter 1—Energy and Water Development Uranium Enrichment Capacity**

**Subchapter A—United States Enrichment Corporation Privatization**

**42 USC 2011  
note.**

**Sec. 3101. Short Title**

Pub. L. 104–134, title III, §3101, Apr. 26, 1996, 110 Stat. 1321–335, provided that:

"This subchapter [subch. A (§§3101–3117) of ch. 1 of title III of Pub. L. 104–134, enacting sections 2297h to 2297h–13 of this title, amending sections 2014, 2239, 2243, 2282, 2296b–7, 2297f, and 2297f–1 of this

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<sup>187</sup> Aug. 1, 1946, ch. 724, title II, §1803, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2954.

<sup>188</sup> Aug. 1, 1946, ch. 724, title II, §1804, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2955.

<sup>189</sup> Aug. 1, 1946, ch. 724, title II, §1805, as added Pub. L. 102–486, title XI, §1101, Oct. 24, 1992, 106 Stat. 2955.



title and section 9101 of Title 31, Money and Finance, repealing sections 2297 to 2297e–7 of this title, and enacting provisions set out as notes under section 2297 of this title and section 9101 of Title 31] may be cited as the 'USEC Privatization Act'."

**42 USC 2297h. Sec. 3102. Definitions**

Except as provided in [section 2297h–10a of this title](#), for purposes of this subchapter:

(1) The term "AVLIS" means atomic vapor laser isotope separation technology.

(2) The term "Corporation" means the United States Enrichment Corporation and, unless the context otherwise requires, includes the private corporation and any successor thereto following privatization.

(3) The term "gaseous diffusion plants" means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

(4) The term "highly enriched uranium" means uranium enriched to 20 percent or more of the uranium-235 isotope.

(5) The term "low-enriched uranium" means uranium enriched to less than 20 percent of the uranium-235 isotope, including that which is derived from highly enriched uranium.

(6) The term "low-level radioactive waste" has the meaning given such term in [section 2021b\(9\) of this title](#).

(7) The term "private corporation" means the corporation established under [section 2297h–3 of this title](#).

(8) The term "privatization" means the transfer of ownership of the Corporation to private investors.

(9) The term "privatization date" means the date on which 100 percent of the ownership of the Corporation has been transferred to private investors.

(10) The term "public offering" means an underwritten offering to the public of the common stock of the private corporation pursuant to [section 2297h–2 of this title](#).

(11) The "Russian HEU Agreement" means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

(12) The term "Secretary" means the Secretary of Energy.

(13) The "Suspension Agreement" means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.

(14) The term "uranium enrichment" means the separation of uranium of a given isotopic content into 2 components, 1 having a

higher percentage of a fissile isotope and 1 having a lower percentage.<sup>190</sup>

**42 USC 2297h-1. Sec. 3103. Sale of Corporation**

**(a) Authorization**

The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer the interest of the United States in the United States Enrichment Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of the operation of the Department of Energy's gaseous diffusion plants, provides for the protection of the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment and conversion services, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

**(b) Proceeds**

Proceeds from the sale of the United States' interest in the Corporation shall be deposited in the general fund of the Treasury.<sup>191</sup>

**42 USC 2297h-2. Sec. 3104. Method of Sale**

**(a) Authorization**

The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer ownership of the assets and obligations of the Corporation to the private corporation established under [section 2297h–3 of this title](#) (which may be consummated through a merger or consolidation effected in accordance with, and having the effects provided under, the law of the State of incorporation of the private corporation, as if the Corporation were incorporated thereunder).

**(b) Board determination**

The Board, with the approval of the Secretary of the Treasury, shall select the method of transfer and establish terms and conditions for the transfer that will provide the maximum proceeds to the Treasury of the United States and will provide for the long-term viability of the private corporation, the continued operation of the gaseous diffusion plants, and the public interest in maintaining reliable and economical domestic uranium mining and enrichment industries.

**(c) Adequate proceeds**

The Secretary of the Treasury shall not allow the privatization of the Corporation unless before the sale date the Secretary of the Treasury determines that the method of transfer will provide the maximum proceeds to the Treasury consistent with the principles set forth in [section 2297h–1\(a\) of this title](#).

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<sup>190</sup> Pub. L. 104–134, title III, §3102, Apr. 26, 1996, 110 Stat. 1321–335 ; Pub. L. 110–329, div. C, title VIII, §8118(1), Sept. 30, 2008, 122 Stat. 3647.

<sup>191</sup> Pub. L. 104–134, title III, §3103, Apr. 26, 1996, 110 Stat. 1321–336.

(d) Application of securities laws

Any offering or sale of securities by the private corporation shall be subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.

(e) Expenses

Expenses of privatization shall be paid from Corporation revenue accounts in the United States Treasury.<sup>192</sup>

**42 USC 2297h-3. Sec. 3105. Establishment of Private Corporation**

(a) Incorporation

(1) The directors of the Corporation shall establish a private for-profit corporation under the laws of a State for the purpose of receiving the assets and obligations of the Corporation at privatization and continuing the business operations of the Corporation following privatization.

(2) The directors of the Corporation may serve as incorporators of the private corporation and shall take all steps necessary to establish the private corporation, including the filing of articles of incorporation consistent with the provisions of this subchapter.

(3) Employees and officers of the Corporation (including members of the Board of Directors) acting in accordance with this section on behalf of the private corporation shall be deemed to be acting in their official capacities as employees or officers of the Corporation for purposes of [section 205 of title 18](#).

(b) Status of private corporation

(1) The private corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation.

(2) Except as otherwise provided by this subchapter, financial obligations of the private corporation shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) No action under [section 1491 of title 28](#) shall be allowable against the United States based on actions of the private corporation.

(c) Application of post-Government employment restrictions

Beginning on the privatization date, the restrictions stated in [section 207\(a\), \(b\), \(c\), and \(d\) of title 18](#) shall not apply to the acts of an individual done in carrying out official duties as a director, officer, or employee of the private corporation, if the individual was an officer or employee of the Corporation (including a director) continuously during the 45 days prior to the privatization date.

(d) Dissolution

In the event that the privatization does not occur, the Corporation will provide for the dissolution of the private corporation within 1 year of the

<sup>192</sup> Pub. L. 104–134, title III, §3104, Apr. 26, 1996, 110 Stat. 1321–336.

private corporation's incorporation unless the Secretary of the Treasury or his delegate, upon the Corporation's request, agrees to delay any such dissolution for an additional year.<sup>193</sup>

**42 USC 2297h-4. Sec. 3106. Transfers to the Private Corporation**

Concurrent with privatization, the Corporation shall transfer to the private corporation-

- (1) the lease of the gaseous diffusion plants in accordance with [section 2297h-5 of this title](#),
- (2) all personal property and inventories of the Corporation,
- (3) all contracts, agreements, and leases under [section 2297h-6\(a\) of this title](#),
- (4) the Corporation's right to purchase power from the Secretary under [section 2297h-6\(b\) of this title](#),
- (5) such funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution as approved by the Secretary of the Treasury, and
- (6) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or characteristics, made or received by the Corporation.<sup>194</sup>

**42 USC 2297h-5. Sec. 3107. Leasing of Gaseous Diffusion Facilities**

**(a) Transfer of lease**

Concurrent with privatization, the Corporation shall transfer to the private corporation the lease of the gaseous diffusion plants and related property for the remainder of the term of such lease in accordance with the terms of such lease.

**(b) Renewal**

The private corporation shall have the exclusive option to lease the gaseous diffusion plants and related property for additional periods following the expiration of the initial term of the lease.

**(c) Exclusion of facilities for production of highly enriched uranium**

The Secretary shall not lease to the private corporation any facilities necessary for the production of highly enriched uranium but may, subject to the requirements of the Atomic Energy Act of 1954 ([42 U.S.C. 2011 et seq.](#)), grant the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

**(d) DOE responsibility for preexisting conditions**

The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before July 1, 1993, at the gaseous diffusion plants shall remain the sole responsibility of the Secretary.

<sup>193</sup> Pub. L. 104–134, title III, §3105, Apr. 26, 1996, 110 Stat. 1321–337.

<sup>194</sup> Pub. L. 104–134, title III, §3106, Apr. 26, 1996, 110 Stat. 1321–338.

(e) Environmental audit

For purposes of subsection (d), the conditions existing before July 1, 1993, at the gaseous diffusion plants shall be determined from the environmental audit conducted pursuant to section 1403(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c–2(e)).

(f) Treatment under Price-Anderson provisions

Any lease executed between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, under this section shall be deemed to be a contract for purposes of section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)).

(g) Waiver of EIS requirement

The execution or transfer of the lease between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, shall not be considered to be a major Federal action significantly affecting the quality of the human environment for purposes of [section 4332 of this title](#).

(h) Maintenance of security

(1) In general

With respect to the Paducah Gaseous Diffusion Plant, Kentucky, and the Portsmouth Gaseous Diffusion Plant, Ohio, the guidelines relating to the authority of the Department of Energy's contractors (including any Federal agency, or private entity operating a gaseous diffusion plant under a contract or lease with the Department of Energy) and any subcontractor (at any tier) to carry firearms and make arrests in providing security at Federal installations, issued under [section 2201\(k\) of this title](#) shall require, at a minimum, the presence of all security police officers carrying sidearms at all times to ensure maintenance of security at the gaseous diffusion plants (whether a gaseous diffusion plant is operated directly by a Federal agency or by a private entity under a contract or lease with a Federal agency).

(2) Funding

(A) The costs of arming and providing arrest authority to the security police officers required under paragraph (1) shall be paid as follows:

(i) the Department of Energy (the "Department") shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are: (I) employees of the Department or the contractor or subcontractors of the Department; or (II) employees of the private entity leasing the gaseous diffusion plant who perform work on behalf of the Department (including employees of a contractor or subcontractor of the private entity); and

(ii) the private entity leasing the gaseous diffusion plant shall pay the percentage of the costs equal to the percentage of the total number of employees at the gaseous diffusion plant who are employees of the private entity (including employees of a contractor or subcontractor) other than those employees who perform work for the Department.

(B) Neither the private entity leasing the gaseous diffusion plant nor the Department shall reduce its payments under any contract or lease or take other action to offset its share of the costs referred to in subparagraph (A), and the Department shall not reimburse the private entity for the entity's share of these costs.

(C) Nothing in this subsection shall alter the Department's responsibilities to pay the safety, safeguards and security costs associated with the Department's highly enriched uranium activities.<sup>195</sup>

**42 USC 2297h-6. Sec. 3108. Transfer of Contracts**

**(a) Transfer of contracts**

Concurrent with privatization, the Corporation shall transfer to the private corporation all contracts, agreements, and leases, including all uranium enrichment contracts, that were-

(1) transferred by the Secretary to the Corporation pursuant to section 2297c(b) of this title, or

(2) entered into by the Corporation before the privatization date.

**(b) Nontransferable power contracts**

The Corporation shall transfer to the private corporation the right to purchase power from the Secretary under the power purchase contracts for the gaseous diffusion plants executed by the Secretary before July 1, 1993. The Secretary shall continue to receive power for the gaseous diffusion plants under such contracts and shall continue to resell such power to the private corporation at cost during the term of such contracts.

**(c) Effect of transfer**

(1) Notwithstanding subsection (a), the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred under subsection (a) for the performance of its obligations under such contracts, agreements, or leases during their terms. Performance of such obligations by the private corporation shall be considered performance by the United States.

(2) If a contract, agreement, or lease transferred under subsection (a) is terminated, extended, or materially amended after the privatization date-

(A) the private corporation shall be responsible for any obligation arising under such contract, agreement, or lease after any extension or material amendment, and

(B) the United States shall be responsible for any obligation arising under the contract, agreement, or lease before the termination, extension, or material amendment.

(3) The private corporation shall reimburse the United States for any amount paid by the United States under a settlement agreement

<sup>195</sup> Pub. L. 104–134, title III, §3107, Apr. 26, 1996, 110 Stat. 1321–338 ; Pub. L. 105–62, title V, §511, Oct. 13, 1997, 111 Stat. 1341 ; Pub. L. 105–245, title III, §310, Oct. 7, 1998, 112 Stat. 1853.

entered into with the consent of the private corporation or under a judgment, if the settlement or judgment-

(A) arises out of an obligation under a contract, agreement, or lease transferred under subsection (a), and

(B) arises out of actions of the private corporation between the privatization date and the date of a termination, extension, or material amendment of such contract, agreement, or lease.

(d) Pricing

The Corporation may establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profit making corporation.<sup>196</sup>

**42 USC 2297h-7. Sec. 3109. Liabilities**

(a) Liability of United States

(1) Except as otherwise provided in this subchapter, all liabilities arising out of the operation of the uranium enrichment enterprise before July 1, 1993, shall remain the direct liabilities of the Secretary.

(2) Except as provided in subsection (a)(3) or otherwise provided in a memorandum of agreement entered into by the Corporation and the Office of Management and Budget prior to the privatization date, all liabilities arising out of the operation of the Corporation between July 1, 1993, and the privatization date shall remain the direct liabilities of the United States.

(3) All liabilities arising out of the disposal of depleted uranium generated by the Corporation between July 1, 1993, and the privatization date shall become the direct liabilities of the Secretary.

(4) Any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising from any action taken by any agent or officer of the United States in connection with the privatization of the Corporation is hereby withdrawn.

(5) To the extent that any claim against the United States under this section is of the type otherwise required by Federal statute or regulation to be presented to a Federal agency or official for adjudication or review, such claim shall be presented to the Department of Energy in accordance with procedures to be established by the Secretary. Nothing in this paragraph shall be construed to impose on the Department of Energy liability to pay any claim presented pursuant to this paragraph.

(6) The Attorney General shall represent the United States in any action seeking to impose liability under this subsection.

(b) Liability of Corporation

Notwithstanding any provision of any agreement to which the Corporation is a party, the Corporation shall not be considered in breach, default, or violation of any agreement because of the transfer of such

<sup>196</sup> Pub. L. 104–134, title III, §3108, Apr. 26, 1996, 110 Stat. 1321–339.

agreement to the private corporation under [section 2297h–6 of this title](#) or any other action the Corporation is required to take under this subchapter.

(c) Liability of private corporation

Except as provided in this subchapter, the private corporation shall be liable for any liabilities arising out of its operations after the privatization date.

(d) Liability of officers and directors

(1) No officer, director, employee, or agent of the Corporation shall be liable in any civil proceeding to any party in connection with any action taken in connection with the privatization if, with respect to the subject matter of the action, suit, or proceeding, such person was acting within the scope of his employment.

(2) This subsection shall not apply to claims arising under the Securities Act of 1933 ([15 U.S.C. 77a et seq.](#)), the Securities Exchange Act of 1934 ([15 U.S.C. 78a et seq.](#)), or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities.<sup>197</sup>

**42 USC 2297h-8. Sec. 3110. Employee Protections**

(a) Contractor employees

(1) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

(2) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plant to a pension plan sponsored by the new contractor or the private corporation or a joint labor-management plan, as the case may be.

(3) In addition to any obligations arising under the National Labor Relations Act ([29 U.S.C. 151 et seq.](#)), any employer (including the private corporation if it operates a gaseous diffusion plant without a contractor or any contractor of the private corporation) at a gaseous diffusion plant shall-

(A) abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the stated expiration or termination date of the agreement; or

(B) in the event a collective bargaining agreement is not in effect upon the privatization date, have the same bargaining obligations under section 8(d) of the National Labor Relations Act ([29 U.S.C. 158\(d\)](#)) as it had immediately before the privatization date.

(4) If the private corporation replaces its operating contractor at a gaseous diffusion plant, the new employer (including the new

<sup>197</sup> Pub. L. 104–134, title III, §3109, Apr. 26, 1996, 110 Stat. 1321–339.



contractor or the private corporation if it operates a gaseous diffusion plant without a contractor) shall-

(A) offer employment to non-management employees of the predecessor contractor to the extent that their jobs still exist or they are qualified for new jobs, and

(B) abide by the terms of the predecessor contractor's collective bargaining agreement until the agreement expires or a new agreement is signed.

(5) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a)(2) and (3) of title 29) at either of the gaseous diffusion plants, the Secretary of Energy shall treat any adversely affected employee of an operating contractor at either plant who was an employee at such plant on July 1, 1993, as a Department of Energy employee for purposes of sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h–7274i).

(6)(A) The Secretary and the private corporation shall cause the post-retirement health benefits plan provider (or its successor) to continue to provide benefits for eligible persons, as described under subparagraph (B), employed by an operating contractor at either of the gaseous diffusion plants in an economically efficient manner and at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date.

(B) Persons eligible for coverage under subparagraph (A) shall be limited to:

(i) persons who retired from active employment at one of the gaseous diffusion plants on or before the privatization date as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant; and

(ii) persons who are employed by the Corporation's operating contractor on or before the privatization date and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant.

(C) The Secretary shall fund the entire cost of post-retirement health benefits for persons who retired from employment with an operating contractor prior to July 1, 1993.

(D) The Secretary and the Corporation shall fund the cost of post-retirement health benefits for persons who retire from employment with an operating contractor on or after July 1, 1993, in proportion to the retired person's years and months of service at a gaseous diffusion plant under their respective management.

(7)(A) Any suit under this subsection alleging a violation of an agreement between an employer and a labor organization shall be brought in accordance with section 185 <sup>1</sup> of title 29.

(B) Any charge under this subsection alleging an unfair labor practice violative of section 8 of the National Labor Relations Act (29 U.S.C. 158) shall be pursued in accordance with section 10 of the National Labor Relations Act (29 U.S.C. 160).

(C) Any suit alleging a violation of any provision of this subsection, to the extent it does not allege a violation of the National Labor Relations Act [29 U.S.C. 151 et seq.], may be brought in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy or the citizenship of the parties.

(8) Continuity of benefits.-To the extent appropriations are provided in advance for this purpose or are otherwise available, not later than 30 days after August 8, 2005, the Secretary shall implement such actions as are necessary to ensure that any employee who-

(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans, shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.

(b) Former Federal employees

(1)(A) An employee of the Corporation that was subject to either the Civil Service Retirement System (referred to in this section as "CSRS") or the Federal Employees' Retirement System (referred to in this section as "FERS") on the day immediately preceding the privatization date shall elect-

(i) to retain the employee's coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation's retirement system, or

(ii) to receive a deferred annuity or lump-sum benefit payable to a terminated employee under CSRS or FERS, as applicable.

(B) An employee that makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee's Thrift Savings Plan account to a defined contribution plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's defined contribution plan.

(2) The Corporation shall pay to the Civil Service Retirement and Disability Fund-

(A) such employee deductions and agency contributions as are required by [sections 8334, 8422, and 8423 of title 5](#) for those employees who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1);

(B) such additional agency contributions as are determined necessary by the Office of Personnel Management to pay, in combination with the sums under subparagraph (A), the "normal cost" (determined using dynamic assumptions) of retirement benefits for those employees who elect to retain their coverage under CSRS pursuant to paragraph (1), with the concept of "normal cost" being used consistent with generally accepted actuarial standards and principles; and

(C) such additional amounts, not to exceed two percent of the amounts under subparagraphs (A) and (B), as are determined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the privatization date under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the privatization date (which amounts shall be available to the Office of Personnel Management as provided in [section 8348\(a\)\(1\)\(B\) of title 5](#)).

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required or authorized by [sections 8432 and 8351 of title 5](#) for employees who elect to retain their coverage under CSRS or FERS pursuant to paragraph (1).

(4) Any employee of the Corporation who was subject to the Federal Employee Health Benefits Program (referred to in this section as "FEHBP") on the day immediately preceding the privatization date and who elects to retain coverage under either CSRS or FERS pursuant to paragraph (1) shall have the option to receive health benefits from a health benefit plan established by the Corporation or to continue without interruption coverage under the FEHBP, in lieu of coverage by the Corporation's health benefit system.

(5) The Corporation shall pay to the Employees Health Benefits Fund-

(A) such employee deductions and agency contributions as are required by [section 8906\(a\)–\(f\) of title 5](#) for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4); and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under [section 8906\(g\)\(1\) of title 5](#) for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4).

(6) The amounts required under paragraph (5)(B) shall pay the Government contributions for retired employees who retire from the Corporation after the privatization date under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the privatization date, with said amounts prorated to reflect only that portion of the total

service of such employees and retired persons that was performed for the Corporation after the privatization date.<sup>198</sup>

**42 USC 2297h-9. Sec. 3111. Ownership Limitations**

**(a) Securities limitations**

No director, officer, or employee of the Corporation may acquire any securities, or any rights to acquire any securities of the private corporation on terms more favorable than those offered to the general public-

- (1) in a public offering designed to transfer ownership of the Corporation to private investors,
- (2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or
- (3) before the election of the directors of the private corporation.

**(b) Ownership limitation**

Immediately following the consummation of the transaction or series of transactions pursuant to which 100 percent of the ownership of the Corporation is transferred to private investors, and for a period of three years thereafter, no person may acquire, directly or indirectly, beneficial ownership of securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation. The foregoing limitation shall not apply to-

- (1) any employee stock ownership plan of the Corporation,
- (2) members of the underwriting syndicate purchasing shares in stabilization transactions in connection with the privatization, or
- (3) in the case of shares beneficially held in the ordinary course of business for others, any commercial bank, broker-dealer, or clearing agency.<sup>199</sup>

**42 USC 2297h-10. Sec. 3112. Uranium Transfers and Sales**

**(a) Transfers and sales by Secretary**

The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except as consistent with this section.

**(b) Russian HEU**

- (1) On or before December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge title to an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the Russian Executive Agent under the Russian HEU

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<sup>198</sup> Pub. L. 104–134, title III, §3110, Apr. 26, 1996, 110 Stat. 1321–340 ; Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2995 ; Pub. L. 109–58, title VI, §633, Aug. 8, 2005, 119 Stat. 790.

<sup>199</sup> Pub. L. 104–134, title III, §3111, Apr. 26, 1996, 110 Stat. 1321–343.

Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U<sup>235</sup>. Uranium hexafluoride transferred to the Secretary pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(2) Within 7 years of April 26, 1996, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold-

(A) at any time for use in the United States for the purpose of overfeeding;

(B) at any time for end use outside the United States;

(C) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,<sup>1</sup>

(D) in calendar year 2001 for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U<sub>3</sub>O<sub>8</sub> equivalent per year.

(3) With respect to all enriched uranium delivered to the United States Executive Agent under the Russian HEU Agreement on or after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, enter into an agreement to deliver concurrently to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U<sup>235</sup>. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent, with such delivery to take place at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed under U.S. law for all purposes to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity for delivery and use in the United States only as permitted in subsections (b)(5), (b)(6) and (b)(7) of this section.

(4) In the event that the Russian Executive Agent does not exercise its right to enter into an agreement to take delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, or upon request of the Russian Executive Agent, then the United States Executive Agent shall engage an independent entity through a competitive selection process to auction an amount of uranium hexafluoride or U<sub>3</sub>O<sub>8</sub> (in the event that the conversion component of such hexafluoride has

previously been sold) equivalent to the natural uranium component of such low-enriched uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. Such independent entity shall sell such uranium hexafluoride in one or more lots to any person or entity to maximize the proceeds from such sales, for disposition consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all reasonable transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U<sup>235</sup>. Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auctioned pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(5) Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States either directly or indirectly prior to January 1, 1998, and thereafter only in accordance with the following schedule:

Annual Maximum Deliveries to End Users (millions lbs. U <sub>3</sub> O <sub>8</sub> equivalent)	
Year:	
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20.

(6) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a matched sale pursuant to the Suspension Agreement, and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

(7) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

(8) Nothing in this subsection (b) shall restrict the sale of the conversion component of such uranium hexafluoride.

(9) The Secretary of Commerce shall have responsibility for the administration and enforcement of the limitations set forth in this subsection. The Secretary of Commerce may require any person to provide any certifications, information, or take any action that may be necessary to enforce these limitations. The United States Customs Service shall maintain and provide any information required by the Secretary of Commerce and shall take any action requested by the Secretary of Commerce which is necessary for the administration and enforcement of the uranium delivery limitations set forth in this section.

(10) The President shall monitor the actions of the United States Executive Agent under the Russian HEU Agreement and shall report to the Congress not later than December 31 of each year on the effect the low-enriched uranium delivered under the Russian HEU Agreement is having on the domestic uranium mining, conversion, and enrichment industries, and the operation of the gaseous diffusion plants. Such report shall include a description of actions taken or proposed to be taken by the President to prevent or mitigate any material adverse impact on such industries or any loss of employment at the gaseous diffusion plants as a result of the Russian HEU Agreement.

(c) Transfers to Corporation

(1) The Secretary shall transfer to the Corporation without charge up to 50 metric tons of enriched uranium and up to 7,000 metric tons of natural uranium from the Department of Energy's stockpile, subject to the restrictions in subsection (c)(2).

(2) The Corporation shall not deliver for commercial end use in the United States-

(A) any of the uranium transferred under this subsection before January 1, 1998;

(B) more than 10 percent of the uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4,000,000 pounds, whichever is less, in any calendar year after 1997; or

(C) more than 800,000 separative work units contained in low-enriched uranium transferred under this subsection in any calendar year.

(d) Inventory sales

(1) In addition to the transfers authorized under subsections (c) and (e), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of natural or low-enriched uranium shall be made unless-

(A) the President determines that the material is not necessary for national security needs,

(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

(C) the price paid to the Secretary will not be less than the fair market value of the material.

(e) Government transfers

Notwithstanding subsection (d)(2), the Secretary may transfer or sell enriched uranium-

(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications;

(2) to any person for national security purposes, as determined by the Secretary; or

(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(f) Savings provision

Nothing in this subchapter shall be read to modify the terms of the Russian HEU Agreement.<sup>200</sup>

**42 USC 2297h-10a.**

**Sec. 3112A. Incentives for Additional Downblending of Highly Enriched Uranium by the Russian Federation**

(a) Definitions

In this section:

(1) Completion of the Russian HEU Agreement

The term "completion of the Russian HEU Agreement" means the importation into the United States from the Russian Federation pursuant to the Russian HEU Agreement of uranium derived from the downblending of not less than 500 metric tons of highly enriched uranium of weapons origin.

(2) Downblending

The term "downblending" means processing highly enriched uranium into a uranium product in any form in which the uranium contains less than 20 percent uranium-235.

(3) Highly enriched uranium

The term "highly enriched uranium" has the meaning given that term in section 2297h(4) of this title.

(4) Highly enriched uranium of weapons origin

The term "highly enriched uranium of weapons origin" means highly enriched uranium that-

(A) contains 90 percent or more uranium-235; and

<sup>200</sup> Pub. L. 104–134, title III, §3112, Apr. 26, 1996, 110 Stat. 1321–344.



(B) is verified by the Secretary of Energy to be of weapons origin.

(5) Low-enriched uranium

The term "low-enriched uranium" means a uranium product in any form, including uranium hexafluoride (UF<sub>6</sub>) and uranium oxide (UO<sub>2</sub>), in which the uranium contains less than 20 percent uranium-235, including natural uranium, without regard to whether the uranium is incorporated into fuel rods or complete fuel assemblies.

(6) Russian HEU Agreement

The term "Russian HEU Agreement" has the meaning given that term in [section 2297h\(11\) of this title](#).

(7) Suspension Agreement

The term "Suspension Agreement" has the meaning given that term in [section 2297h\(13\) of this title](#).

(8) Uranium-235

The term "uranium-235" means the isotope <sup>235</sup>U.

(b) Statement of policy

It is the policy of the United States-

(1) to support the continued downblending of highly enriched uranium of weapons origin in the Russian Federation in order to protect the essential security interests of the United States with respect to the nonproliferation of nuclear weapons;

(2) to reduce reliance on uranium imports in order to protect essential national security interests;

(3) to revive and strengthen the supply chain for nuclear fuel produced and used in the United States; and

(4) to expand production of nuclear fuel in the United States.

(c) Promotion of downblending of Russian highly enriched uranium

(1) Completion of the Russian HEU Agreement

Prior to the completion of the Russian HEU Agreement, the importation into the United States of low-enriched uranium, including low-enriched uranium obtained under contracts for separative work units, that is produced in the Russian Federation and is not imported pursuant to the Russian HEU Agreement, may not exceed the following amounts:

(A) In the 4-year period beginning with calendar year 2008, 16,559 kilograms.

(B) In calendar year 2012, 24,839 kilograms.

(C) In calendar year 2013 and each calendar year thereafter through the calendar year of the completion of the Russian HEU Agreement, 41,398 kilograms.

(2) Incentives to continue downblending Russian highly enriched uranium after the completion of the Russian HEU Agreement

(A) In general

After the completion of the Russian HEU Agreement, the importation into the United States of low-enriched uranium, including low-enriched uranium obtained under contracts for separative work units, that is produced in the Russian Federation,

whether or not such low-enriched uranium is derived from highly enriched uranium of weapons origin, may not exceed-

- (i) in calendar year 2014, 485,279 kilograms;
- (ii) in calendar year 2015, 455,142 kilograms;
- (iii) in calendar year 2016, 480,146 kilograms;
- (iv) in calendar year 2017, 490,710 kilograms;
- (v) in calendar year 2018, 492,731 kilograms;
- (vi) in calendar year 2019, 509,058 kilograms;
- (vii) in calendar year 2020, 514,754 kilograms;
- (viii) in calendar year 2021, 596,682 kilograms;
- (ix) in calendar year 2022, 489,617 kilograms;
- (x) in calendar year 2023, 578,877 kilograms;
- (xi) in calendar year 2024, 476,536 kilograms;
- (xii) in calendar year 2025, 470,376 kilograms;
- (xiii) in calendar year 2026, 464,183 kilograms;
- (xiv) in calendar year 2027, 459,083 kilograms;
- (xv) in calendar year 2028, 344,312 kilograms;
- (xvi) in calendar year 2029, 340,114 kilograms;
- (xvii) in calendar year 2030, 332,141 kilograms;
- (xviii) in calendar year 2031, 328,862 kilograms;
- (xix) in calendar year 2032, 322,255 kilograms;
- (xx) in calendar year 2033, 317,536 kilograms;
- (xxi) in calendar year 2034, 298,088 kilograms;
- (xxii) in calendar year 2035, 294,511 kilograms;
- (xxiii) in calendar year 2036, 286,066 kilograms;
- (xxiv) in calendar year 2037, 281,272 kilograms;
- (xxv) in calendar year 2038, 277,124 kilograms;
- (xxvi) in calendar year 2039, 277,124 kilograms; and
- (xxvii) in calendar year 2040, 267,685 kilograms.

(B) Administration

(i) In general

The Secretary of Commerce shall administer the import limitations described in subparagraph (A) in accordance with the provisions of the Suspension Agreement, including-

(I) the limitations on sales of enriched uranium product and separative work units plus conversion, in amounts determined in accordance with Section IV.B.1 of the Suspension Agreement (as amended by the amendment published in the Federal Register on October 9, 2020 (85 Fed. Reg. 64112));

(II) the export limit allocations set forth in Appendix 5 of the Suspension Agreement (as so amended);

(III) the requirements for natural uranium returned feed associated with imports of low-enriched uranium, including pursuant to sales of enrichment, with or without conversion, from the Russian Federation, as set forth in Section IV.B.1 of the Suspension Agreement (as so amended);

(IV) any other provisions of the Suspension Agreement (as so amended); and

(V) any related administrative guidance issued by the Department of Commerce.

(ii) Effect of termination of Suspension Agreement

Clause (i) shall remain in effect if the Suspension Agreement is terminated.

(C) Additional imports in exchange for a commitment to downblend an additional 300 metric tons of highly enriched uranium

(i) In general

In addition to the amount authorized to be imported under subparagraph (A) and except as provided in clause (ii), if the Russian Federation enters into a bilateral agreement with the United States under which the Russian Federation agrees to downblend an additional 300 metric tons of highly enriched uranium after the completion of the Russian HEU Agreement, 4 kilograms of low-enriched uranium, whether or not such low-enriched uranium is derived from highly enriched uranium of weapons origin and including low-enriched uranium obtained under contracts for separative work units, may be imported in a calendar year for every 1 kilogram of Russian highly enriched uranium of weapons origin that was downblended in the preceding calendar year, subject to the verification of the Secretary of Energy under paragraph (10).

(ii) Maximum annual imports

Not more than 120,000 kilograms of low-enriched uranium may be imported in a calendar year under clause (i).

(3) Exceptions

The import limitations described in paragraphs (1) and (2) shall not apply to low-enriched uranium produced in the Russian Federation that is imported into the United States-

(A) for use in the initial core of a new nuclear reactor; or

(B) for processing and to be certified for reexportation and not for consumption in the United States.

(4) Limited waiver authority

(A) In general

Notwithstanding paragraph (1)(C), if the completion of the Russian HEU Agreement does not occur before December 31, 2013, the import limitations under paragraph (1)(C) shall be waived, and low-enriched uranium may be imported into the United States in the quantities specified in paragraph (2) in a calendar year after 2013, if-

(i) the Secretary of Energy and the Secretary of State jointly determine that-

(I) the failure of the completion of the Russian HEU Agreement arises from causes beyond the control and without the fault or negligence of the Government of the Russian Federation; and

(II) the Government of the Russian Federation has made reasonable efforts to avoid and mitigate the effects of the failure of the completion of the Russian HEU Agreement; and  
(ii) the Secretary of Energy and the Secretary of State jointly notify Congress of, and publish in the Federal Register, the determination under clause (i) and the reasons for the determination.

(B) Notice and wait

A waiver under subparagraph (A) may not take effect until the date that is 180 days after the date on which Secretary of Energy and the Secretary of State notify Congress under subparagraph (A)(ii).

(C) Termination

A waiver under subparagraph (A) shall terminate on December 31 of the calendar year with respect to which the Secretary makes the determination under subparagraph (A)(i).

(5) Adjustments to import limitations

(A) In general

The import limitations described in paragraph (2)(A) are based on the lower scenario data in the report of the World Nuclear Association entitled "The Nuclear Fuel Report: Global Scenarios for Demand and Supply Availability 2019–2040". In each of calendar years 2023, 2029, and 2035, the Secretary of Commerce shall review the projected demand for uranium for nuclear reactors in the United States and adjust the import limitations described in paragraph (2)(A) to account for changes in such demand in years after the year in which that report or a subsequent report is published.

(B) Report required

Not later than one year after December 27, 2020, and every 3 years thereafter, the Secretary shall submit to Congress a report that includes—

(i) a recommendation on the use of all publicly available data to ensure accurate forecasting by scenario data to comport to actual demand for low-enriched uranium for nuclear reactors in the United States; and

(ii) an identification of the steps to be taken to adjust the import limitations described in paragraph (2)(A) based on the most accurate scenario data.

(C) Incentive adjustment

Beginning in the second calendar year after the calendar year of the completion of the Russian HEU Agreement, the Secretary of Energy shall increase or decrease the amount of low-enriched uranium that may be imported in a calendar year under paragraph (2)(C) (including the amount of low-enriched uranium that may be imported for each kilogram of highly enriched uranium downblended under paragraph (2)(C)(i)) by a percentage equal to the percentage increase or decrease, as the case may be, in the average amount of uranium loaded into nuclear power reactors in

the United States in the most recent 3-calendar-year period for which data are available, as reported by the Energy Information Administration of the Department of Energy, compared to the average amount of uranium loaded into such reactors during the 3-calendar-year period beginning on January 1, 2011, as reported by the Energy Information Administration.

(D) Publication of adjustments

As soon as practicable, but not later than July 31 of each calendar year, the Secretary of Energy shall publish in the Federal Register the amount of low-enriched uranium that may be imported in the current calendar year after the adjustments under subparagraph (C).

(6) Authority for additional adjustment

In addition to the adjustment under paragraph (5)(A), the Secretary of Commerce may adjust the import limitations under paragraph (2)(A) for a calendar year if the Secretary-

(A) in consultation with the Secretary of Energy, determines that the available supply of low-enriched uranium and the available stockpiles of uranium of the Department of Energy are insufficient to meet demand in the United States in the following calendar year; and

(B) notifies Congress of the adjustment not less than 45 days before making the adjustment.

(7) Equivalent quantities of low-enriched uranium imports

(A) In general

The import limitations described in paragraphs (1) and (2) are expressed in terms of uranium containing 4.4 percent uranium-235 and a tails assay of 0.3 percent.

(B) Adjustment for other uranium

Imports of low-enriched uranium under paragraphs (1) and (2), including low-enriched uranium obtained under contracts for separative work units, shall count against the import limitations described in such paragraphs in amounts calculated as the quantity of low-enriched uranium containing 4.4 percent uranium-235 necessary to equal the total amount of uranium-235 contained in such imports.

(8) Downblending of other highly enriched uranium

(A) In general

The downblending of highly enriched uranium not of weapons origin may be counted for purposes of paragraph (2)(C), subject to verification under paragraph (10), if the Secretary of Energy determines that the highly enriched uranium to be downblended poses a risk to the national security of the United States.

(B) Equivalent quantities of highly enriched uranium

For purposes of determining the additional low-enriched uranium imports allowed under paragraph (2)(C), highly enriched uranium not of weapons origin downblended pursuant to subparagraph (A) shall count as downblended highly enriched uranium of weapons origin in amounts calculated as the quantity of

highly enriched uranium containing 90 percent uranium-235 necessary to equal the total amount of uranium-235 contained in the highly enriched uranium not of weapons origin downblended pursuant to subparagraph (A).

(9) Termination of import restrictions

The provisions of this subsection shall terminate on December 31, 2040.

(10) Technical verifications by Secretary of Energy

(A) In general

The Secretary of Energy shall verify the origin, quantity, and uranium-235 content of the highly enriched uranium downblended for purposes of paragraphs (2)(C) and (8).

(B) Methods of verification

In conducting the verification required under subparagraph (A), the Secretary of Energy shall employ the transparency measures and access provisions agreed to under the Russian HEU Agreement for monitoring the downblending of Russian highly enriched uranium of weapons origin and such other methods as the Secretary determines appropriate.

(11) Enforcement of import limitations

The Secretary of Commerce shall be responsible for enforcing the import limitations imposed under this subsection and shall enforce such import limitations in a manner that imposes a minimal burden on the commercial nuclear industry.

(12) Effect on other agreements

(A) Russian HEU Agreement

Nothing in this section shall be construed to modify the terms of the Russian HEU Agreement, including the provisions of the Agreement relating to the amount of low-enriched uranium that may be imported into the United States.

(B) Other agreements

If a provision of any agreement between the United States and the Russian Federation, other than the Russian HEU Agreement or the Suspension Agreement, relating to the importation of low-enriched uranium, including low-enriched uranium obtained under contracts for separative work units, into the United States conflicts with a provision of this section, the provision of this section shall supersede the provision of the agreement to the extent of the conflict.<sup>201</sup>

**42 USC 2297h-10b. Sec. 3112B. Secretarial Determinations; Congressional Notification**

(a) Secretarial determinations

In this fiscal year, and in each subsequent fiscal year, any determination (including a determination made prior to December 16, 2014) by the Secretary of Energy under [section 2297h-10\(d\)\(2\)\(B\) of this title](#) shall be

<sup>201</sup> Pub. L. 104–134, title III, §3112A, as added Pub. L. 110–329, div. C, title VIII, §8118(2), Sept. 30, 2008, 122 Stat. 3647 ; amended Pub. L. 116–260, div. Z, title II, §2007(a), Dec. 27, 2020, 134 Stat. 2472.

valid for not more than 2 calendar years subsequent to such determination.

(b) Congressional notification

In this fiscal year, and in each subsequent fiscal year, not less than 30 days prior to the provision of uranium in any form the Secretary of Energy shall notify the Committees on Appropriations of the House of Representatives and the Senate of the following-

- (1) the provisions of law (including regulations) authorizing the provision of uranium;
- (2) the amount of uranium to be provided;
- (3) an estimate by the Secretary of Energy of the gross fair market value of the uranium on the expected date of the provision of the uranium;
- (4) the expected date of the provision of the uranium;
- (5) the recipient of the uranium;
- (6) the value the Secretary of Energy expects to receive in exchange for the uranium, including any adjustments to the gross fair market value of the uranium; and
- (7) whether the uranium to be provided is encumbered by any restriction on use under an international agreement or otherwise.<sup>202</sup>

**42 USC 2297h-11. Sec. 3113. Low-Level Waste**

(a) Responsibility of DOE

(1) The Secretary, at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by-

(A) the Corporation as a result of the operations of the gaseous diffusion plants or as a result of the treatment of such wastes at a location other than the gaseous diffusion plants, or

(B) any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility under [sections 2073, 2093, and 2243 of this title](#).

(2) Except as provided in paragraph (3), the generator shall reimburse the Secretary for the disposal of low-level radioactive waste pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs, but in no event more than an amount equal to that which would be charged by commercial, State, regional, or interstate compact entities for disposal of such waste.

(3) In the event depleted uranium were ultimately determined to be low-level radioactive waste, the generator shall reimburse the Secretary for the disposal of depleted uranium pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs.

(4) In the event that a licensee requests the Secretary to accept for disposal depleted uranium pursuant to this subsection, the Secretary

<sup>202</sup> Pub. L. 113–235, div. D, title III, §306, Dec. 16, 2014, 128 Stat. 2324.

shall be required to take title to and possession of such depleted uranium at an existing DUF6 storage facility.

(b) Agreements with other persons

The generator may also enter into agreements for the disposal of low-level radioactive waste subject to subsection (a) with any person other than the Secretary that is authorized by applicable laws and regulations to dispose of such wastes.

(c) State or interstate compacts

Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.<sup>203</sup>

**42 USC 2297h-12. Sec. 3114. AVLIS**

(a) Exclusive right to commercialize

The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Secretary.

(b) Transfer of related property to Corporation

(1) In general

To the extent requested by the Corporation and subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.), the President shall transfer without charge to the Corporation all of the right, title, or interest in and to property owned by the United States under control or custody of the Secretary that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including-

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) Exception

Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Secretary shall not transfer under paragraph (1)(B).

(3) Expiration of transfer authority

The President's authority to transfer property under this subsection shall expire upon the privatization date.

(c) Liability for patent and related claims

With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b), the Corporation shall have sole liability for any payments made or awards under section 157b.(3) of the Atomic

<sup>203</sup> Pub. L. 104–134, title III, §3113, Apr. 26, 1996, 110 Stat. 1321–347 ; Pub. L. 108–447, div. C, title III, §311, Dec. 8, 2004, 118 Stat. 2959.



Energy Act of 1954 (42 U.S.C. 2187(b)(3)), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) of this section shall provide for a reduction of royalty payments to the Secretary to offset any payments, awards, settlements, or judgments under this subsection.<sup>204</sup>

**42 USC 2297h-13. Sec. 3115. Application of Certain Laws**

**(a) OSHA**

(1) As of the privatization date, the private corporation shall be subject to and comply with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, within 90 days after April 26, 1996, enter into a memorandum of agreement to govern the exercise of their authority over occupational safety and health hazards at the gaseous diffusion plants, including inspection, investigation, enforcement, and rulemaking relating to such hazards.

**(b) Antitrust laws**

For purposes of the antitrust laws, the performance by the private corporation of a "matched import" contract under the Suspension Agreement shall be considered to have occurred prior to the privatization date, if at the time of privatization, such contract had been agreed to by the parties in all material terms and confirmed by the Secretary of Commerce under the Suspension Agreement.

**(c) Energy Reorganization Act requirements**

(1) The private corporation and its contractors and subcontractors shall be subject to the provisions of [section 5851 of this title](#) to the same extent as an employer subject to such section.

(2) With respect to the operation of the facilities leased by the private corporation, [section 5846 of this title](#) shall apply to the directors and officers of the private corporation.<sup>205</sup>

<sup>204</sup> Pub. L. 104–134, title III, §3114, Apr. 26, 1996, 110 Stat. 1321–348.

<sup>205</sup> Pub. L. 104–134, title III, §3115, Apr. 26, 1996, 110 Stat. 1321–348.



## **4. Nuclear Energy Innovation and Modernization Act (NEIMA)**



#### **4. NUCLEAR ENERGY INNOVATION AND MODERNIZATION ACT (NEIMA)**

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**NUCLEAR ENERGY INNOVATION AND MODERNIZATION  
ACT (NEIMA) (PL 115-439), AS AMENDED**

**Pub. L. 115-439**  
**Jan. 14, 2019**

**132 Stat. 5565**

**42 USC 2011**  
**note.**

**Sec. 1. Short Title**

Pub. L. 115-439, §1(a), Jan. 14, 2019, 132 Stat. 5565, provided that:

"This Act [enacting section 2215 of this title, amending sections 2134 and 2214 of this title, repealing section 2214 of this title, and enacting provisions set out as notes under sections 2133, 2134, 2214, and 2215 of this title] may be cited as the 'Nuclear Energy Innovation and Modernization Act'."

**42 USC 2215**  
**note.**

**Sec. 2. Purpose**

Pub. L. 115-439, §2, Jan. 14, 2019, 132 Stat. 5565, provided that:

"The purpose of this Act [see Short Title of 2019 Amendment note set out under section 2011 of this title] is to provide-

- "(1) a program to develop the expertise and regulatory processes necessary to allow innovation and the commercialization of advanced nuclear reactors;
- "(2) a revised fee recovery structure to ensure the availability of resources to meet industry needs without burdening existing licensees unfairly for inaccurate workload projections or premature existing reactor closures; and
- "(3) more efficient regulation of uranium recovery."

**42 USC 2215**  
**note.**

**Sec. 3. Definitions**

Pub. L. 115-439, §3, Jan. 14, 2019, 132 Stat. 5565, provided that:

"In this Act [see Short Title of 2019 Amendment note set out under section 2011 of this title]:

- "(1) Advanced nuclear reactor.-The term 'advanced nuclear reactor' means a nuclear fission reactor or fusion machine<sup>1</sup>, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this Act [Jan. 14, 2019])), with significant improvements compared to commercial nuclear reactors under construction as of the date of enactment of this Act, including improvements such as-
  - "(A) additional inherent safety features;
  - "(B) significantly lower levelized cost of electricity;

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<sup>1</sup> As amended by Pub. L. 118-67, div. B, title II, §205(b)(2)(A), July 9, 2024, 138 Stat. 1447

"(C) lower waste yields;  
 "(D) greater fuel utilization;  
 "(E) enhanced reliability;  
 "(F) increased proliferation resistance;  
 "(G) increased thermal efficiency; or  
 "(H) ability to integrate into electric and nonelectric applications.

"(2) Advanced nuclear reactor applicant.— The term 'advanced nuclear reactor applicant' means an entity that has submitted to the Commission an application for a license for an advanced nuclear reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)."<sup>2</sup>

"(3) Advanced nuclear reactor fuel.—The term 'advanced nuclear reactor fuel' means fuel for use in an advanced nuclear reactor or a research and test reactor, including fuel with a low uranium enrichment level of not greater than 20 percent.

"(4) Advanced nuclear reactor pre-applicant.— The term 'advanced nuclear reactor pre-applicant' means an entity that has submitted to the Commission a licensing project plan for the purposes of submitting a future application for a license for an advanced nuclear reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)."<sup>3</sup>

"(5) Agency support.— The term 'agency support' has the meaning given the term 'agency support (corporate support and the IG)' in section 170.3 of title 10, Code of Federal Regulations (or any successor regulation)."<sup>4</sup>

"(6) Agreement state.—The term 'Agreement State' means any State with which the Commission has entered into an effective agreement under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)).

"(7) Appropriate congressional committees.—The term 'appropriate congressional committees' means the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives.

"(8) Commission.—The term 'Commission' means the Nuclear Regulatory Commission.

"(9) Conceptual design assessment.—The term 'conceptual design assessment' means an early-stage review by the Commission that-

"(A) assesses preliminary design information for consistency with applicable regulatory requirements of the Commission;

"(B) is performed on a set of topic areas agreed to in the licensing project plan; and

"(C) is performed at a cost and schedule agreed to in the licensing project plan.

<sup>2</sup> As amended by Pub. L. 118-67, div. B, title II §201(a)(2), July 9, 2024, 138 Stat. 1447

<sup>3</sup> As amended by Pub. L. 118-67, div. B, title II §201(a)(2), July 9, 2024, 138 Stat. 1447

<sup>4</sup> As amended by Pub. L. 118-67, div. B, title II §201(a)(2), July 9, 2024, 138 Stat. 1447



"(10) Corporate support costs.-

"(A) In general.— The term 'corporate support costs' means expenditures for acquisitions, administrative services, financial management, human resource management, information management, information technology, policy support, outreach, and training, as those categories are described and calculated in Appendix A of the Congressional Budget Justification for Fiscal Year 2018 of the Commission.<sup>5</sup>

"(B) Exclusions.— The term 'corporate support costs' does not include—

"(i) costs for rent and utilities relating to any and all space in the Three White Flint North building that is not occupied by the Commission; or

"(ii) costs for salaries, travel, and other support for the Office of the Commission.<sup>6</sup>

"(11) Fusion machine.— The term 'fusion machine' has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)."<sup>7</sup>

"(12) Hourly rate for mission-direct program salaries and benefits.— The term 'hourly rate for mission-direct program salaries and benefits' means the quotient obtained by dividing—<sup>8</sup>

"(A) the full-time equivalent rate (within the meaning of the document of the Commission entitled 'FY 2023 Final Fee Rule Work Papers' (or a successor document)) for mission-direct program salaries and benefits for a fiscal year; by

"(B) the productive hours assumption for that fiscal year, determined in accordance with the formula established in the document referred to in subparagraph (A) (or a successor document).";

"(13) Licensing project plan.—The term 'licensing project plan' means a plan that describes-

"(A) the interactions between an applicant and the Commission; and

"(B) project schedules and deliverables in specific detail to support long-range resource planning undertaken by the Commission and an applicant.<sup>9</sup>

"(14) Mission-direct program salaries and benefits.— The term 'mission-direct program salaries and benefits' means the resources of the Commission that are allocated to the Nuclear Reactor Safety Program (as determined by the Commission) to perform core work activities committed to fulfilling the mission of the Commission, as described in the document of the Commission entitled 'FY 2023 Final Fee Rule Work Papers' (or a successor document).<sup>10</sup>

<sup>5</sup> As amended by Pub. L. 118-67, div. B, title V, §503(c)(1), July 9, 2024, 138 Stat. 1447

<sup>6</sup> As amended by Pub. L. 118-67, div. B, title V, §503(c)(2), July 9, 2024, 138 Stat. 1447

<sup>7</sup> As amended by Pub. L. 118-67, div. B, title II, §205(b)(2)(C), July 9, 2024, 138 Stat. 1447

<sup>8</sup> As amended by Pub. L. 118-67, div. B, title II, §201(a)(4), July 9, 2024, 138 Stat. 1447

<sup>9</sup> As amended by Pub. L. 118-67, div. B, title II, §201(a)(5), July 9, 2024, 138 Stat. 1447

<sup>10</sup> As amended by Pub. L. 118-67, div. B, title II, §201(a)(5), July 9, 2024, 138 Stat. 1447

“(15) Mission-indirect program support.— The term ‘mission-indirect program support’ has the meaning given the term in section 170.3 of title 10, Code of Federal Regulations (or any successor regulation).”<sup>11</sup>

“(16) Regulatory framework.—The term ‘regulatory framework’ means the framework for reviewing requests for certifications, permits, approvals, and licenses for nuclear reactors.

“(17) Requested activity of the commission.—The term ‘requested activity of the Commission’ means—

“(A) the processing of applications for—

“(i) design certifications or approvals;

“(ii) licenses;

“(iii) permits;

“(iv) license amendments;

“(v) license renewals;

“(vi) certificates of compliance; and

“(vii) power uprates; and

“(B) any other activity requested by a licensee or applicant.

“(18) Research and test reactor.—

“(A) In general.—The term ‘research and test reactor’ means a reactor that—

“(i) falls within the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842); and

“(ii) is useful in the conduct of research and development activities as licensed under section 104 c. of the Atomic Energy Act [of 1954] (42 U.S.C. 2134(c)).

“(B) Exclusion.—The term ‘research and test reactor’ does not include a commercial nuclear reactor.

“(19) Secretary.—The term ‘Secretary’ means the Secretary of Energy.

“(20) Standard design approval.—The term ‘standard design approval’ means the approval of a final standard design or a major portion of a final design standard as described in subpart E of part 52 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this Act).

“(21) Technology-inclusive regulatory framework.—The term ‘technology-inclusive regulatory framework’ means a regulatory framework developed using methods of evaluation that are flexible and practicable for application to a variety of reactor technologies, including, where appropriate, the use of risk-informed and performance-based techniques and other tools and methods.

“(22) Topical report.—The term ‘topical report’ means a document submitted to the Commission that addresses a technical topic related to nuclear reactor safety or design.”

<sup>11</sup> As amended by Pub. L. 118-67, div. B, title II, §201(a)(5), July 9, 2024, 138 Stat. 1447

**Title I—Advanced Nuclear Reactors and User Fees****42 USC 2214  
note.****Sec. 101. Nuclear Regulatory Commission User Fees and Annual Charges Through Fiscal Year 2020****42 USC 2214  
note,  
Repealed.**

(a) IN GENERAL.—Section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

(1) in clause (iii), by striking “and” at the end;

(2) in clause (iv), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(v) amounts appropriated to the Commission for the fiscal year for activities related to the development of regulatory infrastructure for advanced nuclear reactor technologies, including activities required under section 103 of the Nuclear Energy Innovation and Modernization Act.”.

(b) REPEAL.—Effective October 1, 2020, section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is repealed.

**42 USC 2215.****Sec. 102. Nuclear Regulatory Commission User Fees and Annual Charges for Fiscal Year 2021 and Each Fiscal Year Thereafter**

(a) Annual budget justification

(1) In general

In the annual budget justification submitted by the Commission to Congress, the Commission shall expressly identify anticipated expenditures necessary for completion of the requested activities of the Commission anticipated to occur during the applicable fiscal year.

(2) Restriction

Budget authority granted to the Commission for purposes of the requested activities of the Commission shall be used, to the maximum extent practicable, solely for conducting requested activities of the Commission.

(3) Limitation on corporate support costs—

With respect to the annual budget justification submitted to Congress, corporate support costs, to the maximum extent practicable, shall not exceed the following percentages of the total budget authority of the Commission requested in the annual budget justification:

(A) 30 percent for each of fiscal years 2021 and 2022.

(B) 30 percent for fiscal year 2025 and each fiscal year thereafter.<sup>12</sup><sup>12</sup> As amended by Pub. L. 118-67, div. B, title V, §503(b), July 9, 2024, 138 Stat. 1447

## (4) International nuclear export and innovation activities.—

The Commission shall identify in the annual budget justification international nuclear export and innovation activities described in section 101(a) of the ADVANCE Act of 2024.<sup>13</sup>

## (b) Fees and charges

## (1) Annual assessment

## (A) In general

Each fiscal year, the Commission shall assess and collect fees and charges in accordance with paragraphs (2) and (3) in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected is equal to an amount that approximates—

(i) the total budget authority of the Commission for that fiscal year; less

(ii) the budget authority of the Commission for the activities described in subparagraph (B).

## (B) Excluded activities described

The activities referred to in subparagraph (A)(ii) are the following:

(i) Any fee relief activity, as identified by the Commission.

(ii) Amounts appropriated for a fiscal year to the

Commission—

(I) from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c));

(II) for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (50 U.S.C. 2601 note; <sup>1</sup> Public Law 108–375);

(III) for the homeland security activities of the Commission (other than for the costs of fingerprinting and background checks required under section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections);

(IV) for the Inspector General services of the Commission provided to the Defense Nuclear Facilities Safety Board;

(V) for research and development at universities in areas relevant to the mission of the Commission; and

(VI) for a nuclear science and engineering grant program that will support multiyear projects that do not align with programmatic missions but are critical to maintaining the discipline of nuclear science and engineering.

(iii) Costs for activities related to the development of regulatory infrastructure for advanced nuclear reactor technologies, including activities required under section 103.<sup>1</sup>

<sup>13</sup> As amended by Pub. L. 118-67, div. B, title I, §101(c)(1)(A), July 9, 2024, 138 Stat. 1447. Added paragraph (4)

(iv) Costs for international nuclear export and innovation activities described in section 101(a) of the ADVANCE Act of 2024.<sup>14</sup>

(v) The total costs of mission-indirect program support and agency support that, under paragraph (2)(B), may not be included in the hourly rate charged for fees assessed and collected from advanced nuclear reactor applicants.<sup>15</sup>

(vi) The total costs of mission-indirect program support and agency support that, under paragraph (2)(C), may not be included in the hourly rate charged for fees assessed and collected from advanced nuclear reactor pre-applicants.<sup>16</sup>

(vii) Costs for—

(I) activities to review and approve or disapprove an application for an early site permit (as defined in section 52.1 of title 10, Code of Federal Regulations (or any successor regulation)) to demonstrate an advanced nuclear reactor on a Department of Energy site or critical national security infrastructure (as defined in section 327(d) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1722)) site<sup>17</sup>; and

(II) pre-application activities relating to an early site permit (as defined in section 52.1 of title 10, Code of Federal Regulations (or any successor regulation)) to demonstrate an advanced nuclear reactor on a Department of Energy site or critical national security infrastructure (as defined in section 327(d) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1722)) site.<sup>18</sup>

(C) Exception

The exclusion described in subparagraph (B)(iii) shall cease to be effective on January 1, 2031.

(D) Report

Not later than December 31, 2029, the Commission shall submit to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report describing the views of the Commission on the continued appropriateness and necessity of the funding described in subparagraph (B)(iii).

(2) Fees for service or thing of value—<sup>19</sup>

(A) In general.— In accordance with section 9701 of title 31, United States Code, the Commission shall assess and collect fees from any

<sup>14</sup> As amended by Pub. L. 118-67, div. B, title I, §101(c)(1)(B), July 9, 2024, 138 Stat. 1447

<sup>15</sup> As amended by Pub. L. 118-67, div. B, title II, §201(b), July 9, 2024, 138 Stat. 1447

<sup>16</sup> As amended by Pub. L. 118-67, div. B, title II, §201(b), July 9, 2024, 138 Stat. 1447

<sup>17</sup> As amended by Pub. L. 118-67, div. B, title II, §204(a), July 9, 2024, 138 Stat. 1447

<sup>18</sup> As amended by Pub. L. 118-67, div. B, title II, §204(a), July 9, 2024, 138 Stat. 1447

<sup>19</sup> As amended by Pub. L. 118-67, div. B, title II, §201(c), July 9, 2024, 138 Stat. 1447.

Original paragraph (2) struck and replaced with paragraph (2), (A), (B), and (C)

person who receives a service or thing of value from the Commission to cover the costs to the Commission of providing the service or thing of value.

(B) Advanced nuclear reactor applicants.— The hourly rate charged for fees assessed and collected from an advanced nuclear reactor applicant under this paragraph relating to the review of a submitted application described in section 3(1) may not exceed the hourly rate for mission-direct program salaries and benefits.

(C) Advanced nuclear reactor pre-applicants.— The hourly rate charged for fees assessed and collected from an advanced nuclear reactor pre-applicant under this paragraph relating to the review of submitted materials as described in the licensing project plan of an advanced nuclear reactor pre-applicant may not exceed the hourly rate for mission-direct program salaries and benefits.”

(3) Annual charges

(A) In general

Subject to subparagraph (B) and except as provided in subparagraph (D), the Commission may charge to any licensee or certificate holder of the Commission an annual charge in addition to the fees assessed and collected under paragraph (2).

(B) Cap on annual charges of certain licensees

(i) Operating reactors

The annual charge under subparagraph (A) charged to an operating reactor licensee, to the maximum extent practicable, shall not exceed the annual fee amount per operating reactor licensee established in the final rule of the Commission entitled "Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015" (80 Fed. Reg. 37432 (June 30, 2015)), as may be adjusted annually by the Commission to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(ii) Waiver

The Commission may waive, for a period of 1 year, the cap on annual charges described in clause (i) if the Commission submits to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a written determination that the cap on annual charges may compromise the safety and security mission of the Commission.

(C) Amount per licensee

(i) In general

The Commission shall establish by rule a schedule of annual charges fairly and equitably allocating the aggregate amount of charges described in subparagraph (A) among licensees and certificate holders.

(ii) Requirement

The schedule of annual charges under clause (i)-

(I) to the maximum extent practicable, shall be reasonably related to the cost of providing regulatory services; and

(II) may be based on the allocation of the resources of the Commission among licensees or certificate holders or classes of licensees or certificate holders.

(D) Exemption

(i) Definition of research reactor

In this subparagraph, the term "research reactor" means a nuclear reactor that-

(I) is licensed by the Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of not more than 10 megawatts; and

(II) if licensed under subclause (I) for operation at a thermal power level of more than 1 megawatt, does not contain-

(aa) a circulating loop through the core in which the licensee conducts fuel experiments;

(bb) a liquid fuel loading; or

(cc) an experimental facility in the core in excess of 16 square inches in cross-section.

(ii) Exemption

Subparagraph (A) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(c) Performance and reporting

(1) In general

Not later than 180 days after January 14, 2019, the Commission shall develop for the requested activities of the Commission-

(A) performance metrics; and

(B) milestone schedules.

(2) Delays in issuance of final safety evaluation

The Executive Director for Operations of the Commission shall inform the Commission of a delay in issuance of the final safety evaluation for a requested activity of the Commission by the completion date required by the performance metrics or milestone schedule under paragraph (1) by not later than 30 days after the completion date.

(3) Delays in issuance of final safety evaluation exceeding 90<sup>20</sup> days

If the final safety evaluation for the requested activity of the Commission described in paragraph (2) is not completed by the date that is 90<sup>21</sup> days after the completion date required by the performance metrics or milestone schedule under paragraph (1), the Commission shall submit to the appropriate congressional committees a timely

<sup>20</sup> As amended by Pub. L. 118-67, div. B, title V, §504, July 9, 2024, 138 Stat. 1447

<sup>21</sup> As amended by Pub. L. 118-67, div. B, title V, §504, July 9, 2024, 138 Stat. 1447

report describing the delay, including a detailed explanation accounting for the delay and a plan for timely completion of the final safety evaluation.

(4) Periodic updates to metrics and schedules.—<sup>22</sup>

(A) Review and assessment.— Not less frequently than once every 3 years, the Commission shall review and assess, based on the licensing and regulatory activities of the Commission, the performance metrics and milestone schedules established under paragraph (1).

(B) Revisions.— After each review and assessment under subparagraph (A), the Commission shall revise and improve, as appropriate, the performance metrics and milestone schedules described in that subparagraph to provide the most efficient metrics and schedules reasonably achievable.

(d) Accurate invoicing

With respect to invoices for fees described in subsection (b)(2), the Commission shall-

(1) ensure appropriate review and approval prior to the issuance of invoices;

(2) develop and implement processes to audit invoices to ensure accuracy, transparency, and fairness; and

(3) modify regulations to ensure fair and appropriate processes to provide licensees and applicants an opportunity to efficiently dispute or otherwise seek review and correction of errors in invoices for those fees.

(e) Report

Not later than September 30, 2021, the Commission shall submit to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report describing the implementation of this section, including any impacts and recommendations for improvement.

(f) Effective date

Except as provided in subsection (c), this section takes effect on October 1, 2020.<sup>23</sup>

(g) Cessation of Effectiveness.— Paragraphs (1)(B)(vi) and (2)(C) of subsection (b) shall cease to be effective on September 30, 2030.<sup>24</sup>

### Sec. 103. Advanced Nuclear Reactor Program

(a) Licensing.—

(1) Staged Licensing.—For the purpose of predictable, efficient, and timely reviews, not later than 270 days after the date of enactment of this Act, the Commission shall develop and

<sup>22</sup> As amended by Pub. L. 118-67, title V, §504, July 9, 2024, 138 Stat. 1447

<sup>23</sup> As amended by Pub. L. 115-439, title I, §102, Jan. 14, 2019, 132 Stat. 5568.

<sup>24</sup> As amended by Pub. L. 118-67, title II, §201(d), July 9, 2024, 138 Stat. 1447, Paragraph (g) added.



implement, within the existing regulatory framework, strategies for—

- (A) establishing stages in the licensing process for commercial advanced nuclear reactors; and
  - (B) developing procedures and processes for—
    - (i) using a licensing project plan; and
    - (ii) optional use of a conceptual design assessment.
- (2) Risk-Informed Licensing.—Not later than 2 years after the date of enactment of this Act, the Commission shall develop and implement, where appropriate, strategies for the increased use of risk-informed, performance-based licensing evaluation techniques and guidance for commercial advanced nuclear reactors within the existing regulatory framework, including evaluation techniques and guidance for the resolution of the following:
- (A) Applicable policy issues identified during the course of review by the Commission of a commercial advanced nuclear reactor licensing application.
  - (B) The issues described in SECY-93-092 and SECY-15-077, including—
    - (i) licensing basis event selection and evaluation;
    - (ii) source terms;
    - (iii) containment performance; and
    - (iv) emergency preparedness.
- (3) Research and Test Reactor Licensing.—For the purpose of predictable, efficient, and timely reviews, not later than 2 years after the date of enactment of this Act, the Commission shall develop and implement strategies within the existing regulatory framework for licensing research and test reactors, including the issuance of guidance.
- (4) Technology-Inclusive Regulatory Framework.—Not later than December 31, 2027, the Commission shall complete a rulemaking to establish a technology-inclusive regulatory framework for optional use by commercial advanced nuclear reactor applicants for new reactor license applications.
- (5) Training and Expertise.—As soon as practicable after the date of enactment of this Act, the Commission shall provide for staff training or the hiring of experts, as necessary—
- (A) to support the activities described in paragraphs (1) through (4); and
  - (B) to support preparations—
    - (i) to conduct pre-application interactions; and
    - (ii) to review commercial advanced nuclear reactor license applications (including fusion machine license applications)<sup>25</sup>.

<sup>25</sup> As amended by Pub. L. 118-67, div. B, title II, §205(b)(1)(B), July 9, 2024, 138 Stat. 1447

- (6) Authorization Of Appropriations.—There is authorized to be appropriated to the Commission to carry out this subsection \$14,420,000 for each of fiscal years 2020 through 2024.
- (b) Report to Establish Stages in the Commercial Advanced Nuclear Reactor Licensing Process.—
- (1) Report Required.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report for expediting and establishing stages in the licensing process for commercial advanced nuclear reactors that will allow implementation of the licensing process by not later than 2 years after the date of enactment of this Act (referred to in this subsection as the “report”).
- (2) Coordination and Stakeholder Input.—In developing the report, the Commission shall seek input from the Secretary, the nuclear energy industry, a diverse set of technology developers, and other public stakeholders.
- (3) Cost and Schedule Estimates.—The report shall include proposed cost estimates, budgets, and timeframes for implementing strategies to establish stages in the licensing process for commercial advanced nuclear reactor technologies.
- (4) Required Evaluations.—Consistent with the role of the Commission in protecting public health and safety and common defense and security, the report shall evaluate—
- (A)(i) the unique aspects of commercial advanced nuclear reactor licensing, including the use of alternative coolants, operation at or near atmospheric pressure, and the use of passive safety strategies;
- (ii) strategies for the qualification of advanced nuclear reactor fuel, including the use of computer modeling and simulation and experimental validation; and
- (iii) for the purposes of predictable, efficient, and timely reviews, any associated legal, regulatory, and policy issues the Commission should address with regard to the licensing of commercial advanced nuclear reactor technologies;
- (B) options for licensing commercial advanced nuclear reactors under the regulations of the Commission contained in title 10, Code of Federal Regulations (as in effect on the date of enactment of this Act), including—
- (i) the development and use under the regulatory framework of the Commission in effect on the date of enactment of this Act of a licensing project plan that could establish—
- (I) milestones that—
- (aa) correspond to stages of a licensing process for the specific situation of a commercial advanced nuclear reactor project; and
- (bb) use knowledge of the ability of the Commission to review certain design aspects; and

- (II) guidelines defining the roles and responsibilities between the Commission and the applicant at the onset of the interaction—
      - (aa) to provide the foundation for effective communication and effective project management; and
      - (bb) to ensure efficient progress;
    - (ii) the use of topical reports, standard design approval, and other appropriate mechanisms as tools to introduce stages into the commercial advanced nuclear reactor licensing process, including how the licensing project plan might structure the use of those mechanisms;
    - (iii) collaboration with standards-setting organizations to identify specific technical areas for which new or updated standards are needed and providing assistance if appropriate to ensure the new or updated standards are developed and finalized in a timely fashion;
    - (iv) the incorporation of consensus-based codes and standards developed under clause (iii) into the regulatory framework—
      - (I) to provide predictability for the regulatory processes of the Commission; and
      - (II) to ensure timely completion of specific licensing actions;
    - (v) the development of a process for, and the use of, conceptual design assessments; and
    - (vi) identification of any policies and guidance for staff that will be needed to implement clauses (i) and (ii);
  - (C) options for improving the efficiency, timeliness, and cost-effectiveness of licensing reviews of commercial advanced nuclear reactors, including opportunities to minimize the delays that may result from any necessary amendment or supplement to an application;
  - (D) options for improving the predictability of the commercial advanced nuclear reactor licensing process, including the evaluation of opportunities to improve the process by which application review milestones are established and met; and
  - (E) the extent to which Commission action or modification of policy is needed to implement any part of the report.
- (c) Report to Increase the Use of Risk-Informed and Performance-Based Evaluation Techniques and Regulatory Guidance.—
- (1) Report Required.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report for increasing, where appropriate, the use of risk-informed and performance-based evaluation techniques and regulatory guidance in licensing commercial advanced nuclear reactors within the

existing regulatory framework (referred to in this subsection as the “report”).

- (2) Coordination and Stakeholder Input.—In developing the report, the Commission shall seek input from the Secretary, the nuclear energy industry, technology developers, and other public stakeholders.
  - (3) Cost and Schedule Estimate.—The report shall include proposed cost estimates, budgets, and timeframes for implementing a strategy to increase the use of risk-informed and performance-based evaluation techniques and regulatory guidance in licensing commercial advanced nuclear reactors.
  - (4) Required Evaluations.—Consistent with the role of the Commission in protecting public health and safety and common defense and security, the report shall evaluate—
    - (A) the ability of the Commission to develop and implement, where appropriate, risk-informed and performance-based licensing evaluation techniques and guidance for commercial advanced nuclear reactors within existing regulatory frameworks not later than 2 years after the date of enactment of this Act, including policies and guidance for the resolution of—
      - (i) issues relating to—
        - (I) licensing basis event selection and evaluation;
        - (II) use of mechanistic source terms;
        - (III) containment performance;
        - (IV) emergency preparedness; and
        - (V) the qualification of advanced nuclear reactor fuel; and
      - (ii) other policy issues previously identified; and
    - (B) the extent to which Commission action is needed to implement any part of the report.
- (d) Report to Prepare the Research and Test Reactor Licensing Process.—
- (1) Report Required.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report for preparing the licensing process for research and test reactors within the existing regulatory framework (referred to in this subsection as the “report”).
  - (2) Coordination and Stakeholder Input.—In developing the report, the Commission shall seek input from the Secretary, the nuclear energy industry, a diverse set of technology developers, and other public stakeholders.
  - (3) Cost and Schedule Estimates.—The report shall include proposed cost estimates, budgets, and timeframes for preparing the licensing process for research and test reactors.
  - (4) Required Evaluations.—Consistent with the role of the Commission in protecting public health and safety and common defense and security, the report shall evaluate—

- (A) the unique aspects of research and test reactor licensing and any associated legal, regulatory, and policy issues the Commission should address to prepare the licensing process for research and test reactors;
  - (B) the feasibility of developing guidelines for advanced reactor demonstrations and prototypes to support the review process for advanced reactors designs, including designs that use alternative coolants or alternative fuels, operate at or near atmospheric pressure, and use passive safety strategies; and
  - (C) the extent to which Commission action or modification of policy is needed to implement any part of the report.
- (e) Report to Complete a Rulemaking to Establish a Technology-Inclusive Regulatory Framework for Optional Use by Commercial Advanced Nuclear Reactor Technologies in New Reactor License Applications and to Enhance Commission Expertise Relating to Advanced Nuclear Reactor Technologies.—
- (1) Report Required.—Not later than 30 months after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report (referred to in this subsection as the “report”) for—
    - (A) completing a rulemaking to establish a technology-inclusive regulatory framework for optional use by applicants in licensing commercial advanced nuclear reactor technologies in new reactor license applications; and
    - (B) ensuring that the Commission has adequate expertise, modeling, and simulation capabilities, or access to those capabilities, to support the evaluation of commercial advanced reactor license applications, including the qualification of advanced nuclear reactor fuel.
  - (2) Coordination and Stakeholder Input.—In developing the report, the Commission shall seek input from the Secretary, the nuclear energy industry, a diverse set of technology developers, and other public stakeholders.
  - (3) Cost and Schedule Estimate.—The report shall include proposed cost estimates, budgets, and timeframes for developing and implementing a technology-inclusive regulatory framework for licensing commercial advanced nuclear reactor technologies, including completion of a rulemaking.
  - (4) Required Evaluations.—Consistent with the role of the Commission in protecting public health and safety and common defense and security, the report shall evaluate—
    - (A) the ability of the Commission to complete a rulemaking to establish a technology-inclusive regulatory framework for licensing commercial advanced nuclear reactor technologies by December 31, 2027;

- (B) the extent to which additional legislation, or Commission action or modification of policy, is needed to implement any part of the new regulatory framework;
  - (C) the need for additional Commission expertise, modeling, and simulation capabilities, or access to those capabilities, to support the evaluation of licensing applications for commercial advanced nuclear reactors and research and test reactors, including applications that use alternative coolants or alternative fuels, operate at or near atmospheric pressure, and use passive safety strategies; and
  - (D) the budgets and timeframes for acquiring or accessing the necessary expertise to support the evaluation of license applications for commercial advanced nuclear reactors and research and test reactors.
- (f) Prizes for Advanced Nuclear Reactor Licensing—<sup>26</sup>.
- (1) Definition of eligible entity.— In this subsection, the term ‘eligible entity’ means—
    - (A) a non-Federal entity; and
    - (B) the Tennessee Valley Authority.
  - (2) Prize for advanced nuclear reactor licensing.—
    - (A) In general.— Notwithstanding section 169 of the Atomic Energy Act of 1954 (42 U.S.C. 2209) and subject to the availability of appropriations, the Secretary is authorized to make, with respect to each award category described in subparagraph (C), an award in an amount described in subparagraph (B) to the first eligible entity
      - (i) to which the Commission issues an operating license for an advanced nuclear reactor under part 50 of title 10, Code of Federal Regulations (or successor regulations), for which an application has not been approved by the Commission as of the date of enactment of this subsection; or
      - (ii) for which the Commission makes a finding described in section 52.103(g) of title 10, Code of Federal Regulations (or successor regulations), with respect to a combined license for an advanced nuclear reactor—
        - (I) that is issued under subpart C of part 52 of that title (or successor regulations); and
        - (II) for which an application has not been approved by the Commission as of the date of enactment of this subsection.
    - (B) Amount of award.— Subject to paragraph (3), an award under subparagraph (A) shall be in an amount equal to the total amount assessed by the Commission and collected under section 102(b)(2) from the eligible entity receiving the award for costs relating to the issuance of the license described in that subparagraph, including, as applicable, costs relating to the issuance of an associated construction permit described in section 50.23 of title 10, Code of Federal Regulations (or successor

<sup>26</sup> As amended by Pub. L. 118-67, div. B, title II, §202, July 9, 2024, 138 Stat. 1447

regulations), or early site permit (as defined in section 52.1 of that title (or successor regulations)).

(C) Award categories. —An award under subparagraph (A) may be made for—

(i) the first advanced nuclear reactor for which the Commission—

(I) issues a license in accordance with clause (i) of subparagraph (A); or

(II) makes a finding in accordance with clause (ii) of that subparagraph;

(ii) an advanced nuclear reactor that—

(I) uses isotopes derived from spent nuclear fuel (as defined in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101)) or depleted uranium as fuel for the advanced nuclear reactor; and

(II) is the first advanced nuclear reactor described in subclause (I) for which the Commission—

(aa) issues a license in accordance with clause (i) of subparagraph (A); or

(bb) makes a finding in accordance with clause (ii) of that subparagraph;

(iii) an advanced nuclear reactor that—

(I) is a nuclear integrated energy system—

(aa) that is composed of 2 or more co-located or jointly operated subsystems of energy generation, energy storage, or other technologies;

(bb) in which not fewer than 1 subsystem described in item (aa) is a nuclear energy system; and

(cc) the purpose of which is—

(AA) to reduce greenhouse gas emissions in both the power and nonpower sectors; and

(BB) to maximize energy production and efficiency;

and

(II) is the first advanced nuclear reactor described in subclause (I) for which the Commission—

(aa) issues a license in accordance with clause (i) of subparagraph (A); or

(bb) makes a finding in accordance with clause (ii) of that subparagraph;

(iv) an advanced reactor that—

(I) operates flexibly to generate electricity or high temperature process heat for nonelectric applications; and

(II) is the first advanced nuclear reactor described in subclause (I) for which the Commission—

(aa) issues a license in accordance with clause (i) of subparagraph (A); or

(bb) makes a finding in accordance with clause (ii) of that subparagraph; and

(v) the first advanced nuclear reactor for which the Commission grants approval to load nuclear fuel pursuant to the technology-inclusive regulatory framework established under subsection (a)(4).

(3) Federal funding limitations.—

(A) Exclusion of TVA funds.— In this paragraph, the term ‘Federal funds’ does not include funds received under the power program of the Tennessee Valley Authority established pursuant to the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.).

(B) Limitation on amounts expended.— An award under this subsection shall not exceed the total amount expended (excluding any expenditures made with Federal funds received for the applicable project and an amount equal to the minimum cost-share required under section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352)) by the eligible entity receiving the award for licensing costs relating to the project for which the award is made.

(C) Repayment and dividends not required.— Notwithstanding section 9104(a)(4) of title 31, United States Code, or any other provision of law, an eligible entity that receives an award under this subsection shall not be required—

(i) to repay that award or any part of that award; or

(ii) to pay a dividend, interest, or other similar payment based on the sum of that award.

**Sec. 104. Baffle-Former Bolt Guidance**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:

“(a) Revisions to Guidance.—Not later than 90 days after the date of enactment of this Act, the Commission shall publish any necessary revisions to the guidance on the baseline examination schedule and subsequent examination frequency for baffle-former bolts in pressurized water reactors with down-flow configurations.

“(b) Report.—Not later than 90 days after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees—

“(1) a report explaining any revisions made to the guidance described in subsection (a); or

“(2) if no revisions were made, a report explaining why the guidance, as in effect on the date of submission of the report, is sufficient.”



**Sec. 105. Evacuation Report**

Pub. L. 115-439, Jan. 14, 2019, 132 Stat. 5565, provided that:

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report describing the actions the Commission has taken, or plans to take, to consider lessons learned since September 11, 2001, Superstorm Sandy, Fukushima, and other recent natural disasters regarding directed or spontaneous evacuations in densely populated urban and suburban areas.

(b) Inclusions.—The report under subsection (a) shall—

(1) describe the actions of the Commission—

(A) to consider the results from—

(i) the State-of-the-Art Reactor Consequence Analyses project; and

(ii) the current examination by the Commission of emergency planning zones for small modular reactors and advanced nuclear reactors; and

(B) to monitor international reviews, including reviews conducted by—

(i) the United Nations Scientific Committee on the Effects of Atomic Radiation;

(ii) the World Health Organization; and

(iii) the Fukushima Health Management Survey; and

(2) with respect to a disaster similar to a disaster described in subsection (a), include information about—

(A) potential shadow evacuations in response to the disaster; and

(B) what levels of self-evacuation should be expected during the disaster, including outside the 10-mile evacuation zone.

(c) Consultation Required.—The report under subsection (a) shall be prepared after consultation with—

(1) the Federal Radiological Preparedness Coordinating Committee;

(2) State emergency planning officials from States that the Commission determines to be relevant to the report; and

(3) experts in analyzing human behavior and probable responses to a radiological emission event.

**Sec. 106. Encouraging Private Investment in Research and Test Reactors**

(a) Purpose.—The purpose of this section is to encourage private investment in research and test reactors.

(b) Research And Development Activities.—Section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) is amended—

(1) in the first sentence, by striking “and which are not facilities of the type specified in subsection 104 b.” and inserting a period; and

The text added to Section 104(c) of the AEA by NEIMA Section 106(b) was superseded by text in the ADVANCE Act Section 601.

- (2) by adding at the end the following: “The Commission is authorized to issue licenses under this section for utilization facilities useful in the conduct of research and development activities of the types specified in section 31 in which the licensee sells research and testing services and energy to others, subject to the condition that the licensee shall recover not more than 75 percent of the annual costs to the licensee of owning and operating the facility through sales of nonenergy services, energy, or both, other than research and development or education and training, of which not more than 50 percent may be through sales of energy.”.

#### **Sec. 107. Commission Report on Accident Tolerant Fuel**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:

(a) Definition of Accident Tolerant Fuel.—In this section, the term “accident tolerant fuel” means a new technology that—

- (1) makes an existing commercial nuclear reactor more resistant to a nuclear incident (as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)); and
- (2) lowers the cost of electricity over the licensed lifetime of an existing commercial nuclear reactor.

(b) Report to Congress.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report describing the status of the licensing process of the Commission for accident tolerant fuel.

#### **Sec. 108. Report Identifying Best Practices for Establishment and Operation of Local Community Advisory Boards**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:

(a) Best Practices Report.—Not later than 18 months after the date of enactment of this Act, the Commission shall submit to Congress, and make publicly available, a report identifying best practices with respect to the establishment and operation of a local community advisory board to foster communication and information exchange between a licensee planning for and involved in decommissioning activities and members of the community that decommissioning activities may affect, including lessons learned from any such board in existence before the date of enactment of this Act.

(b) Contents.—The report described in subsection (a) shall include—

- (1) a description of—
  - (A) the topics that could be brought before a local community advisory board;
  - (B) how such a board’s input could be used to inform the decision-making processes of stakeholders for various decommissioning activities;
  - (C) what interactions such a board could have with the Commission and other Federal regulatory bodies to

- support the board members' overall understanding of the decommissioning process and promote dialogue between the affected stakeholders and the licensee involved in decommissioning activities; and
- (D) how such a board could offer opportunities for public engagement throughout all phases of the decommissioning process;
- (2) a discussion of the composition of a local community advisory board; and
- (3) best practices relating to the establishment and operation of a local community advisory board, including—
  - (A) the time of establishment of such a board;
  - (B) the frequency of meetings of such a board;
  - (C) the selection of board members;
  - (D) the term of board members;
  - (E) the responsibility for logistics required to support such a board's meetings and other routine activities; and
  - (F) any other best practices relating to such a local community advisory board that are identified by the Commission.
- (c) Consultation.—In developing the report described under subsection (a), the Commission shall consult with any host State, any community within the emergency planning zone of an applicable nuclear power reactor, and any existing local community advisory board.
- (d) Public Meetings.—
  - (1) In General.—The consultation required under subsection (c) shall include public meetings.
  - (2) Public Participation.—The public meetings under paragraph (1) shall be conducted under the requirements applicable to category 3 meetings under the policy statement of the Commission entitled “Enhancing Public Participation in NRC Meetings; Policy Statement” (67 Fed. Reg. 36920 (May 28, 2002)) (or a successor policy statement).
  - (3) Number of Meetings.—
    - (A) In General.—The Commission shall conduct not less than 10 public meetings under paragraph (1) in locations that ensure geographic diversity across the United States.
    - (B) Priority.—In determining locations in which to conduct a public meeting under subparagraph (A), the Commission shall give priority to States that—
      - (i) have a nuclear power reactor currently undergoing the decommissioning process; and
      - (ii) request a public meeting under this paragraph.
  - (4) Written Summary.—The report under subsection (a) shall include a written summary of the public meetings conducted under paragraph (1).

**Sec. 109. Report on Study Recommendations**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:  
“Not later than 90 days after the date of enactment of this Act, the Commission shall submit to Congress a report describing the status of addressing and implementing the recommendations contained in the memorandum of the Executive Director of Operations of the Commission entitled “Tasking in Response to the Assessment of the Considerations Identified in a ‘Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the Nuclear Regulatory Commission’ ” and dated June 19, 2018 (ADAMS Accession No.: ML18165A296).”

**Title II—Uranium**

**Sec. 201. Uranium Recovery Report**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:  
Not later than 90 days after the date of enactment of this Act, the Commission shall submit to the appropriate congressional committees a report describing—

- (1) the duration of uranium recovery license issuance and amendment reviews; and
- (2) recommendations to improve efficiency and transparency of uranium recovery license issuance and amendment reviews.

**Sec. 202. Pilot Program for Uranium Recovery Fees**

Pub. L. 115–439, Jan. 14, 2019, 132 Stat. 5565, provided that:  
Not later than 1 year after the date of enactment of this Act, the Commission shall—

- (1) complete a voluntary pilot initiative to determine the feasibility of the establishment of a flat fee structure for routine licensing matters relating to uranium recovery; and
- (2) provide to the appropriate congressional committees a report describing the results of the pilot initiative under paragraph (1).

## **5. Energy Reorganization Act of 1974, as Amended**



## 5. ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

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**A. ENERGY REORGANIZATION ACT OF 1974 (PL 93-438), AS AMENDED****Pub. L. 93-438  
October 11, 1974****88 STAT. 1233****42 USC 5801  
note.****Sec. 1. Short Title**

Pub. L. 93-438, §1, Oct. 11, 1974, 88 Stat. 1233, provided that:

“This Act [enacting this chapter, repealing sections 2031 and 2032 of this title, amending sections 5313 to 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the ‘Energy Reorganization Act of 1974’.”

**42 USC 5801.****Sec. 2. Congressional Declaration of Policy and Purpose****(a) Development and utilization of energy sources**

The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.

**(b) Necessity of establishing Energy Research and Development Administration**

The Congress finds that, to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission's military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistent with warranted priorities.

**(c) Separation of licensing and regulatory functions of Atomic Energy Commission**

The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner,

pursuant to this chapter, assuring adequacy of technical and other resources necessary for the performance of each.

(d) Small business participation

The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and equitably in grants, contracts, purchases, and other Federal activities relating to research, development, and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out this policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.

(e) Priorities

Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods of utilizing solar energy.<sup>1</sup>

**Title I—Energy Research and Development Administration**

**42 USC 5811. Sec. 101. Establishment of Energy Research and Development Administration**

There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this chapter referred to as the "Administration").<sup>2</sup>

**42 USC 5812. Sec. 102. Officers of Administration**

**Administrator.**

(a) Administrator; appointment

There shall be at the head of the Administration an Administrator of Energy Research and Development (hereinafter in this chapter referred to as the "Administrator"), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.

(b) Deputy Administrator

There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

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<sup>1</sup> Pub. L. 93-438, §2, Oct. 11, 1974, 88 Stat. 1233.

<sup>2</sup> Pub. L. 93-438, title I, §101, Oct. 11, 1974, 88 Stat. 1234.

(c) Qualifications of Administrator and Deputy Administrator

The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.

(d) Assistant Administrators; number; appointment; qualifications

There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage the energy technology area assigned to such Assistant Administrator.

(e) General Counsel

There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator.

(f) Additional officers

There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(g) Director of Military Application; functions; qualifications; compensation

The Division of Military Application transferred to and established in the Administration by section 5814(d) of this title shall be under the direction of a Director of Military Application, who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade. The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], for the Assistant General Manager for Military Application.

(h) Allocation of functions; responsibility for international cooperation

Officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time. The Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.

(i) Order of succession

The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel or such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of

the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.<sup>3</sup>

**42 USC 5813. Sec. 103. Responsibilities of the Administrator**

The responsibilities of the Administrator shall include, but not be limited to—

(1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;

(2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion, storage, transmission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;

(3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;

(4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

(5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;

(6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;

(7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of

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<sup>3</sup> Pub. L. 93-438, title I, §102, Oct. 11, 1974, 88 Stat. 1234.

reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(9) encouraging and participating in international cooperation in energy and related environmental research and development;

(10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(11) encouraging and conducting research and development in clean and renewable energy sources.<sup>4</sup>

#### 42 USC 5814.

#### Atomic Energy Commission.

#### Sec. 104. Abolition and Transfers

##### (a) Abolition of Atomic Energy Commission

The Atomic Energy Commission is hereby abolished. Sections 2031 and 2032 of this title are repealed.

##### (b) Transfer or lapse of functions of Atomic Energy Commission

All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this chapter.

##### (c) Functions of Atomic Energy Commission transferred to Administrator

There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this chapter.

##### (d) Transfer of General Advisory Committee, Patent Compensation Board, and Divisions of Military Application and Naval Reactors to Administration

The General Advisory Committee established pursuant to section 2036<sup>1</sup> of this title, the Patent Compensation Board established pursuant to section 2187 of this title, and the Divisions of Military Application and Naval Reactors established pursuant to section 2035 of this title, are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 2037<sup>1</sup> of this title, are transferred to the Administrator.

<sup>4</sup> Pub. L. 93–438, title I, §103, Oct. 11, 1974, 88 Stat. 1235; Pub. L. 95–39, title V, §510(a), June 3, 1977, 91 Stat. 200; Pub. L. 102–486, title I, §143(b), Oct. 24, 1992, 106 Stat. 2843.

(e) Transfer to Administrator of certain functions of Secretary of the Interior and Department of the Interior; study of potential energy application of helium; report to President and Congress

There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department—

(1) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960 (74 Stat. 336; 30 U.S.C. 661–669);

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the United States Bureau of Mines "energy centers" and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

(3) as relate to or are utilized for underground electric power transmission research.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from October 11, 1974, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

(f) Transfer to Administrator of certain functions of National Science Foundation

There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with—

(1) solar heating and cooling development; and

(2) geothermal power development.

(g) Transfer to Administrator of certain functions of Environmental Protection Agency

There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, of alternative automotive power systems.

(h) Exercise of authority necessary or appropriate to perform transferred functions and carry out transferred programs

To the extent necessary or appropriate to perform functions and carry out programs transferred by this chapter, the Administrator and Commission may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.

(i) Utilization of technical and management capabilities of other executive agencies; assignment of specific programs or projects in energy research and development

In the exercise of his responsibilities under section 5813 of this title, the Administrator shall utilize, with their consent, to the fullest extent he determines advisable the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that—

(1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and

(2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.<sup>5</sup>

#### 42 USC 5815.

##### Regulations.

#### Sec. 105. Administrative Provisions

##### (a) Rules and regulations

The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

##### (b) Policy planning and evaluation

The Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

##### (c) Delegation of functions

Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

##### (d) Organization

Except as provided in sections 5812 and 5814(d) of this title, the Administrator may organize the Administration as he may deem to be necessary or appropriate.

##### (e) Field offices

The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

<sup>5</sup> Pub. L. 93-438, title I, §104, Oct. 11, 1974, 88 Stat. 1237; Pub. L. 102-285, §10(b), May 18, 1992, 106 Stat. 172.

(f) Seal

The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

(g) Working capital fund

The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual or annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

(h) Information from other agencies

Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this subchapter.<sup>6</sup>

42 USC 5816.

**Sec. 106. Personnel and Services**

(a) Appointment and compensation of officers and employees

The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 2201(d) of this title as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.

(b) Employment of experts and consultants

The Administrator is authorized to obtain services as provided by section 3109 of title 5.

(c) Participation of military personnel

The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(d) Status of military personnel unaffected

Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section

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<sup>6</sup> Pub. L. 93-438, title I, §105, Oct. 11, 1974, 88 Stat. 1238.



shall in no way affect the status, office, rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(e) Transportation and per diem expenses

The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

(f) Personnel of other agencies

The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Government.

(g) Advisory boards

The Administrator is authorized to establish advisory boards, in accordance with the provisions of chapter 10 of title 5, to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.

(h) Employment of noncitizens

The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.<sup>7</sup>

**42 USC 5817. Sec. 107. Powers of Administrator**

(a) Research and development

The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the Administrator under this chapter as are applicable to the nuclear activities transferred pursuant to this

<sup>7</sup> Pub. L. 93-438, title I, §106, Oct. 11, 1974, 88 Stat. 1239, Pub. L. 117-286, §4(a)(264), Dec. 27, 2022, 136 Stat. 4335.

subchapter shall be subject to the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 5813 and 5814 of this title shall be carried out pursuant to the provisions of this chapter, applicable authority existing immediately before the effective date of this chapter, or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051–2053).

(b) Facilities and real property

Except for public buildings as defined in chapter 33 of title 40, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States.

(c) Services for employees at remote locations

(1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

(A) Emergency medical services and supplies.

(B) Food and other subsistence supplies.

(C) Messing facilities.

(D) Audiovisual equipment, accessories, and supplies for recreation and training.

(E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.

(F) Living and working quarters and facilities.

(G) Transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(2) The furnishing of medical treatment under subparagraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.

(3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available

for use by the Administrator for performing the work or services for which payment is received.

(d) Acquisition of copyrights and patents

The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him:

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Releases, before suit is brought, for past infringement of patents or copyrights.

(e) Dissemination of information

Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161–2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this subchapter through information programs and other appropriate means, and shall encourage the dissemination of scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.

(f) Gifts and bequests

The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to the United States.<sup>8</sup>

**42 USC 5818  
Repealed.**

**Sec. 108. Repealed**

**Pub. L. 95–91, title VII, §709(b), Aug. 4, 1977, 91 Stat. 608.<sup>9</sup>**

**42 USC 5819.**

**Sec. 109. Future Reorganization**

(a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a

<sup>8</sup> Pub. L. 93–438, title I, §107, Oct. 11, 1974, 88 Stat. 1240.

<sup>9</sup> Section, Pub. L. 93–438, title I, §108, Oct. 11, 1974, 88 Stat. 1241; Pub. L. 94–385, title I, §§162, 163, Aug. 14, 1976, 90 Stat. 1140, 1142; Pub. L. 95–39, title V, §510(b), (c), June 3, 1977, 91 Stat. 200, related to establishment of an Energy Resources Council.

consolidation in whole or in part of regulatory functions concerning energy.

(b) This report shall replace and serve the purposes of the report required by section 774(a)(4) of title 15.<sup>10</sup>

**42 USC 5820. Sec. 110. Coordination with Environmental Efforts**

The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.<sup>11</sup>

**42 USC 5821. Sec. 111. Annual Authorization Acts**

(a) General requirements; applicability to appropriations

All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 2017 of this title, section 5915 of this title, and section 5875 of this title. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as "annual authorization Acts").

(b) Requirements and limitations respecting funds appropriated for operating expenses

(1) Funds appropriated pursuant to an annual authorization Act for "Operating expenses" may be used for—

(A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on

<sup>10</sup> Pub. L. 93-438, title I, §109, Oct. 11, 1974, 88 Stat. 1242.

<sup>11</sup> Pub. L. 93-438, title I, §110, Oct. 11, 1974, 88 Stat. 1242.

Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds \$5,000,000 in the case of such a facility or \$2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator—

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

(B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(c) Additional requirements and limitations respecting funds appropriated for operating expenses

(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless—

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;  
except that this paragraph shall not apply to any project the estimated total cost of which does not exceed \$50,000.

(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated

(1) Except as otherwise provided in the authorization Act involved—

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result of reprogramming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment

Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided*, That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses".

(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment

When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

(g) Performance of construction design services by Administrator

The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions

When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3302(b) of title 31; except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 [42 U.S.C. 2301 et seq.] or the Strategic and Critical Materials Stockpiling Act, as amended [50 U.S.C. 98 et seq.], or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (30 U.S.C. 7); and

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

(i) Requirements respecting transfers of sums appropriated for operating expenses to other Government agencies; merger of transferred sums

When so specified in an appropriation Act, transfers of sums from the "Operating expenses" appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which they are transferred.<sup>12</sup>

<sup>12</sup> Pub. L. 93-438, title I, §111, as added Pub. L. 95-238, title II, §201, Feb. 25, 1978, 92 Stat. 56; amended Pub. L. 103-437, §15(c)(7), Nov. 2, 1994, 108 Stat. 4592.

**Title II—Nuclear Regulatory Commission; Nuclear Whistleblower Protection**

**42 USC 5841. Sec. 201. Establishment and Transfers**

(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission

(1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon



the distribution of appropriated funds according to major programs and purposes.

(b) Appointment of members

(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

(c) Term of office

Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.

(d) Submission of appointments to Senate

Such initial appointments shall be submitted to the Senate within sixty days of October 11, 1974. Any individual who is serving as a member of the Atomic Energy Commission on October 11, 1974, and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.

(e) Removal of members; prohibition against engagement in business or other employment

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.

(f) Transfer of licensing and regulatory functions of Atomic Energy Commission

There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission-which functions officers, components, and personnel are excepted from the transfer to the Administrator by section 5814(c) of this title.

(g) Additional transfers

In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission-

(1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;

(2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 5845 of this title, relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation under the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and of this chapter.<sup>13</sup>

**42 USC 5843. Sec. 202. Licensing and Related Regulatory Functions Respecting Selected Administrative Facilities**

Notwithstanding the exclusions provided for in section 110a. [42 U.S.C. 2140(a)] or any other provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2071 et seq., 2091 et seq., 2111 et seq., 2131 et seq.], as to the following facilities of the Administration:

(1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(2) Other demonstration nuclear reactors-except those in existence on the effective date of this chapter-when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act.

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act, other than any such facility that is utilized for research, development, demonstration, testing, or analysis purposes.<sup>14</sup>

<sup>13</sup> Pub. L. 93-438, title II, §201, Oct. 11, 1974, 88 Stat. 1242 ; Pub. L. 94-79, title II, §§201-203, Aug. 9, 1975, 89 Stat. 413 , 414; Pub. L. 95-209, §2, Dec. 13, 1977, 91 Stat. 1482 ; Pub. L. 99-386, title I, §109, Aug. 22, 1986, 100 Stat. 822.

<sup>14</sup> Pub. L. 93-438, title II, §202, Oct. 11, 1974, 88 Stat. 1244 ; Pub. L. 105-261, div. C, title XXXI, §3134(a), Oct. 17, 1998, 112 Stat. 2247.

42 USC 5843.

**Sec. 203. Office of Nuclear Reactor Regulation****(a) Establishment; appointment of Director**

There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

**(b) Functions of Director**

Subject to the provisions of this chapter, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate, including the following:

(1) Principal licensing and regulation involving all facilities, and materials licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], associated with the construction and operation of nuclear reactors licensed under the Atomic Energy Act of 1954, as amended;

(2) Review the safety and safeguards of all such facilities, materials, and activities, and such review functions shall include, but not be limited to-

(A) monitoring, testing and recommending upgrading of systems designed to prevent substantial health or safety hazards; and

(B) evaluating methods of transporting special nuclear and other nuclear materials and of transporting and storing high-level radioactive wastes to prevent radiation hazards to employees and the general public.

(3) Recommend research necessary to fulfill the licensing and regulatory oversight functions of the Commission.

**(c) Licensing process**

In carrying out the principal licensing and regulation functions under subsection (b)(1), the Director of Nuclear Reactor Regulation shall-

(1) establish techniques and guidance for evaluating applications for licenses for nuclear reactors to support efficient, timely, and predictable reviews of applications for those licenses to enable the safe and secure use of nuclear reactors;

(2) maintain the techniques and guidance established under paragraph (1) by periodically assessing and, if necessary, modifying those techniques and guidance; and

(3) obtain approval from the Commission if establishment or modification of the techniques and guidance under paragraph (1) or (2) involves policy formulation.

**(d) Responsibility for safe operation of facilities**

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safe operation of all

facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.<sup>15</sup>

42 USC 5844.

**Sec. 204. Office of Nuclear Material Safety and Safeguards**

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in [section 5849 of this title](#), and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Material Safety and Safeguards shall perform such functions as the Commission shall delegate including:

(1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended [[42 U.S.C. 2011 et seq.](#)], associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.

(2) Review safety and safeguards of all such facilities and materials licensed under the Atomic Energy Act of 1954, as amended, and such review shall include, but not be limited to-

(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this chapter and promptly transmitted to the Congress by the Commission.

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special

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<sup>15</sup> Pub. L. 93-438, title II, §203, Oct. 11, 1974, 88 Stat. 1244 ; Pub. L. 118-67, div. B, title V, §505(a), July 9, 2024, 138 Stat. 1477.

nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.<sup>16</sup>

**42 USC 5845. Sec. 205. Office of Nuclear Regulatory Research**

**(a) Establishment; appointment of Director**

There is hereby established in the Commission an Office of Nuclear Regulatory Research under the direction of a Director of Nuclear Regulatory Research, who shall be appointed by the Commission, who may report directly to the Commission as provided in [section 5849 of this title](#), and who shall serve at the pleasure of and be removable by the Commission.

**(b) Functions of Director**

Subject to the provisions of this chapter, the Director of Nuclear Regulatory Research shall perform such functions as the Commission shall delegate including:

(1) Developing recommendations for research deemed necessary for performance by the Commission of its licensing and related regulatory functions.

(2) Engaging in or contracting for research which the Commission deems necessary for the performance of its licensing and related regulatory functions.

**(c) Cooperation of Federal agencies**

The Administrator of the Administration and the head of every other Federal agency shall-

(1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;

(2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and

(3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

**(d) Responsibility for safety of activities**

Nothing in subsections (a) and (b) of this section or [section 5841 of this title](#) shall be construed to limit in any way the functions of the Administration relating to the safety of activities within the jurisdiction of the Administration.

**(e) Information and research services**

Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and

<sup>16</sup> Pub. L. 93-438, title II, §204, Oct. 11, 1974, 88 Stat. 1245.

research services, on a reimbursable basis, as it may have or be reasonably able to acquire.

(f) Improved safety systems research

The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear powerplants.<sup>1</sup>

**42 USC 5846. Sec. 206. Noncompliance with Safety Regulations**

(a) Notification to Commission of noncompliance

Any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity-

(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or

(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate, shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(b) Penalty for failure to notify

Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by section 234 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2282].

(c) Posting of requirements

The requirements of this section shall be prominently posted on the premises of any facility licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(d) Inspection and enforcement

The Commission is authorized to conduct such reasonable inspections and other enforcement activities as needed to insure compliance with the provisions of this section.<sup>2</sup>

**42 USC 5847. Sec. 207. Nuclear Energy Center Site Survey**

Solicitation of views.

(a)(1) The Commission is authorized and directed to make or cause to be made under its direction, a national survey, which shall include consideration of each of the existing or future electric reliability regions,

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<sup>1</sup> Pub. L. 93-438, title II, §205, Oct. 11, 1974, 88 Stat. 1246 ; Pub. L. 95-209, §4(a), Dec. 13, 1977, 91 Stat. 1482.

<sup>2</sup> Pub. L. 93-438, title II, §206, Oct. 11, 1974, 88 Stat. 1246.

or other appropriate regional areas, to locate and identify possible nuclear energy center sites. This survey shall be conducted in cooperation with other interested Federal, State, and local agencies, and the views of interested persons, including electric utilities, citizens' groups, and others, shall be solicited and considered.

(2) For purposes of this section, the term "nuclear energy center site" means any site, including a site not restricted to land, large enough to support utility operations or other elements of the total nuclear fuel cycle, or both including, if appropriate, nuclear fuel reprocessing facilities, nuclear fuel fabrication plants, retrievable nuclear waste storage facilities, and uranium enrichment facilities.

(3) The survey shall include-

(a) a regional evaluation of natural resources, including land, air, and water resources, available for use in connection with nuclear energy center sites; estimates of future electric power requirements that can be served by each nuclear energy center site; an assessment of the economic impact of each nuclear energy site; and consideration of any other relevant factors, including but not limited to population distribution, proximity to electric load centers and to other elements of the fuel cycle, transmission line rights-of-way, and the availability of other fuel resources;

(b) an evaluation of the environmental impact likely to result from construction and operation of such nuclear energy centers, including an evaluation whether such nuclear energy centers will result in greater or lesser environmental impact than separate siting of the reactors and/or fuel cycle facilities; and

(c) consideration of the use of federally owned property and other property designated for public use, but excluding national parks, national forests, national wilderness areas, and national historic monuments.

(4) A report of the results of the survey shall be published and transmitted to the Congress and the Council on Environmental Quality not later than one year from October 11, 1974, and shall be made available to the public, and shall be updated from time to time thereafter as the Commission, in its discretion, deems advisable. The report shall include the Commission's evaluation of the results of the survey and any conclusions and recommendations, including recommendations for legislation, which the Commission may have concerning the feasibility and practicality of locating nuclear power reactors and/or other elements of the nuclear fuel cycle on nuclear energy center sites. The Commission is authorized to adopt policies which will encourage the location of nuclear power reactors and related fuel cycle facilities on nuclear energy center sites insofar as practicable.<sup>19</sup>

<sup>19</sup> Pub. L. 93-438, title II, §207, Oct. 11, 1974, 88 Stat. 1247.

**42 USC 5848.****Sec. 208. Abnormal Occurrence Reports**

The Commission shall submit to the Congress an annual report listing for the previous fiscal year any abnormal occurrences at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter. For the purposes of this section an abnormal occurrence is an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. Nothing in the preceding sentence shall limit the authority of a court to review the determination of the Commission. Each such report shall contain-

- (1) the date and place of each occurrence;
- (2) the nature and probable consequence of each occurrence;
- (3) the cause or causes of each; and
- (4) any action taken to prevent reoccurrence;

the Commission shall also provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within fifteen days of its receiving information of each abnormal occurrence and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available to it.<sup>20</sup>

**42 USC 5849.****Sec. 209. Other Officers****(a) Executive Director**

The Commission shall appoint an Executive Director for Operations, who shall serve at the pleasure of and be removable by the Commission.

**(b) Functions of Executive Director**

The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this chapter to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.

**(c) Equal employment opportunity report**

The Executive Director shall report to the Commission at semi-annual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.

**(d) Annual status report**

The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic

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<sup>20</sup> Pub. L. 93-438, title II, §208, Oct. 11, 1974, 88 Stat. 1248 ; Pub. L. 104-66, title II, §2171, Dec. 21, 1995, 109 Stat. 731.



safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 5877(c) of this title) following the fiscal year to which such report applies.

(e) Additional officers

There shall be in the Commission not more than five additional officers appointed by the Commission. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.<sup>21</sup>

**42 USC 5850. Sec. 210. Unresolved Safety Issues Plan**

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.<sup>22</sup>

**42 USC 5851. Sec. 211. Employee Protection**

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)-

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a

<sup>21</sup> Pub. L. 93-438, title II, §209, Oct. 11, 1974, 88 Stat. 1248 ; Pub. L. 95-601, §§4, 6, Nov. 6, 1978, 92 Stat. 2949.

<sup>22</sup> Pub. L. 93-438, title II, §210, as added Pub. L. 95-209, §3, Dec. 13, 1977, 91 Stat. 1482.

proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term "employer" includes-

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant;

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344;

(E) a contractor or subcontractor of the Commission;

(F) the Commission; and

(G) the Department of Energy.

(b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back

pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(4) If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to [chapter 7 of title 5](#). The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction

Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under [section 1361 of title 28](#).

(g) Deliberate violations

Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended [[42 U.S.C. 2011 et seq.](#)].

(h) Nonpreemption

This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) Posting requirement

The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j) Investigation of allegations

(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of-

(A) the filing of a complaint under subsection (b)(1) of this section arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) has not occurred shall not be considered by the

Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.<sup>23</sup>

**42 USC 5853.****Sec. 212. Limitation on Legal Fee Reimbursement**

The Department of Energy shall not, except as required under a contract entered into before August 8, 2005, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to-

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 5851 of this title; or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, section 5851 of this title, or any comparable State law, unless the adverse determination or final judgment is reversed upon further administrative or judicial review.<sup>24</sup>

**Title III—Miscellaneous and Transitional Provisions****42 USC 5871.****Sec. 301. Transitional Provisions**

(a) Lapse of agency or other body from which functions or programs have been transferred and positions or offices therein

Except as otherwise provided in this chapter, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this chapter, have been transferred from that agency, or other body, or any component thereof by this chapter, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall lapse.

(b) Continuation of orders, determinations, rules, etc.

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges-

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or

<sup>23</sup> Pub. L. 93–438, title II, §211, formerly §210, as added Pub. L. 95–601, §10, Nov. 6, 1978, 92 Stat. 2951; renumbered §211 and amended Pub. L. 102–486, title XXIX, §2902(a)–(g), (h)(2), (3), Oct. 24, 1992, 106 Stat. 3123, 3124; Pub. L. 109–58, title VI, §629, Aug. 8, 2005, 119 Stat. 785.

<sup>24</sup> Pub. L. 93–438, title II, §212, as added Pub. L. 109–58, title VI, §627, Aug. 8, 2005, 119 Stat. 784.

official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and (2) which are in effect at the time this chapter takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(c) Effect of chapter on proceedings pending before Atomic Energy Commission or other department or agency

The provisions of this chapter shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this chapter had not been enacted.

(d) Effect of chapter on suits commenced prior to effective date

Except as provided in subsection (f)-

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(e) Abatement of suits, actions, or other proceedings by or against officer, department, or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) Continuation of suits; substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or

officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator or Commission, or other official, as the case may be, substituted.

(g) Judicial review of orders and actions in performance of transferred functions; statutory requirements relating to notices, hearings, action upon record, or administrative review

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

(h) References in other laws to department, agency, officer, or office whose functions have been transferred deemed reference to Administration, Administrator, or Commission

With respect to any functions transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this chapter vests such functions.

(i) Limitation, curtailment, etc., of presidential functions or authority

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) References in chapter to provision of law deemed to include references thereto as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(k) Functions conferred by chapter deemed in addition to and not substitution for functions existing before effective date

Except as may be otherwise expressly provided in this chapter, all functions expressly conferred by this chapter shall be in addition to and not in substitution for functions existing immediately before the effective date of this chapter and transferred by this chapter.<sup>25</sup>

<sup>25</sup> Pub. L. 93-438, title III, §301, Oct. 11, 1974, 88 Stat. 1248.

**42 USC 5872. Sec. 302. Transfer of Personnel****(a) Provisions of law applicable**

Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this chapter, are, subject to [section 1531 of title 31](#), correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this chapter, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule ([5 U.S.C. 5313–5316](#)) on the effective date of this chapter shall be subject to the provisions of subsection (c) of this section and [section 5871 of this title](#).

**(b) Prohibition against separation or reduction in grade or compensation for one year after transfer**

Except as provided in subsection (c), transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

**(c) Compensation in new position at not less than rate provided for previous position**

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in [chapter 53 of title 5](#), and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.<sup>26</sup>

**42 USC 5873. Sec. 303. Director of Office of Management and Budget; Power to Make Dispositions**

The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred by this chapter, as he may deem necessary or appropriate to accomplish the intent and purpose of this chapter.<sup>27</sup>

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<sup>26</sup> Pub. L. 93–438, title III, §302, Oct. 11, 1974, 88 Stat. 1250.

<sup>27</sup> Pub. L. 93–438, title III, §303, Oct. 11, 1974, 88 Stat. 1250.



**42 USC 5874. Sec. 304. Definitions**

As used in this chapter-

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.<sup>28</sup>

**42 USC 5875. Sec. 305. Authorizations of Appropriations**

(a) Except as otherwise provided by law, appropriations made under this Act shall be subject to an annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.<sup>29</sup>

**42 USC 5876. Sec. 306. Comptroller General Audit**

(a) Section 166 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2206], shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under subchapter I and to the activities under subchapter II.

(b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of subchapter II of this chapter by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this chapter, the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to-

(1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;

(2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], are carried out;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of subchapter II.<sup>30</sup>

<sup>28</sup> Pub. L. 93-438, title III, §304, Oct. 11, 1974, 88 Stat. 1251.

<sup>29</sup> Pub. L. 93-438, title III, §305, Oct. 11, 1974, 88 Stat. 1251.

<sup>30</sup> Pub. L. 93-438, title III, §306, Oct. 11, 1974, 88 Stat. 1251.

42 USC 5877.

**Sec. 307. Reports to President for Submission to Congress****(a) Report by Administrator on activities of Administration**

The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of those objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.

**(b) Review of desirability and feasibility of transferring functions of Administrator respecting military application and restricted data to Department of Defense or other Federal agencies; report by Administrator**

During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office the Administrator shall make a report to the President, for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

**(c) Report by Commission on activities of Commission**

The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas-

- (1) insuring the safe design of nuclear powerplants and other licensed facilities;
- (2) investigating abnormal occurrences and defects in nuclear powerplants and other licensed facilities;
- (3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;
- (4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;
- (5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;
- (6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.<sup>31</sup>

<sup>31</sup> Pub. L. 93-438, title III, §307, Oct. 11, 1974, 88 Stat. 1251.

**42 USC 5878. Sec. 308. Information to Committees**

The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.<sup>32</sup>

**42 USC 5879. Sec. 309. Transfer of Funds**

The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.<sup>33</sup>

**Sec. 310. Conforming Amendments to Certain Other Laws****5 USC 5313 Positions at Level II**

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- Deputy Secretary of Defense.
- Deputy Secretary of State.
- Deputy Secretary of State for Management and Resources.
- Administrator, Agency for International Development.
- Administrator of the National Aeronautics and Space Administration.
- Deputy Secretary of Veterans Affairs.
- Deputy Secretary of Homeland Security.
- Under Secretary of Homeland Security for Management.
- Administrator of the Transportation Security Administration.
- Director, Cybersecurity and Infrastructure Security Agency.
- Deputy Secretary of the Treasury.
- Deputy Secretary of Transportation.
- Chairman, Nuclear Regulatory Commission.
- Chairman, Council of Economic Advisers.
- Director of the Office of Science and Technology.
- Director of the Central Intelligence Agency.
- Secretary of the Air Force.
- Secretary of the Army.
- Secretary of the Navy.
- Administrator, Federal Aviation Administration.
- Director of the National Science Foundation.
- Deputy Attorney General.
- Deputy Secretary of Energy.
- Deputy Secretary of Agriculture.

<sup>32</sup> Pub. L. 93-438, title III, §307, Oct. 11, 1974, 88 Stat. 1251.

<sup>33</sup> Pub. L. 93-438, title III, §309, Oct. 11, 1974, 88 Stat. 1252.

Director of the Office of Personnel Management.  
 Administrator, Federal Highway Administration.  
 Administrator of the Environmental Protection Agency.  
 Deputy Secretary of Labor.  
 Deputy Director of the Office of Management and Budget.  
 Independent Members, Thrift Depositor Protection Oversight  
 Board.  
 Deputy Secretary of Health and Human Services.  
 Deputy Secretary of the Interior.  
 Deputy Secretary of Education.  
 Deputy Secretary of Housing and Urban Development.  
 Deputy Director for Management, Office of Management and  
 Budget.  
 Director of the Federal Housing Finance Agency.  
 Deputy Commissioner of Social Security, Social Security  
 Administration.  
 Administrator of the Community Development Financial  
 Institutions Fund.  
 Deputy Director of National Drug Control Policy.  
 Members, Board of Governors of the Federal Reserve System.  
 Under Secretary of Transportation for Policy.  
 Chief Executive Officer, Millennium Challenge Corporation.  
 Principal Deputy Director of National Intelligence.  
 Director of the National Counterterrorism Center.  
 Administrator of the Federal Emergency Management Agency.  
 Federal Transit Administrator.  
 Chief Executive Officer, United States International Development  
 Finance Corporation.

#### **5 USC 5314    Positions at Level III**

Level III of the Executive Schedule applies to the following positions,  
 for which the annual rate of basic pay shall be the rate determined with  
 respect to such level under [chapter 11 of title 2](#), as adjusted by [section  
 5318 of this title](#):

Solicitor General of the United States.  
 Under Secretary of Commerce, Under Secretary of Commerce for  
 Economic Affairs, Under Secretary of Commerce for Industry and  
 Security, Under Secretary of Commerce for Travel and Tourism, and  
 Under Secretary of Commerce for Minority Business Development.  
 Under Secretaries of State (6).  
 Under Secretaries of the Treasury (3).  
 Administrator of General Services.  
 Administrator of the Small Business Administration.  
 Deputy Administrator, Agency for International Development.  
 Chairman of the Merit Systems Protection Board.  
 Chairman, Federal Communications Commission.  
 Chairman, Board of Directors, Federal Deposit Insurance  
 Corporation.  
 Chairman, Federal Energy Regulatory Commission.

Chairman, Federal Trade Commission.  
Chairman, Surface Transportation Board.  
Chairman, National Labor Relations Board.  
Chairman, Securities and Exchange Commission.  
Chairman, National Mediation Board.  
Chairman, Railroad Retirement Board.  
Chairman, Federal Maritime Commission.  
Comptroller of the Currency.  
Commissioner of Internal Revenue.  
Under Secretary of Defense for Research and Engineering.  
Under Secretary of Defense for Acquisition and Sustainment.  
Under Secretary of Defense for Policy.  
Under Secretary of Defense (Comptroller).  
Under Secretary of Defense for Personnel and Readiness.  
Under Secretary of Defense for Intelligence and Security.  
Under Secretary of the Air Force.  
Under Secretary of the Army.  
Under Secretary of the Navy.  
Deputy Administrator of the National Aeronautics and Space Administration.  
Deputy Director of the Central Intelligence Agency.  
Director of the Office of Emergency Planning.  
Director of the Peace Corps.  
Deputy Director, National Science Foundation.  
President of the Export-Import Bank of Washington.  
Members, Nuclear Regulatory Commission.  
Members, Defense Nuclear Facilities Safety Board.  
Director of the Federal Bureau of Investigation, Department of Justice.  
Administrator of the National Highway Traffic Safety Administration.  
Administrator of the Federal Motor Carrier Safety Administration.  
Administrator, Federal Railroad Administration.  
Chairman, National Transportation Safety Board.  
Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.  
Chairman of the National Endowment for the Humanities.  
Director of the Federal Mediation and Conciliation Service.  
Chairman, Postal Regulatory Commission.  
Chairman, Occupational Safety and Health Review Commission.  
Governor of the Farm Credit Administration.  
Chairman, Equal Employment Opportunity Commission.  
Chairman, Consumer Product Safety Commission.  
Under Secretaries of Energy (3).  
Chairman, Commodity Futures Trading Commission.  
Deputy United States Trade Representatives (3).  
Chief Agricultural Negotiator, Office of the United States Trade Representative.

Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative.

Chairman, United States International Trade Commission.

Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.

Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.

Associate Attorney General.

Chairman, Federal Mine Safety and Health Review Commission.

Chairman, National Credit Union Administration Board.

Deputy Director of the Office of Personnel Management.

Under Secretary of Agriculture for Farm Production and Conservation.

Under Secretary of Agriculture for Trade and Foreign Agricultural Affairs.

Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

Under Secretary of Agriculture for Natural Resources and Environment.

Under Secretary of Agriculture for Research, Education, and Economics.

Under Secretary of Agriculture for Food Safety.

Under Secretary of Agriculture for Marketing and Regulatory Programs.

Director, Institute for Scientific and Technological Cooperation.

Under Secretary of Agriculture for Rural Development.

Administrator, Maritime Administration.

Executive Director Property Review Board.

Deputy Administrator of the Environmental Protection Agency.

Archivist of the United States.

Executive Director, Federal Retirement Thrift Investment Board.

Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.<sup>1</sup>

Director, Trade and Development Agency.

Under Secretary for Health, Department of Veterans Affairs.

Under Secretary for Benefits, Department of Veterans Affairs.

Under Secretary for Memorial Affairs, Department of Veterans Affairs.

Under Secretaries, Department of Homeland Security.

Director of the Bureau of Citizenship and Immigration Services.

Director of the Office of Government Ethics.

Administrator for Federal Procurement Policy.

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Director of the Office of Thrift Supervision.

Chairperson of the Federal Housing Finance Board.

Executive Secretary, National Space Council.

Controller, Office of Federal Financial Management, Office of Management and Budget.

Administrator, Office of the Assistant Secretary for Research and Technology of the Department of Transportation.

Deputy Director for Demand Reduction, Office of National Drug Control Policy.

Deputy Director for Supply Reduction, Office of National Drug Control Policy.

Deputy Director for State and Local Affairs, Office of National Drug Control Policy.

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Register of Copyrights.

Commissioner of U.S. Customs and Border Protection, Department of Homeland Security.

Under Secretary of Education

Administrator of the Centers for Medicare & Medicaid Services.

Administrator of the Office of Electronic Government.

Administrator, Pipeline and Hazardous Materials Safety Administration.

Director, Pension Benefit Guaranty Corporation.

Deputy Administrators, Federal Emergency Management Agency.

Deputy Administrator, Transportation Security Administration.

Chief Executive Officer, International Clean Energy Foundation.

Independent Member of the Financial Stability Oversight Council

(1).

Director of the Office of Financial Research.

Director of the National Reconnaissance Office.

Special Counsel of the Office of Special Counsel.<sup>34</sup>

## 5 USC 5315

### Positions at Level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development

(6).

Regional Assistant Administrators, Agency for International Development (4).

Assistant Secretaries of Agriculture (3).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (19).<sup>35</sup>

<sup>34</sup> Pub. L. 117–263, div. E, title LIII, §5304(b)(1)(A), Dec. 23, 2022, 136 Stat. 3251.

<sup>35</sup> Pub. L. 117–263, div. A, title IX, §901(b)(2), div. E, title LIII, §5304(b)(1)(B), Dec. 23, 2022, 136 Stat. 2747, 3251.

Assistant Secretaries of the Air Force (5).  
 Assistant Secretaries of the Army (5).  
 Assistant Secretaries of the Navy (4).  
 Assistant Secretaries of Health and Human Services (6).  
 Assistant Secretaries of the Interior (6).  
 Assistant Attorneys General (11).  
 Assistant Secretaries of Labor (10), one of whom shall be the  
 Assistant Secretary of Labor for Veterans' Employment and Training.  
 Administrator, Wage and Hour Division, Department of Labor.  
 Assistant Secretaries of State (24) and 4 other State Department  
 officials to be appointed by the President, by and with the advice and  
 consent of the Senate.  
 Assistant Secretaries of the Treasury (10).  
 Members, United States International Trade Commission (5).  
 Assistant Secretaries of Education (10).  
 General Counsel, Department of Education.  
 Director of Civil Defense, Department of the Army.  
 Deputy Director of the Office of Emergency Planning.  
 Deputy Director of the Office of Science and Technology.  
 Deputy Director of the Peace Corps.  
 Assistant Directors of the Office of Management and Budget (3).  
 General Counsel of the Department of Agriculture.  
 General Counsel of the Department of Commerce.  
 General Counsel of the Department of Defense.  
 General Counsel of the Department of Health and Human Services.  
 Solicitor of the Department of the Interior.  
 Solicitor of the Department of Labor.  
 General Counsel of the National Labor Relations Board.  
 General Counsel of the Department of the Treasury.  
 First Vice President of the Export-Import Bank of Washington.  
 Members, Council of Economic Advisers.  
 Members, Board of Directors of the Export-Import Bank of  
 Washington.  
 Members, Federal Communications Commission.  
 Member, Board of Directors of the Federal Deposit Insurance  
 Corporation.  
 Directors, Federal Housing Finance Board.  
 Members, Federal Energy Regulatory Commission.  
 Members, Federal Trade Commission.  
 Members, Surface Transportation Board.  
 Members, National Labor Relations Board.  
 Members, Securities and Exchange Commission.  
 Members, Merit Systems Protection Board.  
 Members, Federal Maritime Commission.  
 Members, National Mediation Board.  
 Members, Railroad Retirement Board.  
 Director of Selective Service.  
 Associate Director of the Federal Bureau of Investigation,  
 Department of Justice.



Members, Equal Employment Opportunity Commission (4).  
Director, Community Relations Service.  
Members, National Transportation Safety Board.  
General Counsel, Department of Transportation.  
Deputy Administrator, Federal Aviation Administration.  
Assistant Secretaries of Transportation (5).  
Deputy Federal Highway Administrator.  
Administrator of the Great Lakes St. Lawrence Seaway  
Development Corporation.  
Assistant Secretary for Science, Smithsonian Institution.  
Assistant Secretary for History and Art, Smithsonian Institution.  
Deputy Administrator of the Small Business Administration.  
Assistant Secretaries of Housing and Urban Development (8).  
General Counsel of the Department of Housing and Urban  
Development.  
Commissioner of Interama.  
Federal Insurance Administrator, Federal Emergency Management  
Agency.  
Members, National Credit Union Administration Board (2).  
Members, Postal Regulatory Commission (4).  
Members, Occupational Safety and Health Review Commission.  
Deputy Under Secretaries of the Treasury (or Assistant Secretaries  
of the Treasury) (2).  
Members, Consumer Product Safety Commission (4).  
Members, Commodity Futures Trading Commission.  
Director of Nuclear Reactor Regulation, Nuclear Regulatory  
Commission.  
Director of Nuclear Material Safety and Safeguards, Nuclear  
Regulatory Commission.  
Director of Nuclear Regulatory Research, Nuclear Regulatory  
Commission.  
Executive Director for Operations, Nuclear Regulatory  
Commission.  
President, Government National Mortgage Association,  
Department of Housing and Urban Development.  
Assistant Secretary of Commerce for Oceans and Atmosphere, the  
incumbent of which also serves as Deputy Administrator of the  
National Oceanic and Atmospheric Administration.  
Director, Bureau of Prisons, Department of Justice.  
Assistant Secretaries of Energy (8).  
General Counsel of the Department of Energy.  
Administrator, Economic Regulatory Administration, Department  
of Energy.  
Administrator, Energy Information Administration, Department of  
Energy.  
Director, Office of Indian Energy Policy and Programs,  
Department of Energy.  
Director, Office of Science, Department of Energy.  
Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.  
 President, National Consumer Cooperative Bank.  
 Chairman, Federal Labor Relations Authority.  
 Assistant Secretaries, Department of Homeland Security.  
 Assistant Director for Cybersecurity, Cybersecurity and  
 Infrastructure Security Agency.  
 Assistant Director for Infrastructure Security, Cybersecurity and  
 Infrastructure Security Agency.  
 General Counsel, Department of Homeland Security.  
 Officer for Civil Rights and Civil Liberties, Department of  
 Homeland Security.  
 Chief Financial Officer, Department of Homeland Security.  
 Chief Information Officer, Department of Homeland Security.  
 Deputy Director, Institute for Scientific and Technological  
 Cooperation.  
 Director of the National Institute of Justice.  
 Director of the Bureau of Justice Statistics.  
 Chief Counsel for Advocacy, Small Business Administration.  
 Assistant Administrator for Toxic Substances, Environmental  
 Protection Agency.  
 Assistant Administrator, Office of Solid Waste, Environmental  
 Protection Agency.  
 Assistant Administrators, Environmental Protection Agency (8).  
 Director of Operational Test and Evaluation, Department of  
 Defense.  
 Director of Cost Assessment and Program Evaluation, Department  
 of Defense.  
 Special Representatives of the President for arms control,  
 nonproliferation, and disarmament matters, Department of State.  
 Ambassadors at Large.  
 Assistant Secretary of Commerce and Director General of the  
 United States and Foreign Commercial Service.  
 Assistant Secretaries, Department of Veterans Affairs (7).  
 General Counsel, Department of Veterans Affairs.  
 Commissioner of Food and Drugs, Department of Health and  
 Human Services <sup>1</sup>  
 Chairman, Board of Veterans' Appeals.  
 Administrator, Office of Juvenile Justice and Delinquency  
 Prevention.  
 Director, United States Marshals Service.  
 Chairman, United States Parole Commission.  
 Director, Bureau of the Census, Department of Commerce.  
 Director of the Institute of Museum and Library Services.  
 Chief Financial Officer, Department of Agriculture.  
 Chief Financial Officer, Department of Commerce.  
 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.

Commissioner, Office of Navajo and Hopi Indian Relocation.

Deputy Under Secretary of Defense for Research and Engineering.

Deputy Under Secretary of Defense for Acquisition and

Sustainment.

Deputy Under Secretary of Defense for Policy.

Deputy Under Secretary of Defense for Personnel and Readiness.

Deputy Under Secretary of Defense (Comptroller).

Deputy Under Secretary of Defense for Intelligence and Security.

General Counsel of the Department of the Army.

General Counsel of the Department of the Navy.

General Counsel of the Department of the Air Force.

Liaison for Community and Junior Colleges, Department of

Education.

Director of the Office of Educational Technology.

Director of the International Broadcasting Bureau.

The <sup>2</sup> Commissioner of Labor Statistics, Department of Labor.

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 the 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 the 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.

General Counsel of the Central Intelligence Agency.

Principal Deputy Administrator, National Nuclear Security Administration.

Additional Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

Director of the National Counterintelligence and Security Center.

42 USC 5801  
note.

#### **Sec. 311. Separability**

Pub. L. 93-438, title III, §311, Oct. 11, 1974, 88 Stat. 1253, provided that: "If any provision of this Act [See Short Title note above], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

42 USC 5801  
note.

#### **Sec. 312. Effective Date and Interim Appointments**

Pub. L. 93-438, title III, §312, Oct. 11, 1974, 88 Stat. 1253 , provided that:

"(a) This Act [see Short Title note below] shall take effect one hundred and twenty days after the date of its enactment [Oct. 11, 1974], or on such earlier date as the President may prescribe and publish in the Federal Register [prescribed as Jan. 19, 1975, by Ex. Ord. No. 11834, formerly set out below] except that any of the officers provided for in title I of this Act [subchapter I of this chapter] may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred to the Administrator and the Commission by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

"(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act."

#### **Title IV—Sex Discrimination**

**42 USC 5891.**

#### **Sec. 401. Sex Discrimination Prohibited**

No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any subchapter of this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.<sup>36</sup>

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<sup>36</sup> Pub. L. 93-438, title IV, §401, Oct. 11, 1974, 88 Stat. 1254.



## **6. Reorganization Plan of 1980 and Other Documents Pertaining to NRC Jurisdiction**





**6. REORGANIZATION PLAN OF 1980 AND OTHER DOCUMENTS  
PERTAINING TO NRC JURISDICTION**

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**A. REORGANIZATION PLAN NO. 1 OF 1980, AS AMENDED**

45 F.R. 40561,  
June 16, 1980

94 STAT. 3585

5 USC App.;  
42 USC 5841  
note.

Prepared by the President and submitted to the Senate and the House of Representatives in Congress assembled March 27, 1980,<sup>1</sup> pursuant to the provisions of chapter 9 of Title 5 of the United States Code.<sup>2</sup>

**Nuclear Regulatory Commission****Sec. 1.**

(a) Those functions of the Nuclear Regulatory Commission, hereinafter referred to as the "Commission," concerned with:

(1) policy formulation;

(2) rulemaking, as defined in section 553 of title 5 of the United States Code, except that those matters set forth in 553(a)(2) and (b) which do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;

(3) orders and adjudications, as defined in section 551 (6) and (7) of title 5 of the United States Code;

shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Nuclear Regulatory Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b)(1) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Executive Director for Operations,

(ii) General Counsel,

(iii) Secretary of the Commission,

(iv) Director of the Office of Policy Evaluation,

(v) Director of the Office of Inspector and Auditor,

(vi) Chairman, Vice Chairman, Executive Secretary, and

Members of the Atomic Safety and Licensing Board Panel,

(vii) Chairman, Vice Chairman and Members of the Atomic Safety and Licensing Appeal Panel.

<sup>1</sup> As amended May 5, 1980. See House Document No. 96-307, Amendments to Reorganization Plan No. 1 of 1980, Message from the President of the United States.

<sup>2</sup> This Reorganization Plan was originally approved under special Congressional procedures; the Supreme Court decision in *Immigration & Naturalization Service vs. Chadha* (462 US 919 (1983)) called into question the legality of this plan. Congress responded by enacting this Reorganization Plan in Pub. L. 98-614.

(2) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman, after consultation with the Executive Director for Operations, shall initiate the appointment, subject to the approval of the Commission, and the Chairman, or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

- (i) Director of Nuclear Reactor Regulation,
- (ii) Director of Nuclear Material Safety and Safeguards,
- (iii) Director of Nuclear Regulatory Research,
- (iv) Director of Inspection and Enforcement.
- (v) Director of Standards Development.

(3) The Chairman or a member of the Commission shall initiate the appointment of the Members of the Advisory Committee on Reactor Safeguards, subject to the approval of the Commission. The provisions for appointment of the Chairman of the Advisory Committee on Reactor Safeguards and the term of the members shall not be affected by the provisions of this Reorganization Plan.

(4) The Commission shall delegate the function of appointing, removing and supervising the staff of the following offices or successor offices to the respective heads of such offices: General Counsel, Secretary of the Commission, Office of Policy Evaluation, Office of Inspector and Auditor. The Commission shall delegate the functions of appointing, removing and supervising the staff of the following panels and committee to the respective Chairman thereof: Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel and Advisory Committee on Reactor Safeguards.

(c) Each member of the Commission shall continue to appoint, remove and supervise the personnel employed in his or her immediate office.

(d) The Commission shall act as provided by subsection 201(a)(1) of the Energy Reorganization Act of 1974, as amended (42 USC 5841 (a)(1), as amended) in the performance of its functions as described in subsections (a) and (b) of this section.

## **Sec. 2.**

(a) All other functions of the Commission, not specified by section 1 of this Reorganization Plan, are hereby transferred to the Chairman. The Chairman shall be the official spokesman for the Commission, and shall appoint, supervise, and remove, without further action by the Commission, the Directors and staff of the Office of Public Affairs and the Office of Congressional Relations. The Chairman may consult with the Commission as he deems appropriate in exercising this appointment function.

(b) The Chairman shall also be the principal executive officer of the Commission, and shall be responsible to the Commission for developing policy planning and guidance for consideration by the Commission; shall be responsible for the Commission for assuring that the Executive

Director for Operations and the staff of the Commission (other than the officers and staff referred to in sections (1)(b)(4), (1)(c) and (2)(a) of this Reorganization Plan) are responsive to the requirements of the Commission in the performance of its functions; shall determine the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission; shall present to the Commission for its consideration the proposals and estimates set forth in subsection (3) of this paragraph; and shall be responsible for the following functions, which he shall delegate, subject to his direction and supervision, to the Executive Director for Operations unless otherwise provided by this Reorganization Plan:

- (1) administrative functions of the Commission;
  - (2) distribution of business among such personnel and among administrative units and offices of the Commission;
  - (3) preparation of
    - (i) proposals for the reorganization of the major offices within the Commission;
    - (ii) the budget estimate for the Commission; and
    - (iii) the proposed distribution of appropriated funds according to major programs and purposes.
  - (4) appointing and removing without any further action by the Commission, all officers and employees under the Commission other than those whose appointment and removal are specifically provided for by subsections 1 (b), (c) and 2(a) of this Reorganization Plan.
- (c) The Chairman as principal executive officer and the Executive

Director for Operations shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions and distribution of appropriated funds, as the Commission may by law, including this Plan, be authorized to make. The Chairman and the Executive Director for Operations, through the Chairman, shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions.

### Sec. 3.

(a) Notwithstanding sections 1 and 2 of this Reorganization Plan, there are hereby transferred to the Chairman all the functions vested in the Commission pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities, and the public, directing, and coordinating actions relative to such emergency incident.

(b) The Chairman may delegate the authority to perform such emergency functions, in whole or in part, to any of the other members of the Commission. Such authority may also be delegated or re-delegated, in whole or in part to the staff of the Commission.

(c) In acting under this section, the Chairman, or other member of the Commission delegated authority under subsection (b), shall conform to the policy guidelines of the Commission. To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency.

(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency.

#### **Sec. 4.**

(a) The Chairman may make such delegations and provide for such reporting as the Chairman deems necessary, subject to provisions of law and this Reorganization Plan. Any officer or employee under the Commission may communicate directly to the Commission, or to any member of the Commission, whenever in the view of such officer or employee a critical problem or public health and safety or common defense and security is not being properly addressed.

(b) The Executive Director for Operations shall report for all matters to the Chairman.

(c) The function of the Director of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Nuclear Regulatory Research of reporting directly to the Commission is hereby transferred so that such officers report to the Executive Director for Operations. The function of receiving such reports is hereby transferred from the Commission to the Executive Director for Operations.

(d) The heads of the Commission level offices or successor offices, of General Counsel, Secretary to the Commission, Office of Policy Evaluation, Office of Inspector and Auditor, the Atomic Safety and Licensing Board Panel and Appeal Panel, and Advisory Committee on Reactor Safeguards shall continue to report directly to the Commission and the Commission shall continue to receive such reports.

#### **Sec. 5.**

The provisions of this Reorganization Plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but no sooner than the earliest time allowable under section 906 of Title 5 of the United States Code.<sup>3</sup>

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<sup>3</sup> Excludes Message of the President (March 27, 1980, and May 5, 1980); Current through Pub .L. 117-102.

**B. REORGANIZATION PLAN NO. 3 OF 1970, AS AMENDED**

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98–80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.

**Title III—The President****5 USC App.**

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled July 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code.<sup>1 2</sup>

**Environmental Protection Agency****Sec. 1. Establishment of Agency**

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay rates (5 U.S.C. 5313).

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

**Sec. 2. Transfers to Environmental Protection Agency**

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and

<sup>1</sup> Effective December 2, 1970, under the provisions of section 7 of the plan.

<sup>2</sup> This Reorganization Plan was originally approved under special Congressional procedures; the Supreme Court decision in *Immigration & Naturalization Service vs. Chadha* (462 US 919 (1983)) called into question the legality of this plan. Congress responded by enacting this Reorganization Plan in Pub .L. 98–614.

the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof [see 33 U.S.C. 1251 et seq.].

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law to the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

- (i) The National Air Pollution Control Administration,
- (ii) The Environmental Control Administration
- (A) Bureau of Solid Waste Management,
- (B) Bureau of Water Hygiene,
- (C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.], and the Public Health Service Act, as amended [42 U.S.C. 201 et seq.].

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855) [42 U.S.C. 4344(5)], as pertains to ecological systems.



(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and the Rodenticide Act, as amended (7 U.S.C. 135-135k) [7 U.S.C. 136 et seq.], (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408 (1) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a (1)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. 466f) [see 33 U.S.C. 1363], together with its functions, and (ii) the hearing boards provided for in section 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e) [42 U.S.C. 7417], together with its functions. The functions of the Secretary of Health,

Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

### **Sec. 3. Performance of Transferred Functions**

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer or by any organizational entity or employee, of the Agency.

### **Sec. 4. Incidental Transfers**

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

### **Sec. 5. Interim Officers**

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

### **Sec. 6. Abolitions**

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. [former] 466–1).

(2) The Federal Radiation Council (73 Stat. 690; 42 USC 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

#### **Sec. 7. Effective Date**

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.<sup>3</sup>

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<sup>3</sup> Excludes Message of President (July 9, 1970); Current through Pub .L. 117-102.

**C. EXECUTIVE ORDER 11834—ACTIVATION OF THE  
ENERGY RESEARCH AND DEVELOPMENT  
ADMINISTRATION AND THE NUCLEAR REGULATORY  
COMMISSION**

**EO 11834 (Signed January 14, 1975), 40 FR 2971 (January 17, 1975);  
Revoked by EO 12553 (Signed February 25, 1986), 51 FR 7237**

**(March 3, 1986)  
The White House**

**Activation of the Energy Research and Development Administration  
and the Nuclear Regulatory Commission**

By virtue of the authority vested in me by the Energy Reorganization Act of 1974 (Public Law 93-438; 88 Stat. 1233), section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered:

**Sec. 1.**

Pursuant to section 312(a) of the Energy Reorganization Act of 1974, I hereby prescribe January 19, 1975, as the effective date of that Act. This action shall not impair in any way the activation of the Energy Resources Council by Executive Order No. 11814 of October 11, 1974 [39 FR 36955, Oct. 16, 1974].

**Sec. 2.**

The Director of the Office of Management and Budget shall take all steps necessary or appropriate to ensure or effectuate the transfers provided for in the Energy Reorganization Act of 1974, the Solar Heating and Cooling Demonstration Act of 1974 (Public Law 93-409; 88 Stat. 1069), the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410; 88 Stat. 1079), the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-473; 88 Stat. 1431), to the extent required or permitted by law, including transfers of funds, personnel and positions, assets liabilities, contracts, property, records, and other items related to the transfer of functions, programs, or authorities.

**Sec. 3.**

As required by the Energy Reorganization Act of 1974, this Order shall be published in the *Federal Register*.

GERALD R. FORD  
THE WHITE HOUSE,  
*January 15, 1975.*

[FR Doc. 75 – 1838 Filed 1-16-75; 10:43am]

**D. OMB MEMORANDUM REGARDING RESPONSIBILITY FOR  
SETTING RADIATION PROTECTION STANDARDS**

**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICER OF MANAGEMENT AND BUDGET**

**Washington, D.C. 20503**

**December 7, 1973**

**MEMORANDUM FOR: ADMINISTRATOR TRAIN  
CHAIRMAN RAY**

**SUBJECT: Responsibility for Setting Radiation Protection Standards**

**FROM: Roy L. Ash**

Thank you for providing position papers which outline the background and the current difference of views between your two agencies as to which should have the responsibility for issuing standards to define permissible limits on radioactivity that may be emitted from facilities in the nuclear power industry.

It is clear, as your paper indicated, that a decision is needed on this matter so that the nuclear power industry and the general public will know where the responsibility lies for developing (including public participation in development), promulgating and enforcing radiation protection standards for various types of facilities in the nuclear power industry. We must, in the national interest, avoid confusion in this area, particularly since nuclear power is expected to supply a growing share of the Nation's energy requirements; and it must be clear that we are assuring continued full protection of the public health and the environment from radiation hazards.

It is also clear from the information which you provided that:

the area of responsibility now in controversy is intimately related to the direct regulatory responsibilities and capabilities of the Atomic Energy Commission, responsibilities about which there is no dispute.

EPA has construed too broadly its responsibilities, as set forth in Reorganization Plan No. 3 of 1970, to set "generally applicable environmental standards for the protection of the general environment from radioactive material."

On behalf of the President, this memorandum is to advise you that the decision is that AEC should proceed with its plans for issuing uranium fuel cycle standards, taking into account the comments received from all sources, including EPA; that EPA should discontinue its preparations for issuing, now or in the future, any standards for types of facilities; and that

EPA should continue, under its current authority, to have responsibility for setting standards for the total amount of radiation in the general environment from all facilities combined in the uranium fuel cycle, i.e., an ambient standard which would have to reflect AEC's findings as to the practicability of emission controls.

EPA can continue to have a major impact upon standards for facilities set by AEC through EPA's review of proposed standards, during which EPA can bring to bear its knowledge and perspective derived from its responsibility for setting ambient radiation standards.

The President expects that AEC and EPA continue to work together to carry out the responsibilities as outlined above.

[Signed: Roy L. Ash]

**E. PRESIDENT'S COMMISSION ON THE ACCIDENT AT  
THREE MILE ISLAND****Public Papers of the Presidents of the United States:  
Jimmy Carter, 1979**

*Remarks Announcing Actions in Response to the Commission's  
Report. December 7, 1979.*

The purpose of this brief statement this afternoon is to outline to you and to the public, both in this country and in other nations of the world, my own assessment of the Kemeny report recommendations on the Three Mile Island accident. And I would like to add, of course, in the presentation some thoughts and actions of my own.

I have reviewed the report of the Commission, which I established to investigate the accident at the Three Mile Island nuclear power plant. The Commission, headed by Dr. John Kemeny, found very serious shortcomings in the way that both the Government and the utility industry regulate and manage nuclear power.

The steps that I am taking today will help to assure that nuclear power plants are operated safely. Safety, as it always has been and will remain, is my top priority.

As I've said before, in this country nuclear power is an energy source of last resort. By this I meant that as we reach our goals on conservation, on the direct use of coal, on development of solar power and synthetic fuels, and enhanced production of American oil and natural gas – as we reach those goals, then we can minimize our reliance on nuclear power.

Many of our foreign allies must place much greater reliance than we do on nuclear power, because they do not have the vast natural resources that give us so many alternatives. We must get on with the job of developing alternative energy resources, and we must also pass, in order to do this, the legislation that I have proposed to the Congress in making an effort, at every level of society, to conserve energy. To conserve energy and to develop energy resources in our country are the two basic answers for which we are seeking. But we cannot shut the door on nuclear power for the United States.

The recent events in Iran have shown us the clear, stark dangers that excessive dependence on imported oil holds for our Nation. We must make every effort to lead this country to energy security. Every domestic energy source, including nuclear power, is critical if we are to be free as a country from our present over-dependence on unstable and uncertain sources of high-priced foreign oil.

We do not have the luxury of abandoning nuclear power or imposing a lengthy moratorium on its further use. A nuclear power plant can displace 35,000 barrels of oil per day, or roughly 13 million barrels of oil per year. We must take every possible step to increase the safety of nuclear power production. I agree fully with the letter and the spirit and the intent of the Kemeny commission's recommendations, some of which are within my own power to implement, others of which rely on the

Nuclear Regulatory Commission, or the NRC, or the utility industry itself.

To get the Government's own house in order, I will take several steps. First, I will send to the Congress a reorganization plan to strengthen the role of the Chairman of the NRC, to clarify assignment of authority and responsibility, and provide this person with the power to act on a daily basis as a chief executive officer with authority to put needed safety requirements in place and to implement better procedures. The Chairman must be able to select key personnel and to act on behalf of the Commission during any emergency.

Second, I intend to appoint a new Chairman of the Nuclear Regulatory Commission, someone from outside that agency, in the spirit of the Kemeny commission's recommendation. In the meantime, I've asked Commissioner Ahearne, now on the NRC, to serve as the Chairman. Mr. Ahearne will stress safety and the prompt implementation of the needed reforms.

In addition, I will establish an independent advisory committee to help keep me and the public of the United States informed of the progress of the NRC and the industry in achieving and in making clear the recommendations that nuclear power will be safer.

Third, I'm transferring responsibility to the Federal Emergency Management Agency, the FEMA, to head up all off site emergency activities and to complete a thorough review of emergency plans in all the States of our country with operating nuclear reactors by June 1980.

Fourth, I have directed the Nuclear Regulatory Commission and the other agencies of the Government to accelerate our program to place a resident Federal inspector at every reactor site.

Fifth, I'm asking all relevant Government agencies to implement virtually all of the other recommendations of the Kemeny commission – I believe there were 44 in all. A detailed fact sheet is being issued to the public, and a more extended briefing will be given to the press this afternoon.

With clear leadership and improved organization, the executive branch of Government and the NRC will be better able to act quickly on the crucial issues of improved training and standards, safety procedures, and the other Kemeny commission recommendations. But responsibility to make nuclear power safer does not stop with the Federal Government. In fact, the primary, day-by-day responsibility for safety rests with utility company management and with suppliers of nuclear equipment. There is no substitute for technically qualified and committed people working on the construction, the operation, and the inspection of nuclear power plants.

Personal responsibility must be stressed. Some one person must always be designated as in charge, both at the corporate level and also at the power plant site. The industry owes it to the American people to strengthen its commitment to safety.

I call on the utilities to implement the following changes. First, building on the steps already taken, the industry must organize itself to develop enhanced standards for safe design, operation, and construction



of plants. Second, the nuclear industry must work together to develop and to maintain in operation a comprehensive training, examination, and evaluation program for operators and for supervisors. This training program must pass muster with the NRC through accreditation of the training programs to be established. Third, control rooms in nuclear power plants must be modernized, standardized, and simplified as much as possible to permit better informed decision-making among regular operating hours and, of course, during emergencies.

I challenge our utility companies to bend every effort to improve the safety of nuclear power.

Finally, I would like to discuss how we manage this transition period during which the Kemeny recommendations are being implemented. There are a number of new nuclear plants now awaiting operating licenses or construction permits. Under law, the Nuclear Regulatory Commission is an independent agency. Licensing decisions rest with the Nuclear Regulatory Commission, and, as the Kemeny commission noted, it has the authority to proceed with licensing these plants on a case-by-case basis, which may be used as circumstances surrounding a plant or its application dictate.

The NRC has indicated, however, that it will pause in issuing any new licenses and construction permits in order to devote its full attention to putting its own house in order and tightening up safety requirements. I endorse this approach which the NRC has adopted, but I urge the NRC to complete its work as quickly as possible and in no event later than 6 months from today. Once we've instituted the necessary reforms to assure safety, we must resume the licensing process promptly so that the new plants we need to reduce our dependence on foreign oil can be built and operated.

The steps I'm announcing today will help to ensure that our safety has the safety of nuclear plants. Nuclear power does have a future in the United States. It's an option that we must keep open. I will join with the utilities and their suppliers, the Nuclear Regulatory Commission, the executive departments and agencies of the Federal Government, and also the State and local governments to assure that the future is a safe one.

and now Dr. Frank Press, Stu Eizenstat, and John Deutch will be glad to answer your questions about these decisions and about nuclear power and the future of it in our country. Frank?

NOTE: The President spoke at 2:45 p.m. in Room 450 of the Old Executive Office Building.

Following the President's remarks, Frank Press, Director of the Office of Science and Technology Policy, Stuart E. Eizenstat, Assistant to the President for Domestic Affairs and Policy, and Under Secretary of Energy John .M. Deutch held a news conference on the announcements.



## **7. Low-Level Radioactive Waste**



## 7. LOW-LEVEL RADIOACTIVE WASTE

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**A. LOW-LEVEL RADIOACTIVE WASTE POLICY ACT OF 1985  
(TITLE 1) (PL 99-240), AS AMENDED**

**Pub. L. 99–240** 99 Stat. 1842  
**January 15, 1986**

**Title I—Low-Level Radioactive Waste Policy Amendments Act of  
1985**

**42 USC 2021b  
note.**

**Sec. 101. Short Title**

Pub. L. 99–240, title I, §101, Jan. 15, 1986, 99 Stat. 1842, provided that:

"This Title [enacting this section and sections 2021c to 2021j of this title, repealing former sections 2021b to 2021d of this title, and enacting and repealing a provision set out as a note under this section] may be cited as the 'Low-Level Radioactive Waste Policy Amendments Act of 1985'."

**Sec. 102. Amendment to the Low-Level Radioactive Waste Policy Act**

**42 USC 2021b  
note.**

**Sec. 1. Short Title**

Pub. L. 96–573, §1, as added by Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1842, provided that:

"This Act [enacting sections 2021b to 2021j of this title] may be cited as the 'Low-Level Radioactive Waste Policy Act'."

A prior section 1 of Pub. L. 96–573, which provided that Pub. L. 96–573 [enacting former sections 2021b to 2021d of this title] could be cited as the "Low-Level Radioactive Waste Policy Act", was repealed by Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1842.

**42 USC 2021b.**

**Sec. 2. Definitions**

For purposes of sections 2021b to 2021j of this title:

**(1) Agreement State**

The term "agreement State" means a State that-

(A) has entered into an agreement with the Nuclear Regulatory Commission under section 2021 of this title; and

(B) has authority to regulate the disposal of low-level radioactive waste under such agreement.

**(2) Allocation**

The term "allocation" means the assignment of a specific amount of low-level radioactive waste disposal capacity to a commercial nuclear power reactor for which access is required to be provided by sited States subject to the conditions specified under sections 2021b to 2021j of this title.

(3) Commercial nuclear power reactor

The term "commercial nuclear power reactor" means any unit of a civilian light-water moderated utilization facility required to be licensed under [section 2133](#) or [2134\(b\)](#) of this title.

(4) Compact

The term "compact" means a compact entered into by two or more States pursuant to [sections 2021b to 2021j](#) of this title.

(5) Compact commission

The term "compact commission" means the regional commission, committee, or board established in a compact to administer such compact.

(6) Compact region

The term "compact region" means the area consisting of all States that are members of a compact.

(7) Disposal

The term "disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an agreement State if such isolation occurs in such agreement State.

(8) Generate

The term "generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(9) Low-level radioactive waste

(A) In general

The term "low-level radioactive waste" means radioactive material that-

(i) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in [section 2014\(e\)\(2\)](#) of this title); and

(ii) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.

(B) Exclusion

The term "low-level radioactive waste" does not include byproduct material (as defined in paragraphs (3) and (4) of [section 2014\(e\)](#) of this title).

(10) Non-sited compact region

The term "non-sited compact region" means any compact region that is not a sited compact region.

(11) Regional disposal facility

The term "regional disposal facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.

(12) Secretary

The term "Secretary" means the Secretary of Energy.

(13) Sited compact region

The term "sited compact region" means a compact region in which there is located one of the regional disposal facilities at Barnwell, in



the State of South Carolina; Richland, in the State of Washington; or Beatty, in the State of Nevada.

(14) State

The term "State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.<sup>1</sup>

**42 USC 2021c. Sec. 3. Responsibilities for Disposal of Low-Level Radioactive Waste**

(a)(1) Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of-

(A) low-level radioactive waste generated within the State (other than by the Federal Government) that consists of or contains class A, B, or C radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;

(B) low-level radioactive waste described in subparagraph (A) that is generated by the Federal Government except such waste that is-

(i) owned or generated by the Department of Energy;

(ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or

(iii) owned or generated as a result of any research, development, testing, or production of any atomic weapon; and

(C) low-level radioactive waste described in subparagraphs (A) and (B) that is generated outside of the State and accepted for disposal in accordance with sections 2021e or 2021f of this title.

(2) No regional disposal facility may be required to accept for disposal any material-

(A) that is not low-level radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, or

(B) identified under the Formerly Utilized Sites Remedial Action Program.

Nothing in this paragraph shall be deemed to prohibit a State, subject to the provisions of its compact, or a compact region from accepting for disposal any material identified in subparagraph (A) or (B).

(b)(1) The Federal Government shall be responsible for the disposal of-

(A) low-level radioactive waste owned or generated by the Department of Energy;

(B) low-level radioactive waste owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy;

(C) low-level radioactive waste owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapon; and

(D) any other low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for

<sup>1</sup> Pub. L. 96–573, §2, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1842 ; amended Pub. L. 109–58, title VI, §651(e)(3)(B), Aug. 8, 2005, 119 Stat. 808.

class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

(2) All radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D) that results from activities licensed by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, shall be disposed of in a facility licensed by the Nuclear Regulatory Commission that the Commission determines is adequate to protect the public health and safety.

(3) Not later than 12 months after January 15, 1986, the Secretary shall submit to the Congress a comprehensive report setting forth the recommendations of the Secretary for ensuring the safe disposal of all radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D). Such report shall include-

(A) an identification of the radioactive waste involved, including the source of such waste, and the volume, concentration, and other relevant characteristics of such waste;

(B) an identification of the Federal and non-Federal options for disposal of such radioactive waste;

(C) a description of the actions proposed to ensure the safe disposal of such radioactive waste;

(D) a description of the projected costs of undertaking such actions;

(E) an identification of the options for ensuring that the beneficiaries of the activities resulting in the generation of such radioactive wastes bear all reasonable costs of disposing of such wastes; and

(F) an identification of any statutory authority required for disposal of such waste.

(4) The Secretary may not dispose of any radioactive waste designated a Federal responsibility pursuant to paragraph (b)(1)(D) that becomes a Federal responsibility for the first time pursuant to such paragraph until ninety days after the report prepared pursuant to paragraph (3) has been submitted to the Congress.<sup>2</sup>

#### **42 USC 2021d. Sec. 4. Regional Compacts for Disposal of Low-Level Radioactive Waste**

(a) In general

(1) Federal policy

It is the policy of the Federal Government that the responsibilities of the States under [section 2021c of this title](#) for the disposal of low-level radioactive waste can be most safely and effectively managed on a regional basis.

(2) Interstate compacts

To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

<sup>2</sup> Pub. L. 96–573, §3, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1843.

(b) Applicability to Federal activities

(1) In general

(A) Activities of the Secretary

Except as provided in subparagraph (B), no compact or action taken under a compact shall be applicable to the transportation, management, or disposal of any low-level radioactive waste designated in section 2021c(a)(1)(B)(i)–(iii) of this title.

(B) Federal low-level radioactive waste disposed of at non-Federal facilities

Low-level radioactive waste owned or generated by the Federal Government that is disposed of at a regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact shall be subject to the same conditions, regulations, requirements, fees, taxes, and surcharges imposed by the compact commission, and by the State in which such facility is located, in the same manner and to the same extent as any low-level radioactive waste not generated by the Federal Government.

(2) Federal low-level radioactive waste disposal facilities

Any low-level radioactive waste disposal facility established or operated exclusively for the disposal of low-level radioactive waste owned or generated by the Federal Government shall not be subject to any compact or any action taken under a compact.

(3) Effect of compacts on Federal law

Nothing contained in sections 2021b to 2021j of this title or any compact may be construed to confer any new authority on any compact commission or State-

(A) to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission or inconsistent with the regulations of the Department of Transportation;

(B) to regulate health, safety, or environmental hazards from source material, byproduct material, or special nuclear material;

(C) to inspect the facilities of licensees of the Nuclear Regulatory Commission;

(D) to inspect security areas or operations at the site of the generation of any low-level radioactive waste by the Federal Government, or to inspect classified information related to such areas or operations; or

(E) to require indemnification pursuant to the provisions of chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act), or section 2210 of this title, whichever is applicable.

(4) Federal authority

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title or any compact may be construed to limit the applicability of any Federal law or to diminish or otherwise impair the jurisdiction of any Federal agency, or to alter, amend, or otherwise affect any Federal law

governing the judicial review of any action taken pursuant to any compact.

(5) State authority preserved

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title expands, diminishes, or otherwise affects State law.

(c) Restricted use of regional disposal facilities

Any authority in a compact to restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region shall not take effect before each of the following occurs:

(1) January 1, 1986; and

(2) the Congress by law consents to the compact.

(d) Congressional review

Each compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent.<sup>3</sup>

42 USC 2021e.

**Sec. 5. Limited Availability of Certain Regional Disposal Facilities During Transition and Licensing Periods**

(a) Availability of disposal capacity

(1) Pressurized water and boiling water reactors

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g), each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) shall make disposal capacity available for low-level radioactive waste generated by pressurized water and boiling water commercial nuclear power reactors in accordance with the allocations established in subsection (c).

(2) Other sources of low-level radioactive waste

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g), each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) shall make disposal capacity available for low-level radioactive waste generated by any source not referred to in paragraph (1).

(3) Allocation of disposal capacity

(A) During the seven-year period beginning January 1, 1986 and ending December 31, 1992, low-level radioactive waste generated within a sited compact region shall be accorded priority under this section in the allocation of available disposal capacity at a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) and located in the sited compact region in which such waste is generated.

(B) Any State in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) is located may, subject to

<sup>3</sup> Pub. L. 96–573, §4, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1845.

the provisions of its compact, prohibit the disposal at such facility of low-level radioactive waste generated outside of the compact region if the disposal of such waste in any given calendar year, together with all other low-level radioactive waste disposed of at such facility within that same calendar year, would result in that facility disposing of a total annual volume of low-level radioactive waste in excess of 100 per centum of the average annual volume for such facility designated in subsection (b): *Provided, however,* That in the event that all three States in which regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) act to prohibit the disposal of low-level radioactive waste pursuant to this subparagraph, each such State shall, in accordance with any applicable procedures of its compact, permit, as necessary, the disposal of additional quantities of such waste in increments of 10 per centum of the average annual volume for each such facility designated in subsection (b).

(C) Nothing in this paragraph shall require any disposal facility or State referred to in paragraphs (1) through (3) of subsection (b) to accept for disposal low-level radioactive waste in excess of the total amounts designated in subsection (b).

(4) Cessation of operation of low-level radioactive waste disposal facility

No provision of this section shall be construed to obligate any State referred to in paragraphs (1) through (3) of subsection (b) to accept low-level radioactive waste from any source in the event that the regional disposal facility located in such State ceases operations.

(b) Limitations

The availability of disposal capacity for low-level radioactive waste from any source shall be subject to the following limitations:

(1) Barnwell, South Carolina

The State of South Carolina, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Barnwell, South Carolina to a total of 8,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,200,000 cubic feet of low-level radioactive waste).

(2) Richland, Washington

The State of Washington, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Richland, Washington to a total of 9,800,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,400,000 cubic feet of low-level radioactive waste).

(3) Beatty, Nevada

The State of Nevada, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Beatty, Nevada to a total of 1,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending

December 31, 1992 (as based on an average annual volume of 200,000 cubic feet of low-level radioactive waste).

(c) Commercial nuclear power reactor allocations

(1) Amount

Subject to the provisions of subsections (a) through (g) each commercial nuclear power reactor shall upon request receive an allocation of low-level radioactive waste disposal capacity (in cubic feet) at the facilities referred to in subsection (b) during the 4-year transition period beginning January 1, 1986, and ending December 31, 1989, and during the 3-year licensing period beginning January 1, 1990, and ending December 31, 1992, in an amount calculated by multiplying the appropriate number from the following table by the number of months remaining in the applicable period as determined under paragraph (2).

Reactor Type	4-year Transition Period		3-year Licensing Period	
	In Sited Region	All Other Locations	In Sited Region	All Other Locations
PWR	1027	871	934	685
BWR	2300	1951	2091	1533

(2) Method of calculation

For purposes of calculating the aggregate amount of disposal capacity available to a commercial nuclear power reactor under this subsection, the number of months shall be computed beginning with the first month of the applicable period, or the sixteenth month after receipt of a full power operating license, whichever occurs later.

(3) Unused allocations

Any unused allocation under paragraph (1) received by a reactor during the transition period or the licensing period may be used at any time after such reactor receives its full power license or after the beginning of the pertinent period, whichever is later, but not in any event after December 31, 1992, or after commencement of operation of a regional disposal facility in the compact region or State in which such reactor is located, whichever occurs first.

(4) Transferability

Any commercial nuclear power reactor in a State or compact region that is in compliance with the requirements of subsection (e) may assign any disposal capacity allocated to it under this subsection to any other person in each State or compact region. Such assignment may be for valuable consideration and shall be in writing, copies of which shall be filed at the affected compact commissions and States, along with the assignor's unconditional written waiver of the disposal capacity being assigned.

(5) Unusual volumes

(A) The Secretary may, upon petition by the owner or operator of any commercial nuclear power reactor, allocate to such reactor disposal capacity in excess of the amount calculated under paragraph

(1) if the Secretary finds and states in writing his reasons for so finding that making additional capacity available for such reactor through this paragraph is required to permit unusual or unexpected operating, maintenance, repair or safety activities.

(B) The Secretary may not make allocations pursuant to subparagraph (A) that would result in the acceptance for disposal of more than 800,000 cubic feet of low-level radioactive waste or would result in the total of the allocations made pursuant to this subsection exceeding 11,900,000 cubic feet over the entire seven-year interim access period.

(6) Limitation

During the seven-year interim access period referred to in subsection (a), the disposal facilities referred to in subsection (b) shall not be required to accept more than 11,900,000 cubic feet of low-level radioactive waste generated by commercial nuclear power reactors.

(d) Use of surcharge funds for milestone incentives; consequences of failure to meet disposal deadline

(1) Surcharges

The disposal of any low-level radioactive waste under this section (other than low-level radioactive waste generated in a sited compact region) may be charged a surcharge by the State in which the applicable regional disposal facility is located, in addition to the fees and surcharges generally applicable for disposal of low-level radioactive waste in the regional disposal facility involved. Except as provided in subsection (e)(2), such surcharges shall not exceed-

(A) in 1986 and 1987, \$10 per cubic foot of low-level radioactive waste;

(B) in 1988 and 1989, \$20 per cubic foot of low-level radioactive waste; and

(C) in 1990, 1991, and 1992, \$40 per cubic foot of low-level radioactive waste.

(2) Milestone incentives

(A) Escrow account

Twenty-five per centum of all surcharge fees received by a State pursuant to paragraph (1) during the seven-year period referred to in subsection (a) shall be transferred on a monthly basis to an escrow account held by the Secretary. The Secretary shall deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States. The Secretary shall act as trustee for such funds and shall invest them in interest-bearing United States Government Securities with the highest available yield. Such funds shall be held by the Secretary until-

(i) paid or repaid in accordance with subparagraph (B) or (C);  
or

(ii) paid to the State collecting such fees in accordance with subparagraph (F).

## (B) Payments

(i) July 1, 1986.-The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning on January 15, 1986, and ending June 30, 1986, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(A) is met by the State in which such waste originated.

(ii) January 1, 1988.-The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning July 1, 1986 and ending December 31, 1987, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(B) is met by the State in which such waste originated (or its compact region, where applicable).

(iii) January 1, 1990.-The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1988 and ending December 31, 1989, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(C) is met by the State in which such waste originated (or its compact region, where applicable).

(iv) The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992, and transferred to the Secretary under subparagraph <sup>1</sup> (A), shall be paid by the Secretary in accordance with subparagraph (D) if, by January 1, 1993, the State in which such waste originated (or its compact region, where applicable) is able to provide for the disposal of all low-level radioactive waste generated within such State or compact region.

## (C) Failure to meet January 1, 1993 deadline

If, by January 1, 1993, a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region-

(i) each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, shall be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1,



1993 as the generator or owner notifies the State that the waste is available for shipment; or

(ii) if such State elects not to take title to, take possession of, and assume liability for such waste, pursuant to clause (i), twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992 shall be repaid, with interest, to each generator from whom such surcharge was collected. Repayments made pursuant to this clause shall be made on a monthly basis, with the first such repayment beginning on February 1, 1993, in an amount equal to one thirty-sixth of the total amount required to be repaid pursuant to this clause, and shall continue until the State (or, where applicable, compact region) in which such low-level radioactive waste is generated is able to provide for the disposal of all such waste generated within such State or compact region or until January 1, 1996, whichever is earlier.

If a State in which low-level radioactive waste is generated elects to take title to, take possession of, and assume liability for such waste pursuant to clause (i), such State shall be paid such amounts as are designated in subparagraph (B)(iv). If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated provides for the disposal of such waste at any time after January 1, 1993 and prior to January 1, 1996, such State (or, where applicable, compact region) shall be paid in accordance with subparagraph (D) a lump sum amount equal to twenty-five per centum of any amount collected by a State under paragraph (1): *Provided, however,* That such payment shall be adjusted to reflect the remaining number of months between January 1, 1993 and January 1, 1996 for which such State (or, where applicable, compact region) provides for the disposal of such waste. If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

(D) Recipients of payments

The payments described in subparagraphs (B) and (C) shall be paid within thirty days after the applicable date-

- (i) if the State in which such waste originated is not a member of a compact region, to such State;
- (ii) if the State in which such waste originated is a member of the compact region, to the compact commission serving such State.

(E) Uses of payments

(i) Limitations

Any amount paid under subparagraphs (B) or (C) may only be used to-

(I) establish low-level radioactive waste disposal facilities;

(II) mitigate the impact of low-level radioactive waste disposal facilities on the host State;

(III) regulate low-level radioactive waste disposal facilities; or

(IV) ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

(ii) Reports

(I) Recipient

Any State or compact commission receiving a payment under subparagraphs (B) or (C) shall, on December 31 of each year in which any such funds are expended, submit a report to the Department of Energy itemizing any such expenditures.

(II) Department of Energy

Not later than six months after receiving the reports under subclause (I), the Secretary shall submit to the Congress a summary of all such reports that shall include an assessment of the compliance of each such State or compact commission with the requirements of clause (i).

(F) Payment to States

Any amount collected by a State under paragraph (1) that is placed in escrow under subparagraph (A) and not paid to a State or compact commission under subparagraphs (B) and (C) or not repaid to a generator under subparagraph (C) shall be paid from such escrow account to such State collecting such payment under paragraph (1). Such payment shall be made not later than 30 days after a determination of ineligibility for a refund is made.

(G) Penalty surcharges

No rebate shall be made under this subsection of any surcharge or penalty surcharge paid during a period of noncompliance with subsection (e)(1).

(e) Requirements for access to regional disposal facilities

(1) Requirements for non-sited compact regions and non-member States

Each non-sited compact region, or State that is not a member of a compact region that does not have an operating disposal facility, shall comply with the following requirements:

(A) By July 1, 1986, each such non-member State shall ratify compact legislation or, by the enactment of legislation or the certification of the Governor, indicate its intent to develop a site for the location of a low-level radioactive waste disposal facility within such State.

(B) By January 1, 1988

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) The siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in sections 2021b to 2021j of this title. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

(C) By January 1, 1990

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists.

(D) By January 1, 1992, a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency

of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State.

(E) The Nuclear Regulatory Commission shall transmit any certification received under subparagraph (C) to the Congress and publish any such certification in the Federal Register.

(F) Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D).

(2) Penalties for failure to comply

(A) By July 1, 1986

If any State fails to comply with subparagraph (1)(A)-

(i) any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning July 1, 1986, and ending December 31, 1986, be charged 2 times the surcharge otherwise applicable under subsection (d); and

(ii) on or after January 1, 1987, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(B) By January 1, 1988

If any non-sited compact region or non-member State fails to comply with paragraph (1)(B)-

(i) any generator of low-level radioactive waste within such region or non-member State shall-

(I) for the period beginning January 1, 1988, and ending June 30, 1988, be charged 2 times the surcharge otherwise applicable under subsection (d); and

(II) for the period beginning July 1, 1988, and ending December 31, 1988, be charged 4 times the surcharge otherwise applicable under subsection (d); and

(ii) on or after January 1, 1989, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(C) By January 1, 1990

If any non-sited compact region or non-member State fails to comply with paragraph (1)(C), any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(D) By January 1, 1992

If any non-sited compact region or non-member State fails to comply with paragraph (1)(D), any generator of low-level

radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d).

(3) Denial of access

No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

(4) Restoration of suspended access; penalties for failure to comply

Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of this subsection shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f) Monitoring of compliance and denial of access to non-Federal facilities for noncompliance; information requirements of certain States; proprietary information

(1) Administration

Each State and compact commission in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) is located shall have authority-

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that-

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1).

(2) Availability of information during interim access period

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) Proprietary information.-

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State-

(I) consents in writing to restrict the dissemination of the information to those who are directly involved in monitoring under subparagraph (A) and who have a need to know;  
 (II) accepts liability for wrongful disclosure; and  
 (III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under sections 2021b to 2021j of this title may be required to disclose such information under State law.

(g) Nondiscrimination

Except as provided in subsections (b) through (e), low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.<sup>4</sup>

**42 USC 2021f. Sec. 6. Emergency Access**

(a) In general

The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request for emergency access

Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

<sup>4</sup> Pub. L. 96–573, §5, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1846.

(c) Determination of Nuclear Regulatory Commission

(1) Required determination

Not later than 45 days after receiving a request under subsection (b), the Nuclear Regulatory Commission shall determine whether-

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) the threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to [section 2021e\(c\) of this title](#) or ceasing activities that generate low-level radioactive waste.

(2) Required notification

If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e), no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

(d) Temporary emergency access

Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c). Absent a determination that no alternative consistent with the public health and safety would mitigate the threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

(e) Extension of emergency access

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c), if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the

common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

(f) Reciprocal access

Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval by compact commission

Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f).

(h) Limitations

No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders for more than 20 percent of the total volume of low-level radioactive waste accepted for disposal at such facility during the previous calendar year.

(i) Volume reduction and surcharges

Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in [sections 2021b to 2021j](#) of this title.



## (j) Deduction from allocation

Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, if generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 2021e(c) of this title.

## (k) Agreement States

Any agreement under section 2021 of this title shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.<sup>5</sup>

**42 USC 2021g. Sec. 7. Responsibilities of the Department of Energy**

## (a) Financial and technical assistance

The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States determined by the Secretary to require assistance for purposes of carrying out sections 2021b to 2021j of this title-

(1) continuing technical assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a computerized data-base to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title.

(b) Omitted.<sup>6</sup>**42 USC 2021h. Sec. 8. Alternative Disposal Methods**

(a) Not later than 12 months after January 15, 1986, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Not later than 24 months after January 15, 1986, the Commission shall, in consultation with the States and other interested persons, identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of

<sup>5</sup> Pub. L. 96–573, §6, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1855.

<sup>6</sup> Pub. L. 96–573, §7, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1858.

the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.<sup>7</sup>

**42 USC 2021i. Sec. 9. Licensing Review and Approval**

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state<sup>1</sup> shall-

(1) not later than 12 months after January 15, 1986, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.<sup>8</sup>

**42 USC 2021j. Sec. 10. Radioactive Waste Below Regulatory Concern**

(a) Not later than 6 months after January 15, 1986, the Commission shall establish standards and procedures, pursuant to existing authority, and develop the technical capability for considering and acting upon petitions to exempt specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

(b) The standards and procedures established by the Commission pursuant to subsection (a) shall set forth all information required to be submitted to the Commission by licensees in support of such petitions, including, but not limited to-

(1) a detailed description of the waste materials, including their origin, chemical composition, physical state, volume, and mass; and

(2) the concentration or contamination levels, half-lives, and identities of the radionuclides present.

Such standards and procedures shall provide that, upon receipt of a petition to exempt a specific radioactive waste stream from regulation by the Commission, the Commission shall determine in an expeditious

<sup>7</sup> Pub. L. 96–573, §8, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1858.

<sup>8</sup> Pub. L. 96–573, §9, as added Pub. L. 99–240, title I, §102, Jan. 15, 1986, 99 Stat. 1859.

manner whether the concentration or quantity of radionuclides present in such waste stream requires regulation by the Commission in order to protect the public health and safety. Where the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission shall take such steps as may be necessary, in an expeditious manner, to exempt the disposal of such radioactive waste from regulation by the Commission.<sup>9</sup>

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<sup>9</sup> Pub. L. 96-573, §10, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1859.

**B. LOW-LEVEL RADIOACTIVE WASTE POLICY  
AMENDMENTS ACT OF 1985 (TITLE II, INCLUDES: NW,  
CENTRAL, SE, CENTRAL MIDWEST, MW, ROCKY  
MOUNTAIN, NE INTERSTATE COMPACTS) (PL 99-240), AS  
AMENDED**

**Pub. L. 99-240  
January 15, 1986**

**99 Stat. 1842**

**Title II—Omnibus Low-Level Radioactive Waste Interstate Compact  
Consent Act**

Pub. L. 99-240, title II, Jan. 15, 1986, 99 Stat. 1859, provided that:

**42 USC 2021d  
note.**

**Sec. 201. Short Title**

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

**Subtitle A—General Provisions**

**Sec. 211. Congressional Finding**

"The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j].

**Sec. 212. Conditions of Consent to Compacts**

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

"(1) shall become effective on the date of the enactment of this Act [Jan. 15, 1986];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended [42 U.S.C. 2021b–2021j];  
and

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

**Sec. 213. Congressional Review**

"The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act [Jan. 15, 1986], and at such intervals thereafter as may be provided in such compact.

**Subtitle B—Congressional Consent to Compacts**

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

"The consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows: [Text of compact appears at 99 Stat. 1860.]

**Sec. 222. Central Interstate Low-Level Radioactive Waste Compact**

"The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows: [Text of compact appears at 99 Stat. 1863.]

**Sec. 223. Southeast Interstate Low-Level Radioactive Waste Management Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1871; 103 Stat. 1289.]

**Sec. 224. Central Midwest Interstate Low-Level Radioactive Waste Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1880; 108 Stat. 4607.]

**Sec. 225. Midwest Interstate Low-Level Radioactive Waste Management Compact**

"The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-level Radioactive Waste

Management. Such compact is as follows: [Text of compact appears at 99 Stat. 1892.]

**Sec. 226. Rocky Mountain Low-Level Radioactive Waste Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1902.]

**Sec. 227. Northeast Interstate Low-Level Radioactive Waste Management Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021d(a)(2)], the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows: [Text of compact appears at 99 Stat. 1910]."

**C. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE  
WASTE COMPACT CONSENT ACT(PL 100-319), AS AMENDED**

**Pub. L. 100–319**  
**May 19, 1988**

**102 Stat. 471**

**Appalachian States Low-Level Radioactive Waste Compact Consent  
Act**

[42 USC 2021d  
note.](#)

Pub. L. 100–319, May 19, 1988, 102 Stat. 471, provided that:

**Sec. 1. Short Title**

"This Act may be cited as the 'Appalachian States Low-Level  
Radioactive Waste Compact Consent Act'.

**Sec. 2. Congressional Finding**

"The Congress finds that the compact set forth in section 5 is in  
furtherance of the Low-Level Radioactive Waste Policy Act [[42 U.S.C.  
2021b–2021j](#)].

**Sec. 3. Conditions of Consent to Compact**

"The consent of the Congress to the compact set forth in section 5-  
"(1) shall become effective on the date of the enactment of this  
Act [[May 19, 1988](#)],  
"(2) is granted subject to the provisions of the Low-Level  
Radioactive Waste Policy Act [[42 U.S.C. 2021b–2021j](#)], and  
"(3) is granted only for so long as the Appalachian States Low-  
Level Radioactive Waste Commission, advisory committees, and  
regional boards established in the compact comply with all the  
provisions of such Act.

**Sec. 4. Congressional Review**

"The Congress may alter, amend, or repeal this Act with respect to the  
compact set forth in section 5 after the expiration of the 10-year period  
following the date of the enactment of this Act [[May 19, 1988](#)], and at  
such intervals thereafter as may be provided for in such compact.

**Sec. 5. Appalachian States Low-Level Radioactive Waste Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste  
Policy Act ([42 U.S.C. 2021d\(A\)\(2\)](#) [[42 U.S.C. 2021d\(a\)\(2\)](#)]), the consent  
of Congress is given to the States of Pennsylvania, West Virginia, and  
any eligible States as defined in Article 5(A) of the Appalachian States  
Low-Level Radioactive Waste Compact to enter into such compact. Such  
compact is substantially as follows: [Text of compact appears at 102 Stat.  
471]".

**D. SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE  
DISPOSAL COMPACT CONSENT ACT(PL 100-712) , AS  
AMENDED**

**Pub. L. 100–712  
November 23, 1988**

**102 Stat. 4773**

**Southwestern Low-Level Radioactive Waste Disposal Compact Consent  
Act**

**42 USC 2021d  
note.**

Pub. L. 100–712, Nov. 23, 1988, 102 Stat. 4773, provided that:

**Sec. 1. Short Title**

"This Act may be cited as the 'Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act'[.]

**Sec. 2. Congressional Finding**

"The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j].

**Sec. 3. Conditions of Consent to Compact**

"The consent of the Congress to the compact set forth in section 5-

"(1) shall become effective on the date of the enactment of this Act [Nov. 23, 1988];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b–2021j]; and

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

**Sec. 4. Congressional Review**

"The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of enactment of this Act [Nov. 23, 1988], and at such intervals thereafter as may be provided in such compact.

**Sec. 5. Southwestern Low-Level Radioactive Waste Compact**

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of Congress is given to the states of Arizona, California, and any eligible states, as defined in article VII of the Southwestern Low-Level Radioactive Waste Disposal Compact, to enter into such compact. Such compact is substantially as follows: [Text of compact appears at 102 Stat. 4773]".



**E. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL  
COMPACT CONSENT ACT(PL 105-236), AS AMENDED****Pub. L. 105–236**  
**September 20, 1998****112 Stat. 1542**

[42 USC 2021d](#)  
[note.](#)

**Texas Low-Level Radioactive Waste Disposal Compact Consent Act**

Pub. L. 105–236, Sept. 20, 1998, 112 Stat. 1542, provided that:

**Sec. 1. Short Title**

"This Act may be cited as the 'Texas Low-Level Radioactive Waste Disposal Compact Consent Act'.

**Sec. 2. Congressional Finding**

"The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act ([42 U.S.C. 2021b et seq.](#)).

**Sec. 3. Conditions of Consent to Compact**

"The consent of the Congress to the compact set forth in section 5-

"(1) shall become effective on the date of the enactment of this Act [Sept. 20, 1998];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act ([42 U.S.C. 2021b et seq.](#)); and

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

**Sec. 4. Congressional Review**

"The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act [Sept. 20, 1998], and at such intervals thereafter as may be provided in such compact.

**Sec. 5. Texas Low-Level Radioactive Waste Compact**

"(a) Consent of Congress.-In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act ([42 U.S.C. 2021d\(a\)\(2\)](#)), the consent of Congress is given to the States of Texas, Maine, and Vermont to enter into the compact set forth in subsection (b).

"(b) Text of Compact.-The compact reads substantially as follows: [Text of compact appears at 112 Stat. 1543]".



## **8. High-Level Radioactive Waste**



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**A. NUCLEAR WASTE POLICY ACT OF 1982 (PL 97-425), AS AMENDED****Pub. L. 97-425**  
**January 7, 1983****96 Stat. 2201****42 USC 10101**  
**note.****Sec. 1. Short Title and Table of Contents**Pub. L. 97-425, §1, Jan. 7, 1983, 96 Stat. 2201, provided that:

"This Act [enacting this chapter] may be cited as the 'Nuclear Waste Policy Act of 1982'."

**42 USC 10101.****Sec. 2. Definitions**

For purposes of this chapter:

- (1) The term "Administrator" means the Administrator of the Environmental Protection Agency.
- (2) The term "affected Indian tribe" means any Indian tribe-
  - (A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;
  - (B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;
- (3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:
  - (A) naval reactors development;
  - (B) weapons activities including defense inertial confinement fusion;
  - (C) verification and control technology;
  - (D) defense nuclear materials production;
  - (E) defense nuclear waste and materials by-products management;
  - (F) defense nuclear materials security and safeguards and security investigations; and
  - (G) defense research and development.
- (4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.
- (5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.

(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under [section 2133 or 2134\(b\) of this title](#).

(7) The term "Commission" means the Nuclear Regulatory Commission.

(8) The term "Department" means the Department of Energy.

(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term "high-level radioactive waste" means-

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term "Federal agency" means any Executive agency, as defined in [section 105 of title 5](#).

(14) The term "Governor" means the chief executive officer of a State.

(15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act ([43 U.S.C. 1602\(c\)](#)).

(16) The term "low-level radioactive waste" means radioactive material that-

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in [section 2014\(e\)\(2\) of this title](#); and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in [section 10224 of this title](#).

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the

permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term "reservation" means-

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of [section 1151 of title 18](#); or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#)).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means-

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in [section 10156\(c\) <sup>2</sup>](#) of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means the storage facility described in section 10161(b)(1) of this title.<sup>1</sup>

**42 USC 10102. Sec. 3. Separability**

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, 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.<sup>2</sup>

**42 USC 10103. Sec. 4. Territories and Possessions**

Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.<sup>3</sup>

**42 USC 10104. Sec. 5. Ocean Disposal**

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).<sup>4</sup>

**42 USC 10105. Sec. 6. Limitation on Spending Authority**

The authority under this Act to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government

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<sup>1</sup> Pub. L. 97-425, §2, Jan. 7, 1983, 96 Stat. 2202 ; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104 , 1329-121; Pub. L. 100-203, title V, §5002, Dec. 22, 1987, 101 Stat. 1330-227.

<sup>2</sup> Pub. L. 97-425, §3, Jan. 7, 1983, 96 Stat. 2205.

<sup>3</sup> Pub. L. 97-425, §4, Jan. 7, 1983, 96 Stat. 2205.

<sup>4</sup> Pub. L. 97-425, §5, Jan. 7, 1983, 96 Stat. 2205.

shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.<sup>5</sup>

**42 USC 10106. Sec. 7. Protection of Classified National Security Information**

Nothing in this Act shall require the release or disclosure to any person or to the Commission of any classified national security information.<sup>6</sup>

**42 USC 10107. Sec. 8. Applicability to Atomic Energy Defense Activities**

**(a) Atomic energy defense activities**

Subject to the provisions of subsection (c), the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

**(b) Evaluation by President**

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under part A of subchapter I for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under [section 10222](#) of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under [section 5842 of this title](#); and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

**(c) Applicability to certain repositories**

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive

<sup>5</sup> Pub. L. 97–425, §6, Jan. 7, 1983, 96 Stat. 2205.

<sup>6</sup> Pub. L. 97–425, §7, Jan. 7, 1983, 96 Stat. 2205.

waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.<sup>7</sup>

**42 USC 10108. Sec. 9. Applicability to Transportation**

Nothing in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.<sup>8</sup>

**Title I—Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste**

**42 USC 10121. Sec. 101. State and Affected Indian Tribe Participation in Development of Proposed Repositories for Defense Waste**

**(a) Notification to States and affected Indian tribes**

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

**(b) Participation of States and affected Indian tribes**

Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.<sup>9</sup>

**Subtitle A—Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel**

**42 USC 10131. Sec. 111. Findings and Purposes**

**(a) The Congress finds that—**

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

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<sup>7</sup> Pub. L. 97–425, §8, Jan. 7, 1983, 96 Stat. 2205.

<sup>8</sup> Pub. L. 97–425, §9, Jan. 7, 1983, 96 Stat. 2206.

<sup>9</sup> Pub. L. 97–425, title I, §101, Jan. 7, 1983, 96 Stat. 2206.

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.<sup>10</sup>

<sup>10</sup> Pub. L. 97-425, title I, §111, Jan. 7, 1983, 96 Stat. 2207.

**42 USC 10132. Sec. 112. Recommendation of Candidate Sites for Site Characterization**

**(a) Guidelines**

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

**(b) Recommendation by Secretary to President**

(1)(A) Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.



(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a);

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i) <sup>1</sup> The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).<sup>2</sup>

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such

available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.<sup>11</sup>

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<sup>11</sup> Pub. L. 97-425, title I, §112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(b)-(d), Dec. 22, 1987, 101 Stat. 1330-228; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.

**42 USC 10133. Sec. 113. Site Characterization****(a) In general**

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).

**(b) Commission and States**

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the

vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.<sup>12</sup>

**42 USC 10134. Sec. 114. Site Approval and Construction Authorization**

Notification of  
decision.

**(a) Hearings and Presidential recommendation**

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the

<sup>12</sup> Pub. L. 97–425, title I, §113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(e)–(g), Dec. 22, 1987, 101 Stat. 1330–228.

waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.<sup>13</sup>

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<sup>13</sup> Pub. L. 97-425, title I, §114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(h)-(l), Dec. 22, 1987, 101 Stat. 1330-229, 1330-230.



**42 USC 10135. Sec. 115. Review of Repository Site Selection****(a) "Resolution of repository siting approval" defined**

For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

**(b) State or Indian tribe petitions**

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

**(c) Congressional review of petitions**

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

**(d) Procedures applicable to Senate****(1) The provisions of this subsection are enacted by the Congress—**

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, 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 such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion

of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section <sup>1</sup> are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such

Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

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

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.<sup>14</sup>

#### **42 USC 10136. Sec. 116. Participation of States**

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department

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<sup>14</sup> Pub. L. 97-425, title I, §115, Jan. 7, 1983, 96 Stat. 2217.

undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site; whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.<sup>15</sup>

#### **42 USC 10137. Sec. 117. Consultation with States and Affected Indian Tribes**

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian

<sup>15</sup> Pub. L. 97-425, title I, §116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5032(a), Dec. 22, 1987, 101 Stat. 1330-241.



tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever,<sup>2</sup> first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an



affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at

such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.<sup>16</sup>

## 42 USC 10138.

Notice of  
disapproval,  
submittal to  
Congress.

**Sec. 118. Participation of Indian Tribes****(a) Participation of Indian tribes in repository siting decisions**

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

**(b) Financial assistance**

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

<sup>16</sup> Pub. L. 97–425, title I, §117, Jan. 7, 1983, 96 Stat. 2222; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(m), Dec. 22, 1987, 101 Stat. 1330–231; Pub. L. 104–66, title I, §1051(i), Dec. 21, 1995, 109 Stat. 716.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5) <sup>1</sup> An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;<sup>2</sup>

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c)

of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.<sup>17</sup>

**42 USC 10139. Sec. 119. Judicial Review of Agency Actions**

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal

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<sup>17</sup> Pub. L. 97–425, title I, §118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5033, Dec. 22, 1987, 101 Stat. 1330–243.

office, or in the United States Court of Appeals for the District of Columbia.

(c) Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.<sup>18</sup>

**42 USC 10140. Sec. 120. Expedited Authorizations**

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.<sup>19</sup>

**42 USC 10141. Sec. 121. Certain Standards and Criteria**

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic

<sup>18</sup> Pub. L. 97-425, title I, §119, Jan. 7, 1983, 96 Stat. 2227.

<sup>19</sup> Pub. L. 97-425, title I, §120, Jan. 7, 1983, 96 Stat. 2227.

Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

- (i) applications for authorization to construct repositories;
- (ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and
- (iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.<sup>20</sup>

## **42 USC 10142. Sec. 122. Disposal of Spent Nuclear Fuel**

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.<sup>21</sup>

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<sup>20</sup> Pub. L. 97-425, title I, §121, Jan. 7, 1983, 96 Stat. 2228.

<sup>21</sup> Pub. L. 97-425, title I, §122, Jan. 7, 1983, 96 Stat. 2228.

**42 USC 10143. Sec. 123. Title to Material**

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this subtitle shall constitute a transfer to the Secretary of title to such waste or spent fuel.<sup>22</sup>

**42 USC 10144. Sec. 124. Consideration of Effect of Acquisition of Water Rights**

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.<sup>23</sup>

**42 USC 10145. Sec. 125. Termination of Certain Provisions**

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.<sup>24</sup>

**Subtitle B—Interim Storage Program****42 USC 10151. Sec. 131. Findings and Purposes**

(a) The Congress finds that-

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

<sup>22</sup> Pub. L. 97–425, title I, §123, Jan. 7, 1983, 96 Stat. 2229.

<sup>23</sup> Pub. L. 97–425, title I, §124, Jan. 7, 1983, 96 Stat. 2229.

<sup>24</sup> Pub. L. 97–425, title I, §125, Jan. 7, 1983, 96 Stat. 2229.

(b) The purposes of this part are-

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.<sup>25</sup>

**42 USC 10152. Sec. 132. Available Capacity for Interim Storage of Spent Nuclear Fuel**

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with-

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.<sup>26</sup>

**42 USC 10153. Sec. 133. Interim at Reactor Storage**

Licensing  
procedures.

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a) of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.<sup>27</sup>

**42 USC 10154. Sec. 134. Licensing of Facility Expansions and Transshipments**

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand

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<sup>25</sup> Pub. L. 97-425, title I, §131, Jan. 7, 1983, 96 Stat. 2229.

<sup>26</sup> Pub. L. 97-425, title I, §132, Jan. 7, 1983, 96 Stat. 2230.

<sup>27</sup> Pub. L. 97-425, title I, §133, Jan. 7, 1983, 96 Stat. 2230.



the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that-

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission-

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider-

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for

which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless-

- (1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and
- (2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.<sup>28</sup>

**42 USC 10155. Sec. 135. Storage of Spent Nuclear Fuel**

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not-

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such <sup>1</sup> facility is already being used, or has previously been used, for such storage or for any similar purpose.<sup>2</sup>

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent

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<sup>28</sup> Pub. L. 97-425, title I, §134, Jan. 7, 1983, 96 Stat. 2230.

nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under [section 10156\(a\) of this title](#), and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term "facility" means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d), the Secretary shall offer to enter into, and may enter into, contracts under [section 10156\(a\) of this title](#) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that-

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including-

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include-

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5.

Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of [section 10139](#) of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such

State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of [section 10135 of this title](#) and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at \_\_\_\_\_, with respect to which a notice of disapproval was submitted by \_\_\_\_\_ on \_\_\_\_\_.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of [section 10135 of this title](#) to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner



of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198 of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection

(e).<sup>29</sup>

**42 USC 10156. Sec. 136. Interim Storage Fund**

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however,* That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in [section 10155\(a\) of this title](#). Those contracts shall provide that the Federal Government will (1) take

<sup>29</sup> Pub. L. 97–425, title I, §135, Jan. 7, 1983, 96 Stat. 2232.



title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in [section 10157](#) of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in [section 101](#) or [102](#) of [title 5](#) may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of-

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund;  
and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including-

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in [section 10155](#) of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e).

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional <sup>1</sup> boundaries of such government or governments and authorized under this part: *Provided, however,* That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be-

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts;  
and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with [chapter 11 of title 31](#). The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States-

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of [subchapter II of chapter 15 of title 31](#).

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations

shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under [chapter 31 of title 31](#), and the purposes for which securities may be issued under such Act <sup>2</sup> are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.<sup>30</sup>

#### **42 USC 10157. Sec. 137. Transportation**

(a)(1) Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.<sup>31</sup>

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<sup>30</sup> Pub. L. 97-425, title I, § 136, Jan. 7, 1983, 96 Stat. 2237.

<sup>31</sup> Pub. L. 97-425, title I, § 137, Jan. 7, 1983, 96 Stat. 2241.

**Subtitle C—Monitored Retrievable Storage****42 USC 10161. Sec. 141. Monitored Retrievable Storage****(a) Findings**

The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

**(b) Submission of proposal by Secretary**

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to



a repository shall be considered to refer to a monitored retrievable storage facility.<sup>32</sup>

**42 USC 10162. Sec. 142. Authorization of Monitored Retrievable Storage**

**(a) Nullification of Oak Ridge siting proposal**

The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

**(b) Authorization**

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.<sup>33</sup>

**42 USC 10163. Sec. 143. Monitored Retrievable Storage Commission**

**(a) Establishment**

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

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<sup>32</sup> Pub. L. 97-425, title I, §141, Jan. 7, 1983, 96 Stat. 2241.

<sup>33</sup> Pub. L. 97-425, title I, §142, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-232.



(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

- (A) repository design and construction;
- (B) waste package design, fabrication and standardization;
- (C) waste preparation;
- (D) waste transportation systems;
- (E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.<sup>34</sup>

**42 USC 10164. Sec. 144. Survey**

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.<sup>35</sup>

**42 USC 10165. Sec. 145. Site Selection**

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an

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<sup>34</sup> Pub. L. 97–425, title I, §143, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–232; amended Pub. L. 100–507, §2, Oct. 18, 1988, 102 Stat. 2541.

<sup>35</sup> Pub. L. 97–425, title I, §144, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–234.

integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.<sup>36</sup>

<sup>36</sup> Pub. L. 97-425, title I, §145, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.

**42 USC 10166. Sec. 146. Notice of Disapproval**

(a) In general

The selection of a site under [section 10165 of this title](#) shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection,<sup>1</sup> unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under [section 10165 of this title](#) shall not be effective except as provided under [section 10135\(c\) of this title](#).

(b) References

For purposes of carrying out the provisions of this subsection, references in [section 10135\(c\) of this title](#) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under [section 10136\(b\) or 10138\(a\) of this title](#) shall be considered to refer to a notice of disapproval under this section.<sup>37</sup>

**42 USC 10167. Sec. 147. Benefits Agreement**

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under [section 10165 of this title](#), the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under [section 10173 of this title](#).<sup>38</sup>

**42 USC 10168. Sec. 148. Construction Authorization**

(a) Environmental impact statement

(1) Once the selection of a site is effective under [section 10166 of this title](#), the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in [section 10161\(b\)\(1\) of this title](#).

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<sup>37</sup> Pub. L. 97–425, title I, §146, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.

<sup>38</sup> Pub. L. 97–425, title I, §147, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in [section 10161\(b\)\(1\) of this title](#) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under [section 10162\(b\) of this title](#).

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under [section 10166 of this title](#), the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to [section 10162\(b\) of this title](#) shall be subject to licensing under [section 5842\(3\) of this title](#). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in [section 10161\(b\)\(1\) of this title](#).

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that-

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under [section 10135\(d\) <sup>1</sup> of this title](#);

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.<sup>39</sup>

**42 USC 10169. Sec. 149. Financial Assistance**

The provisions of [section 10136\(c\) or 10138\(b\) of this title](#) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local

<sup>39</sup> Pub. L. 97–425, title I, §148, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.

government in the case of a monitored retrievable storage facility in the same manner as for a repository.<sup>40</sup>

#### **Subtitle D—Low-Level Radioactive Waste**

### **42 USC 10171. Sec. 151. Financial Arrangements for Low-Level Radioactive Waste Site Closure**

#### **(a) Financial arrangements**

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021 of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

#### **(b) Title and custody**

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

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<sup>40</sup> Pub. L. 97–425, title I, §149, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–236.

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.<sup>41</sup>

**Subtitle E—Redirection of the Nuclear Waste Program**

**42 USC 10172. Sec. 160. Selection of Yucca Mountain Site**

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.<sup>42</sup>

**42 USC 10172a. Sec. 161. Siting a Second Repository**

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

<sup>41</sup> Pub. L. 97–425, title I, §151, Jan. 7, 1983, 96 Stat. 2244.

<sup>42</sup> Pub. L. 97–425, title I, §160, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(a), Dec. 22, 1987, 101 Stat. 1330–227.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

- (1) seasonal increases in population;
- (2) proximity to public drinking water supplies, including those of metropolitan areas; and
- (3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.<sup>43</sup>

**Subtitle F—Benefits**

**42 USC 10173. Sec. 170. Benefits Agreements**

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

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<sup>43</sup> Pub. L. 97–425, title I, §161, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5012, Dec. 22, 1987, 101 Stat. 1330–231.



## (c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

## (d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

## (e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

## (f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.<sup>44</sup>

**42 USC 10173a. Sec. 171. Content of Agreements**

## (a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 10173 of this title in accordance with the following schedule:

BENEFITS SCHEDULE (amounts in \$ millions)		
Event	MRS Repository	
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

## (2) For purposes of this section, the term—

(A) "MRS" means a monitored retrievable storage facility,

(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

(C) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

<sup>44</sup> Pub. L. 97-425, title I, §170, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-237.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 10173 of this title covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

(b) Contents

A benefits agreement under section 10173 of this title shall provide that—

(1) a Review Panel be established in accordance with section 10173b of this title;

(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.<sup>45</sup>

**42 USC 10173b. Sec. 172. Review Panel**

(a) In general

The Review Panel required to be established by section 10173a(b)(1) of this title shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

- (1) 2 members selected by the Governor of such State or governing body of such Indian tribe;
- (2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;
- (3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and
- (4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

- (1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;
- (2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;
- (3) recommend corrective actions to the Secretary;
- (4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

<sup>45</sup> Pub. L. 97–425, title I, §171, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–237.

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly<sup>46</sup> make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

(e) Chapter 10 of title 5

The requirements of chapter 10 of title 5 shall not apply to a Review Panel established under this subchapter.<sup>47</sup>

**42 USC 10173c. Sec. 173. Termination**

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or

(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.<sup>48</sup>

**Subtitle G—Other Benefits**

**42 USC 10174. Sec. 174. Consideration in Siting Facilities**

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.<sup>49</sup>

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<sup>46</sup> So in original.

<sup>47</sup> Pub. L. 97–425, title I, §172, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–239; amended Pub. L. 117–286, §4(a)(272), Dec. 27, 2022, 136 Stat. 4335.

<sup>48</sup> Pub. L. 97–425, title I, §173, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.

<sup>49</sup> Pub. L. 97–425, title I, §174, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.

**42 USC 10174a. Sec. 175. Report****(a) In general**

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under [section 10173a of this title](#), and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

**(b) Impacts to be considered**

Potential impacts to be addressed in the report under this <sup>1</sup> subsection

**(a) shall include impacts on-**

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.<sup>50</sup>

### **Subtitle H—Transportation**

#### **42 USC 10175. Sec. 180. Transportation**

##### **(a) Packaging**

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purpose by the Commission.

##### **(b) Advance Notification**

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

##### **(c) Training for Public Safety Officials**

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.<sup>51</sup>

### **Title II—Research, Development, and Demonstration Regarding Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel**

#### **42 USC 10191. Sec. 211. Purpose**

It is the purpose of this subchapter-

- (1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;
- (2) to authorize the Secretary, pursuant to this subchapter-
  - (A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and
  - (B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive

<sup>50</sup> Pub. L. 97-425, title I, §175, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.

<sup>51</sup> Pub. L. 97-425, title I, §180, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5061, Dec. 22, 1987, 101 Stat. 1330-251.

waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and  
(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.<sup>52</sup>

**42 USC 10192. Sec. 212. Applicability**

The provisions of this title are subject to section 8 and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.<sup>53</sup>

**42 USC 10193. Sec. 213. Identification of Sites**

**(a) Guidelines**

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to [section 553 of title 5](#), general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

**(b) Site identification by Secretary**

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a), the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater

<sup>52</sup> Pub. L. 97-425, title II, §211, Jan. 7, 1983, 96 Stat. 2245.

<sup>53</sup> Pub. L. 97-425, title II, §212, Jan. 7, 1983, 96 Stat. 2245.

possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include-

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a);

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.<sup>54</sup>

#### **42 USC 10194. Sec. 214. Siting Research and Related Activities**

##### **(a) In general**

Not later than 30 months after the date on which the Secretary completes the identification of sites under [section 10193 of this title](#), the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under [section 10198 of this title](#). The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in [section 10222\(d\)](#)

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<sup>54</sup> Pub. L. 97–425, title II, §213, Jan. 7, 1983, 96 Stat. 2245 ; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.



of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under [section 10193 of this title](#), and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in [section 10198 of this title](#) with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a)-

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of [section 10222 of this title](#) for the disposal of such material.<sup>55</sup>

**42 USC 10195. Sec. 215. Test and Evaluation Facility Siting Review and Reports**

(a) Consultation and cooperation

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under [section 10193 of this title](#) shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term "process of consultation and cooperation" means a methodology-

(1) by which the Secretary-

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

<sup>55</sup> Pub. L. 97-425, title II, §214, Jan. 7, 1983, 96 Stat. 2247.

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify-

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.<sup>56</sup>

**42 USC 10196. Sec. 216. Federal Agency Actions**

(a) Cooperation and coordination

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under [section 10221 of this title](#).

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or [section 10221 of this title](#) with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction

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<sup>56</sup> Pub. L. 97-425, title II, §215, Jan. 7, 1983, 96 Stat. 2247.

of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).<sup>57</sup>

**42 USC 10197. Sec. 217. Research and Development on Disposal of High-Level Radioactive Waste**

**(a) Purpose**

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under [section 10194 of this title](#), as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be-

(1) to supplement and focus the repository site characterization process;

(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 10192 <sup>1</sup> of this title;

(4) to validate, under actual conditions, the scientific models used in the design of a repository;

(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

(6) to supplement the siting data, the generic and specific geological characteristics developed under [section 10194 of this title](#) relating to isolating disposal materials in the physical environment of a repository;

(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

(8) to establish operating capability without exposing workers to excessive radiation.

<sup>57</sup> Pub. L. 97-425, title II, §216, Jan. 7, 1983, 96 Stat. 2248.

(b) Design

The Secretary shall design each test and evaluation facility-

(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under [section 10221 of this title](#), for purposes of-

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including-

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under [section 10194 of this title](#) and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 ([42 U.S.C. 2011 et seq.](#)), for repositories.

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,<sup>2</sup> for submission by the Secretary of, and review by the Commission of and necessary action on-

(i) the mission plan prepared under [section 10221 of this title](#); and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to [section 10225 of this title](#), the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under [section 5842 of this title](#).

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a). Nothing in this subsection may be construed to limit siting research activities conducted under section 10194 of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than-

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes; whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.<sup>58</sup>

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<sup>58</sup> Pub. L. 97-425, title II, §217, Jan. 7, 1983, 96 Stat. 2249.

**42 USC 10198. Sec. 218. Research and Development on Spent Nuclear Fuel****(a) Demonstration and cooperative programs**

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under [section 10194 of this title](#) at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

**(b) Cooperative agreements**

To carry out the programs described in subsection (a), the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that-

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

**(c) Dry storage research and development**

(1) The consultative and technical assistance referred to in subsection (b)(2) may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to

collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of [section 10155 of this title](#), the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under [section 10155 of this title](#). Such spent nuclear fuel shall not be subject to the provisions of [section 10155\(e\) of this title](#).

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a), as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in [section 10156 of this title](#).

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in [section 10155 of this title](#) shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless-

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.<sup>59</sup>

**42 USC 10199. Sec. 219. Payments to States and Indian Tribes**

(a) Payments

Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to [section 10195 of this title](#). The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under [section 10195 of this title](#) with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed \$3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to [section 10197\(h\) of this title](#). Any

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<sup>59</sup> Pub. L. 97–425, title II, §218, Jan. 7, 1983, 96 Stat. 2252 ; Pub. L. 103–437, §15(c)(10), Nov. 2, 1994, 108 Stat. 4592.



such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under [section 10193 of this title](#), or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with [section 10195 of this title](#). Annual payments shall be prorated on a 365-day basis to the specified dates.<sup>60</sup>

**42 USC 10200. Sec. 220. Study of Research and Development Needs for Monitored Retrievable Storage Proposal**

Report to Congress.

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in [section 10161\(b\)](#) of this title with respect to a monitored retrievable storage facility.<sup>61</sup>

**42 USC 10201. Sec. 221. Judicial Review**

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of [section 10139 of this title](#).<sup>62</sup>

**42 USC 10202. Sec. 222. Research on Alternatives for the Permanent Disposal of High-Level Radioactive Waste**

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.<sup>63</sup>

<sup>60</sup> Pub. L. 97-425, title II, §219, Jan. 7, 1983, 96 Stat. 2253.

<sup>61</sup> Pub. L. 97-425, title II, §220, Jan. 7, 1983, 96 Stat. 2254.

<sup>62</sup> Pub. L. 97-425, title II, §221, Jan. 7, 1983, 96 Stat. 2254.

<sup>63</sup> Pub. L. 97-425, title II, §222, Jan. 7, 1983, 96 Stat. 2254.

**42 USC 10203. Sec. 223. Technical Assistance to Non-Nuclear Weapon States in the Field of Spent Fuel Storage and Disposal**

(a) Statement of policy

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

## (e) "Non-nuclear weapon state" defined

For the purposes of this subsection, the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).

## (f) Unauthorized actions

Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.<sup>64</sup>

**42 USC 10204. Sec. 224. Subseabed Disposal**

(a) Repealed. Pub. L. 104-66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716.

## (b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).<sup>65</sup>

<sup>64</sup> Pub. L. 97-425, title II, §223, Jan. 7, 1983, 96 Stat. 2254.

<sup>65</sup> Pub. L. 97-425, title II, §224, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5063, Dec. 22, 1987, 101 Stat. 1330-253; amended Pub. L. 104-66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105-245, title III, §309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853.

**Title III—Other Provisions Relating to Radioactive Waste****42 USC 10221. Sec. 301. Mission Plan****(a) Contents of mission plan**

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include-

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under [section 10132\(a\) of this title](#);

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a

summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.<sup>66</sup>

**42 USC 10222. Sec. 302. Nuclear Waste Fund**

**(a) Contracts**

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to [section 10143 of this title](#), to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c).<sup>1</sup> In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the

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<sup>66</sup> Pub. L. 97-425, title III, §301, Jan. 7, 1983, 96 Stat. 2255.

event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under [section 6421 of this title](#).

(5) Contracts entered into under this section shall provide that-

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of [section 2133 or 2134 of this title](#) unless-

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under [section 2133 or 2134 of this title](#) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in [section 101 or 102 of title 5](#)) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than-

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste; whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in [section 101 or 102 of title 5](#) may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of-

- (1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;
- (2) any appropriations made by the Congress to the Waste Fund;
- and
- (3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under subchapters I and II, including-

- (1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,<sup>2</sup> retrievable storage facility or test and evaluation facility constructed under this chapter;
- (2) the conducting of nongeneric research, development, and demonstration activities under this chapter;
- (3) the administrative cost of the radioactive waste disposal program;
- (4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored, retrievable storage site or to be used in a test and evaluation facility;
- (5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility;
- and



(6) the provision of assistance to States, units of general local government, and Indian tribes under [sections 10136, 10138, and 10199 of this title](#).

No amount may be expended by the Secretary under this subchapter for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with [chapter 11 of title 31](#). The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States-

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of [chapter 15 of title 31](#).

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,<sup>1</sup> the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of

such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under [chapter 31 of title 31](#), and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.<sup>67</sup>

#### **[42 USC 10223.](#) Sec. 303. Alternative Means of Financing**

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.<sup>68</sup>

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<sup>67</sup> Pub. L. 97-425, title III, §302, Jan. 7, 1983, 96 Stat. 2257.

<sup>68</sup> Pub. L. 97-425, title III, §303, Jan. 7, 1983, 96 Stat. 2261.

**42 USC 10224. Sec. 304. Office of Civilian Radioactive Waste Management****(a) Establishment**

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under [section 5315 of title 5](#).

**(b) Functions of Director**

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

**(c) Annual report to Congress**

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

**(d) Audit by GAO**

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.<sup>69</sup>

**42 USC 10225. Sec. 305. Location of Test and Evaluation Facility****(a) Report to Congress**

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

**(b) Procedures**

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in

<sup>69</sup> Pub. L. 97-425, title III, §304, Jan. 7, 1983, 96 Stat. 2261 ; Pub. L. 104-66, title I, §1052(l), Dec. 21, 1995, 109 Stat. 719 ; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.

accordance with the procedures and requirements established in subchapter I with respect to the site selection and development of repositories.

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under [section 10135 of this title](#).<sup>70</sup>

**42 USC 10226.**

Regulations or guidance.

Report to Congress.

**Sec. 306. Nuclear Regulatory Commission Training Authorization**

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.<sup>71</sup>

**Title IV—Nuclear Waste Negotiator**

**42 USC 10241. Sec. 401. “State” Defined**

For purposes of this subchapter, the term "State" means each of the several States and the District of Columbia.<sup>72</sup>

**42 USC 10242. Sec. 402. The Office of the Nuclear Waste Negotiator**

**(a) Establishment**

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

**(b) Nuclear Waste Negotiator**

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the

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<sup>70</sup> Pub. L. 97-425, title III, §305, Jan. 7, 1983, 96 Stat. 2262.

<sup>71</sup> Pub. L. 97-425, title III, §306, Jan. 7, 1983, 96 Stat. 2262.

<sup>72</sup> Pub. L. 97-425, title IV, §401, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 102-486, title VIII, §802(b), Oct. 24, 1992, 106 Stat. 2923.

President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.<sup>73</sup>

**42 USC 10243. Sec. 403. Duties of Negotiator**

**(a) Negotiations with potential hosts**

**(1) The Negotiator shall—**

**(A)** seek to enter into negotiations on behalf of the United States, with—

**(i)** the Governor of any State in which a potential site is located; and

**(ii)** the governing body of any Indian tribe on whose reservation a potential site is located; and

**(B)** attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

**(b) Consultation with affected States, subdivisions of States, and tribes**

In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

**(c) Consultation with other Federal agencies**

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

<sup>73</sup> Pub. L. 97-425, title IV, §402, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 100-507, §1, Oct. 18, 1988, 102 Stat. 2541.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.<sup>74</sup>

**42 USC 10244. Sec. 404. Environmental Assessment of Sites**

(a) In general

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review

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<sup>74</sup> Pub. L. 97-425, title IV, §403, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-244.

in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.<sup>75</sup>

**42 USC 10245. Sec. 405. Site Characterization; Licensing**

(a) Site characterization

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory

<sup>75</sup> Pub. L. 97-425, title IV, §404, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-245.

Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.<sup>76</sup>

**42 USC 10246. Sec. 406. Monitored Retrievable Storage**

**(a) Construction and operation**

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

**(b) Financial assistance**

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.<sup>77</sup>

**42 USC 10247. Sec. 407. Environmental Impact Statement**

**(a) In general**

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**(b) Preparation**

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

**(c) Adoption**

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

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<sup>76</sup> Pub. L. 97-425, title IV, §405, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-246.

<sup>77</sup> Pub. L. 97-425, title IV, §406, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-246.



(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.<sup>78</sup>

**42 USC 10248.****Sec. 408. Administrative Powers of the Negotiator**

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under chapter 10 of title 5.<sup>79</sup>

<sup>78</sup> Pub. L. 97–425, title IV, §407, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–246.

<sup>79</sup> Pub. L. 97–425, title IV, §408, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247; amended Pub. L. 117–286, §4(a)(273), Dec. 27, 2022, 136 Stat. 4336.

**42 USC 10249. Sec. 409. Cooperation of Other Departments and Agencies**

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.<sup>80</sup>

**42 USC 10250. Sec. 410. Termination of the Office**

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.<sup>81</sup>

**42 USC 10251. Sec. 411. Authorization of Appropriations**

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.<sup>82</sup>

**Title V—Nuclear Waste Technical Review Board**

**42 USC 10261. Sec. 501. Definitions**

As used in this subchapter:

(1) The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term "Board" means the Nuclear Waste Technical Review Board established under section 10262 of this title.<sup>83</sup>

**42 USC 10262. Sec. 502. Nuclear Waste Technical Review Board**

**(a) Establishment**

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

**(b) Members**

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from

<sup>80</sup> Pub. L. 97-425, title IV, §409, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-247.

<sup>81</sup> Pub. L. 97-425, title IV, §410, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-247; amended Pub. L. 102-486, title VIII, §802(a), Oct. 24, 1992, 106 Stat. 2923.

<sup>82</sup> Pub. L. 97-425, title IV, §411, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-248.

<sup>83</sup> Pub. L. 97-425, title V, §501, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.

among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.<sup>84</sup>

#### **42 USC 10263. Sec. 503. Functions**

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.<sup>85</sup>

<sup>84</sup> Pub. L. 97-425, title V, §502, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.

<sup>85</sup> Pub. L. 97-425, title V, §503, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.

**42 USC 10264. Sec. 504. Investigatory Powers**

(a) Hearings

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.<sup>86</sup>

**42 USC 10265. Sec. 505. Compensation of Members**

(a) In general

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.<sup>87</sup>

**42 USC 10266. Sec. 506. Staff**

(a) Clerical staff

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

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<sup>86</sup> Pub. L. 97-425, title V, §504, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.

<sup>87</sup> Pub. L. 97-425, title V, §505, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.<sup>88</sup>

**42 USC 10267. Sec. 507. Support Services**

(a) General services

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.<sup>89</sup>

<sup>88</sup> Pub. L. 97-425, title V, §506, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.

<sup>89</sup> Pub. L. 97-425, title V, §507, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-250.

**42 USC 10268. Sec. 508. Report**

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after December 22, 1987.<sup>90</sup>

**42 USC 10269. Sec. 509. Authorization of Appropriations**

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.<sup>91</sup>

**42 USC 10270. Sec. 510. Termination of the Board**

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.<sup>92</sup>

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<sup>90</sup> Pub. L. 97-425, title V, §508, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-250.

<sup>91</sup> Pub. L. 97-425, title V, §509, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-251.

<sup>92</sup> Pub. L. 97-425, title V, §510, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-251.

**B. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT  
OF 1992 (ENVIRONMENTAL PROTECTION STANDARDS)  
(PL 102-486), AS AMENDED**

**Pub. L. 102-486  
October 24, 1992**

**106 Stat. 2921**

**Title VIII—High-Level Radioactive Waste**

**42 USC 10141  
note.**

**Sec. 801. Nuclear Waste Disposal**

Pub. L. 102–486, title VIII, §801, Oct. 24, 1992, 106 Stat. 2921, provided that:

"(a) Environmental Protection Agency Standards.-

"(1) Promulgation.-Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

"(2) Study by national academy of sciences.-Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including-

"(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

"(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or

increasing the exposure of individual members of the public to radiation beyond allowable limits; and

"(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

"(3) Applicability.-The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

"(b) Nuclear Regulatory Commission Requirements and Criteria.-

"(1) Modifications.-Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator's standards promulgated under subsection (a).

"(2) Required assumptions.-The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to-

"(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

"(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

"(c) Post-Closure Oversight.-Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of-

"(1) breaching the repository's engineered or geologic barriers;

or

"(2) increasing the exposure of individual members of the public to radiation beyond allowable limits."

**42 USC 10101**  
**note.**

### **Sec. 803. Nuclear Waste Management Plan**

Pub. L. 102–486, title VIII, §803, Oct. 24, 1992, 106 Stat. 2923, provided that:

"(a) Preparation and Submission of Report.-The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and



licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

"(b) Opportunity for Public Comment.-In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

"(c) Authorization of Appropriations.-There are authorized to be appropriated such sums as may be necessary to carry out this section."

**C. PERTINENT PROVISIONS OF THE RONALD W. REAGAN  
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2005 (WASTE INCIDENTAL TO REPROCESSING)  
(PL 108-375), AS AMENDED**

**Pub. L. 108-375  
October 28, 2004**

**118 Stat 1811**

**50 USC 2602  
note.**

**Sec. 3116. Defense Site Acceleration Completion**

Pub. L. 108–375, div. C, title XXXI, §3116, Oct. 28, 2004, 118 Stat. 2162, provided that:

"(a) In General.—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982 [42 U.S.C. 10101 et seq.], the requirements of section 202 of the Energy Reorganization Act of 1974 [42 U.S.C. 5842], and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term 'high-level radioactive waste' does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the 'Secretary'), in consultation with the Nuclear Regulatory Commission (in this section referred to as the 'Commission'), determines—

"(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

"(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

"(3)(A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

"(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

"(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

"(B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

"(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;

"(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and

"(iii) pursuant to plans developed by the Secretary in consultation with the Commission.

"(b) Monitoring by Nuclear Regulatory Commission.—(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to

subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

"(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

"(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

"(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

"(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding [section 3302 of title 31, United States Code](#), and shall remain available until expended.

"(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under [section 1105\(a\) of title 31, United States Code](#)) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

"(c) Inapplicability to Certain Materials.-Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

"(d) Covered States.-For purposes of this section, the following States are covered States:

"(1) The State of South Carolina.

"(2) The State of Idaho.

"(e) Construction.-(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

"(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.

"(3) Nothing in this section amends the definition of 'transuranic waste' or regulations for repository disposal of transuranic waste pursuant

to the Waste Isolation Pilot Plant Land Withdrawal Act [[Pub. L. 102–579, 106 Stat. 4777](#)] or part 191 of title 40, Code of Federal Regulations.

"(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act ([50 U.S.C. 2567](#)).

"(5) Nothing in this section amends the West Valley Demonstration Act [[Pub. L. 96–368](#)] ([42 U.S.C. 2121a](#) [2021a] note).

"(f) Judicial Review.-Judicial review shall be available in accordance with [chapter 7 of title 5, United States Code](#), for the following:

"(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

"(2) Any failure of the Commission to carry out its responsibilities under subsection (b)."

**D. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT OF 2005 (GREATER-THAN-CLASS C WASTE) (PL 109-58), AS AMENDED****Pub. L. 109-58**  
**August 8, 2005****119 Stat 594****Sec. 631. Safe Disposal of Greater-than-Class C Radioactive Waste**

Pub. L. 109-58, title VI, subtitle B, § 631, Aug. 8, 2005, 119 Stat. 788,  
provided that:

“(a) Responsibility for Activities to Provide Storage Facility

The Secretary shall provide to Congress official notification of the final designation of an entity within the Department to have the responsibility of completing activities needed to provide a facility for safely disposing of all greater-than-Class C low-level radioactive waste.

“(b) Reports and Plans

“(1) Report on Permanent Disposal Facility

“(A) Plan Regarding Cost and Schedule for Completion of  
EIS And ROD

Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with Congress, shall submit to Congress a report containing an estimate of the cost and a proposed schedule to complete an environmental impact statement and record of decision for a permanent disposal facility for greater-than-Class C radioactive waste.

“(B) Analysis Of Alternatives

Before the Secretary makes a final decision on the disposal alternative or alternatives to be implemented, the Secretary shall—

“(i) submit to Congress a report that describes all alternatives under consideration, including all information required in the comprehensive report making recommendations for ensuring the safe disposal of all greater-than-Class C low-level radioactive waste that was submitted by the Secretary to Congress in February 1987; and

“(ii) await action by Congress.

“(2) Short-Term Plan for Recovery and Storage

(A) In General

Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a plan to ensure the continued recovery and storage of greater-than-Class C low-level radioactive sealed sources that pose a security threat until a permanent disposal facility is available.

“(B) Contents

The plan shall address estimated cost, resource, and facility needs.”



## **9. Uranium Mill Tailings**





## 9. URANIUM MILL TAILINGS

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**A. URANIUM MILL TAILINGS RADIATION CONTROL ACT  
OF 1978 (PL 95-604), AS AMENDED****Pub. L. 95–604**  
**November 8, 1978****92 Stat. 3021****42 USC 7901**  
**note.****Sec. 1. Short Title and Table of Contents**Pub. L. 95–604, §1, Nov. 8, 1978, 92 Stat. 3021, provided that:

"This Act [enacting this chapter and sections 2022, 2113, and 2114 of this title, amending sections 2014, 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2014, 2021, and 2113 of this title] may be cited as the 'Uranium Mill Tailings Radiation Control Act of 1978'."

**42 USC 7901. Sec. 2. Congressional Findings and Purposes**

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this chapter are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.<sup>1</sup>

**Title I—Remedial Action Program****42 USC 7911. Sec. 101. Definitions**

For purposes of this subchapter—

(1) The term "Secretary" means the Secretary of Energy.

<sup>1</sup> Pub. L. 95–604, §2, Nov. 8, 1978, 92 Stat. 3021.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021]) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this subchapter shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 7918(b) of this title.

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.<sup>2</sup>

**42 USC 7912. Sec. 102. Processing Site Designations**

(a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado, site restriction

(1) As soon as practicable, but no later than one year after November 8, 1978, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah  
Green River, Utah  
Mexican Hat, Utah  
Durango, Colorado  
Grand Junction, Colorado  
Rifle, Colorado (two sites)  
Gunnison, Colorado  
Naturita, Colorado  
Maybell, Colorado  
Slick Rock, Colorado (two sites)  
Shiprock, New Mexico  
Ambrosia Lake, New Mexico  
Riverton, Wyoming  
Converse County, Wyoming  
Lakeview, Oregon  
Falls City, Texas  
Tuba City, Arizona  
Monument Valley, Arizona  
Lowman, Idaho  
Cannonsburg, Pennsylvania

Subject to the provisions of this subchapter, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this subchapter. The Secretary shall within one year of November 8, 1978, also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this subchapter. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

<sup>2</sup> Pub. L. 95–604, title I, §101, Nov. 8, 1978, 92 Stat. 3022.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92-314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

(b) Health hazard assessment; priorities for remedial action

Within one year from November 8, 1978, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Notification

Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) Finality of determinations

The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) Certain real property or improved areas

(1) The designation of processing sites within one year after November 8, 1978, under this section shall include, to the maximum extent practicable, the areas referred to in section 7911(6)(B) of this title.

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 7911(6)(B) of this title as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this subchapter.

(3) The Secretary shall designate as a processing site within the meaning of section 7911(6) of this title any real property, or improvements thereon, in Edgemont, South Dakota, that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this subchapter shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this subchapter to November 8, 1978, shall be treated as a reference to January 4, 1983, and in determining the State share under section 7917 of this title of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to January 4, 1983, which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this subchapter.

(f) Designation of Moab Site as processing site

(1) Designation

Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the "Moab site") located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA–917, is designated as a processing site.

(2) Applicability

This subchapter applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that—

(A) sections 7913, 7914(b), 7917(a), 7922(a), and 7925(a) of this title shall not apply; and

(B) a reference in this subchapter to November 8, 1978, shall be treated as a reference to October 30, 2000.

(3) Remediation

Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 8720 note; Public Law 105–261), including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.<sup>3</sup>

**42 USC 7913. Sec. 103. State Cooperative Agreements**

(a) Authority of Secretary; prompt commencement of preparations

After notifying a State of the designation referred to in section 7912 of this title, the Secretary subject to section 7923 of this title, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 7915 of this title). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

<sup>3</sup> Pub. L. 95–604, title I, §102, Nov. 8, 1978, 92 Stat. 3023; Pub. L. 97–415, §21, Jan. 4, 1983, 96 Stat. 2079; Pub. L. 106–398, §1 [div. C, title XXXIV, §3403(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–489; Pub. L. 115–232, div. A, title VIII, §809(n)(4), Aug. 13, 2018, 132 Stat. 1844.

(b) Terms and conditions; limitation of Federal assistance

Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 7918 of this title.

(c) Written consent of record interest holder; waiver

(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 7914 of this title, each cooperative agreement with a State under this section shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Inspection entries; termination of right of entry

Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 7914(b)(1) of this title in furtherance of the provisions of this subchapter and to carry out such agreement and enforce this chapter and any rules prescribed under this chapter. Such right of entry under this section or section 7916 of this title into an area described in section 7911(6)(B) of this title shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Effective date

Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) Reimbursement

The Secretary may, in any cooperative agreement entered into under this section or section 7915 of this title, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 7911(6)(B) of this title. Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to November 8, 1978, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section



7915 of this title is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this chapter with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 2022(a) of this title.<sup>4</sup>

**42 USC 7914. Sec. 104. Acquisition and Disposition of Lands and Materials**

**(a) State acquisition; windfall profits prevention**

Each cooperative agreement under section 7913 of this title shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

**(b) Disposition and stabilization site for residual radioactive materials; Federal site available**

(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 7916(2) of this title is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

**(c) Boundary limitations**

No State shall be required under subsection (a) or (b) to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 7911(6)(A) of this title, and

(2) the site used for disposition of the residual radioactive materials.

**(d) Purchasers of sites; notification; rules and regulations**

In the case of each processing site designated under this subchapter other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the

<sup>4</sup> Pub. L. 95–604, title I, §103, Nov. 8, 1978, 92 Stat. 3024.

condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place. For purposes of this subsection, the term "site" does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.

(e) State disposition; terms and conditions; fair market value; offer of sale to prior owner

(1) The terms and conditions of any cooperative agreement with a State under section 7913 of this title shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a), the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f).

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill tailings; transfer of title restriction

(1) Each agreement under section 7913 of this title shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b), for the disposition of such materials, shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this subchapter. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes

of this chapter other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this subchapter, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 2022(a) of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after November 8, 1978. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h).

(g) Reimbursement; fair market value; deposits in Treasury

Each agreement under section 7913 of this title which permits any sale described in subsection (e)(1)(A) shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials

No provision of any agreement under section 7913 of this title shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will

not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.<sup>5</sup>

**42 USC 7915. Sec. 105. Indian Tribe Cooperative Agreements**

(a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions

After notifying the Indian tribe of the designation pursuant to section 7912 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 7923 of this title, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 7918 of this title by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this subchapter, to carry out such agreement, and to enforce any rules prescribed under this chapter.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

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<sup>5</sup> Pub. L. 95–604, title I, §104, Nov. 8, 1978, 92 Stat. 3025; Pub. L. 104–259, §4(a), Oct. 9, 1996, 110 Stat. 3174.

(b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of the Interior

When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 7914(f)(2) and (h) of this title.<sup>6</sup>

**42 USC 7916.**

**Sec. 106. Acquisition of Land by Secretary; Transfer of Public Lands by Secretary of the Interior to Secretary; Consultations with Governor; Consent of Governor; Transfer from Federal Agency to Secretary**

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this subchapter, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this chapter, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming; and

(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 1714 of title

<sup>6</sup> Pub. L. 95–604, title I, §105, Nov. 8, 1978, 92 Stat. 3028.

43 shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection <sup>1</sup> in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.<sup>7</sup>

**42 USC 7917. Sec. 107. Financial Assistance**

(a) Federal and non-Federal funds; administrative costs

In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 7913 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this subchapter, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this subchapter.

(b) Indian land processing sites

In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.<sup>8</sup>

**42 USC 7918. Sec. 108. Remedial Action and Mineral Recovery Activities**

(a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards

(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)]. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior. Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical

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<sup>7</sup> Pub. L. 95–604, title I, §106, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 100–616, §2, Nov. 5, 1988, 102 Stat. 3192.

<sup>8</sup> Pub. L. 95–604, title I, §107, Nov. 8, 1978, 92 Stat. 3029.

requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter.

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] in final form by such date, remedial action taken by the Secretary under this subchapter shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

(b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits; recovery costs; licenses

Prior to undertaking any remedial action at a designated site pursuant to this subchapter, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials and the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this subchapter. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or under State law as permitted under section 274 of such Act [42 U.S.C. 2021].<sup>9</sup>

<sup>9</sup> Pub. L. 95–604, title I, §108, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 97–415, §18(b), Jan. 4, 1983, 96 Stat. 2078; Pub. L. 104–259, §4(b), Oct. 9, 1996, 110 Stat. 3174.

**42 USC 7919. Sec. 109. Rules**

The Secretary may prescribe such rules consistent with the purposes of this Act as he deems appropriate pursuant to title V of the Department of Energy Organization Act [42 U.S.C. 7191 et seq.].<sup>10</sup>

**42 USC 7920. Sec. 110. Enforcement**

(a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies

(1) Any person who violates any provision of this subchapter or any cooperative agreement entered into pursuant to this subchapter or any rule prescribed under this chapter concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than \$1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this subchapter or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Atomic energy licensing requirements

Subsection (a) shall not apply to any licensing requirement under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]. Such licensing requirements shall be enforced by the Commission as provided in such Act.<sup>11</sup>

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<sup>10</sup> Pub. L. 95–604, title I, §109, Nov. 8, 1978, 92 Stat. 3030.

<sup>11</sup> Pub. L. 95–604, title I, §110, Nov. 8, 1978, 92 Stat. 3030.



**42 USC 7921. Sec. 111. Public Participation; Public Hearings**

In carrying out the provisions of this subchapter, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.<sup>12</sup>

**42 USC 7922. Sec. 112. Termination of Authority of Secretary****(a) Exceptions; "byproduct material" defined**

(1) The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1998, except that—

Water.

(A) the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation, and

(B) the Secretary may continue operation of the disposal site in Mesa County, Colorado (known as the Cheney disposal cell) for receiving and disposing of residual radioactive material from processing sites and of byproduct material from property in the vicinity of the uranium milling site located in Monticello, Utah, until the Cheney disposal cell has been filled to the capacity for which it was designed, or September 30, 2031, whichever comes first.

(2) For purposes of this subsection, the term "byproduct material" has the meaning given that term in section 2014(e)(2) of this title.

**(b) Authorization of appropriations**

The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this subchapter shall be available until expended.<sup>13</sup>

**42 USC 7923. Sec. 113. Limitation of Contractual Authority**

The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.<sup>14</sup>

<sup>12</sup> Pub. L. 95–604, title I, §111, Nov. 8, 1978, 92 Stat. 3031.

<sup>13</sup> Pub. L. 95–604, title I, §112, Nov. 8, 1978, 92 Stat. 3031; Pub. L. 100–616, §3, Nov. 5, 1988, 102 Stat. 3193; Pub. L. 102–486, title X, §1031, Oct. 24, 1992, 106 Stat. 2951; Pub. L. 104–259, §2, Oct. 9, 1996, 110 Stat. 3173; Pub. L. 116–260, div. Z, title XI, §11002, Dec. 27, 2020, 134 Stat. 2612.

<sup>14</sup> Pub. L. 95–604, title I, §113, Nov. 8, 1978, 92 Stat. 3031.

**42 USC 7924. Sec. 114. Reports to Congress**

(a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions

Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this chapter and any amendments to other laws made by this Act. Each report shall—

- (1) include data on the actual and estimated costs of the program authorized by this subchapter;
- (2) describe the extent of participation by the States and Indian tribes in this program;
- (3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and
- (4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information

Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other radioactive <sup>1</sup> waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

(c) Uranium mine wastes hazards elimination program

Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies

the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Reports to Congressional committees

Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) Documentation of information; public availability; trade secrets and other disclosure exempt information

The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this subchapter and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.<sup>15</sup>

**42 USC 7925. Sec. 115. Active Operations: Liability for Remedial Action**

(a) No amount may be expended under this subchapter with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021] at which production of any uranium product from ores (other than from residual radioactive materials) takes place. This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.

(b) In the case of each processing site designated under this subchapter, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before November 8, 1978, may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following November 8, 1978. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.<sup>16</sup>

<sup>15</sup> Pub. L. 95–604, title I, §114, Nov. 8, 1978, 92 Stat. 3032; H. Res. 549, Mar. 25, 1980.

<sup>16</sup> Pub. L. 95–604, title I, §115, Nov. 8, 1978, 92 Stat. 3033; Pub. L. 104–259, §4(c), Oct. 9, 1996, 110 Stat. 3174.

## **Title II—Uranium Mill Tailings Licensing and Regulation**

### **42 USC 2014(e). Sec. 201. Definition**

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

- (e) The term "byproduct material" means-
  - (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;
  - (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;
  - (3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or
  - (B) any material that-
    - (i) has been made radioactive by use of a particle accelerator; and
    - (ii) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and
  - (4) any discrete source of naturally occurring radioactive material, other than source material, that-
    - (A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and
    - (B) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

### **42 USC 2113. Sec. 202. Custody of Disposal Site**

- (a) Specific Assurances in License for Pretermination Actions
 

Any license issued or renewed after the effective date of this section under section 2092 or section 2111 of this title for any activity which results in the production of any byproduct material, as defined in section 2014(e)(2) of this title, shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license-

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

(2) ownership of any byproduct material, as defined in section 2014(e)(2) of this title, which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection (b)(1) to acquire land used for the disposal of byproduct material. Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

(b) Transfer of title; health and environmental protection through maintenance of property and materials; use of surface or subsurface estates: first refusal rights of transferor; maintenance, monitoring, and emergency measures and other authorized action; licensee-transferor liability for fraud or negligence; administrative and legal costs limitation; government retransfers under section 7914(h) of this title

(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 2014(e)(2) of this title, pursuant to such license shall be transferred to-

(i) the United States, or

(ii) the State in which such land is located, at the option of such State, unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 2231 of this title. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 2111 of this title in such manner as will protect the public health, safety, and the environment.

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

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

to another officer or instrumentality of the United States only upon approval of the President.

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

(4) In the case of any such license under section 2092 of this title, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 2114 of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after November 8, 1978.

(6) The transfer of title to land or byproduct materials, as defined in section 2014(e)(2) of this title, to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 7914(h) of this title.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 2014(e)(2) of this title, the licensee shall

be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

(c) Compliance with applicable standards and license requirements; determination upon termination of license

Upon termination on 1 any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.<sup>17</sup>

**42 USC 2201(x). Sec. 203. Authority to Establish Certain Requirements**

(x) Standards and Instructions For Bonding, Surety, or Other Financial Arrangements, Including Performance Bonds

Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure-

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and  
(2) that-

(A) in the case of any such license issued or renewed after November 8, 1978, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on November 8, 1978, or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or

<sup>17</sup> Aug. 1, 1946, ch. 724, title I, §83, as added Pub. L. 95–604, title II, §202(a), Nov. 8, 1978, 92 Stat. 3033 ; amended Pub. L. 96–106, §22(c), (e), Nov. 9, 1979, 93 Stat. 800 ; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.<sup>18</sup>

**42 USC 2021. Sec. 204. Cooperation with States**

**(a) Purpose**

It is the purpose of this section-

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

**(b) Agreements with States**

Except as provided in subsection (c), the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this division, and [section 2201 of this title](#),

<sup>18</sup> Aug. 1, 1946, ch. 724, title I, §161, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948 ; amended July 14, 1956, ch. 608, 70 Stat. 553 ; Aug. 6, 1956, ch. 1015, §4, 70 Stat. 1069 ; Pub. L. 85–162, title II, §§201, 204, Aug. 21, 1957, 71 Stat. 410 ; Pub. L. 85–287, §4, Sept. 4, 1957, 71 Stat. 613 ; Pub. L. 85–507, §21(b)(1), July 7, 1958, 72 Stat. 337 ; Pub. L. 85–681, §§6, 7, Aug. 19, 1958, 72 Stat. 633 ; Pub. L. 86–300, §1, Sept. 21, 1959, 73 Stat. 574 ; Pub. L. 87–206, §13, Sept. 6, 1961, 75 Stat. 478 ; Pub. L. 87–456, title III, §303(c), May 24, 1962, 76 Stat. 78 ; Pub. L. 87–615, §12, Aug. 29, 1962, 76 Stat. 411 ; Pub. L. 87–793, title VI, §1001(g), Oct. 11, 1962, 76 Stat. 864 ; Pub. L. 88–489, §16, Aug. 26, 1964, 78 Stat. 606 ; Pub. L. 90–190, §11, Dec. 14, 1967, 81 Stat. 578 ; Pub. L. 91–452, title II, §237, Oct. 15, 1970, 84 Stat. 930 ; Pub. L. 91–560, §§7, 8, Dec. 19, 1970, 84 Stat. 1474 ; Pub. L. 92–314, title III, §301, June 16, 1972, 86 Stat. 227 ; Pub. L. 93–377, §7, Aug. 17, 1974, 88 Stat. 475 ; Pub. L. 95–604, title II, §203, Nov. 8, 1978, 92 Stat. 3036 ; Pub. L. 97–90, title II, §211, Dec. 4, 1981, 95 Stat. 1170 ; Pub. L. 99–661, div. C, title I, §3134, Nov. 14, 1986, 100 Stat. 4064 ; Pub. L. 100–449, title III, §305(b), Sept. 28, 1988, 102 Stat. 1876 ; Pub. L. 101–575, §5(b), Nov. 15, 1990, 104 Stat. 2835 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(4), (5), (8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 109–58, title VI, §623, 626, Aug. 8, 2005, 119 Stat. 783 , 784 ; Pub. L. 115–232, div. C, title XXXI, §3116(a), Aug. 13, 2018, 132 Stat. 2291.



with respect to any one or more of the following materials within the State:

- (1) Byproduct materials (as defined in [section 2014\(e\) of this title](#)).
- (2) Source materials.
- (3) Special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(c) Commission regulation of certain activities

No agreement entered into pursuant to subsection (b) shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of-

- (1) the construction and operation of any production or utilization facility or any uranium enrichment facility;
- (2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- (3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;
- (4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#). Notwithstanding any agreement between the Commission and any State pursuant to subsection (b), the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

(d) Conditions

The Commission shall enter into an agreement under subsection (b) of this section with any State if-

- (1) The <sup>1</sup> Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and
- (2) the Commission finds that the State program is in accordance with the requirements of subsection (o) and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public

health and safety with respect to the materials covered by the proposed agreement.

(e) Publication in Federal Register; comment of interested persons

(1) Before any agreement under subsection (b) is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

(f) Exemptions

The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in subchapters V, VI, and VII, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

(g) Compatible radiation standards

The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

(h) Consultative, advisory, and miscellaneous functions of Administrator of Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings with, participate in the deliberations of, and to advise the Administrator. The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Administrator shall also perform such other functions as the President may assign to him by Executive order.

(i) Inspections and other functions; training and other assistance

The Commission in carrying out its licensing and regulatory responsibilities under this chapter is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems

appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection (b).

(j) Reserve power to terminate or suspend agreements; emergency situations; State nonaction on causes of danger; authority exercisable only during emergency and commensurate with danger

(1) The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this chapter, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

(k) State regulation of activities for certain purposes

Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

(l) Commission regulated activities; notice of filing; hearing

With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection (c), the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

(m) Limitation of agreements and exemptions

No agreement entered into under subsection (b), and no exemption granted pursuant to subsection (f), shall affect the authority of the

Commission under section 2201(b) or (i) of this title to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of [section 2201\(i\) of this title](#), activities covered by exemptions granted pursuant to subsection (f) shall be deemed to constitute activities authorized pursuant to this chapter; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to [section 2073 of this title](#).

(n) "State" and "agreement" defined

As used in this section, the term "State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.

(o) State compliance requirements: compliance with [section 2113\(b\) of this title](#) and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction; alternative requirements

In the licensing and regulation of byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection (b), a State shall require-

(1) compliance with the requirements of subsection (b) of [section 2113 of this title](#) (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to [sections 2113, 2114, and 2022 of this title](#), and

(3) procedures which-

(A) in the case of licenses, provide procedures under State law which include-

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available

to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include-

- (i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;
- (ii) an assessment of any impact on any waterway and groundwater resulting from such activities;
- (iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and
- (iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by [section 2014\(e\)\(2\) of this title](#); and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with [section 2113\(b\) of this title](#), such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to [section 2201\(x\) of this title](#). No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in [section 2014\(e\)\(2\) of this title](#), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with [section 2022 of this title](#). Such alternative State requirements may take into account local or

regional conditions, including geology, topography, hydrology and meteorology.<sup>19</sup>

**42 USC 2114. Sec. 205. Authorities of Commission Respecting Certain Byproduct Material**

(a) Management function

The Commission shall insure that the management of any byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), is carried out in such manner as-

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

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under [section 2022 of this title](#), and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended [[42 U.S.C. 6901 et seq.](#)].

(b) Rules, regulations, or orders for certain activities; civil penalty

In carrying out its authority under this section, the Commission is authorized to-

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under [section 2111 of this title](#) to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

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

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or [section 2113 of this title](#) shall be subject to a civil penalty in

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<sup>19</sup> Aug. 1, 1946, ch. 724, title I, §274, as added Pub. L. 86–373, §1, Sept. 23, 1959, 73 Stat. 688 ; amended 1970 Reorg. Plan No. 3, §§2(a)(7), 6(2), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086; Pub. L. 95–604, title II, §204(a)–(e)(1), (f), Nov. 8, 1978, 92 Stat. 3036–3038 ; Pub. L. 96–295, title II, §205, June 30, 1980, 94 Stat. 787 ; Pub. L. 97–415, §19(a), Jan. 4, 1983, 96 Stat. 2078 ; renumbered title I and amended Pub. L. 102–486, title IX, §902(a)(6), (8), Oct. 24, 1992, 106 Stat. 2944 ; Pub. L. 109–58, title VI, §651(e)(2), Aug. 8, 2005, 119 Stat. 807.

the same manner and in the same amount as violations subject to a civil penalty under [section 2282 of this title](#). Nothing in this section affects any authority of the Commission under any other provision of this chapter.

(c) Alternative requirements or proposals

In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in [section 2014\(e\)\(2\) of this title](#), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this chapter. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with [section 2022 of this title](#).<sup>20</sup>

**42 USC 2022. Sec. 206. Authority of Environmental Protection Agency Respecting Certain Byproduct Material**

(a) Promulgation and revision of rules for protection from hazards at inactive or depository sites

As soon as practicable, but not later than October 1, 1982, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under [section 104\(h\) of the Uranium Mill Tailings Radiation Control Act of 1978 \[42 U.S.C. 7914\(h\)\]](#)) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in [section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 \[42 U.S.C. 7911\]](#)) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978 [[42 U.S.C. 7911 et seq.](#)]. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended [[42 U.S.C. 6901 et seq.](#)]. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment,

<sup>20</sup> Aug. 1, 1946, ch. 724, title I, §84, as added Pub. L. 95–604, title II, §205(a), Nov. 8, 1978, 92 Stat. 3039 ; amended Pub. L. 97–415, §§20, 22(a), Jan. 4, 1983, 96 Stat. 2079 , 2080; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.



the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. The Administrator may periodically revise any standard promulgated pursuant to this subsection. After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.

(b) Promulgation and revision of rules for protection from hazards at processing or disposal sites

(1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material. If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this chapter without regard to any provision of this chapter requiring such actions to comply with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this chapter. Requirements established by the Commission under this chapter with respect to byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection (f)(3). Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) pending promulgation by the Commission of any such standard of general application. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required



under subtitle C of the Solid Waste Disposal Act, as amended [42 U.S.C. 6921 et seq.], which are applicable to such hazards: *Provided, however,* That no permit issued by the Administrator is required under this chapter or the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.], for the processing, possession, transfer, or disposal of byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#). The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under [section 2021\(b\)\(2\) of this title](#) shall apply such revised standard in the case of any license for byproduct material as defined in [section 2014\(e\)\(2\) of this title](#) or any revision thereof.

(c) Publication in Federal Register; notice and hearing; consultations; judicial review; time for petition; venue; copy to Administrator; record; administrative jurisdiction; review by Supreme Court; effective date of rule

(1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in [section 2112 of title 28](#). The court shall have jurisdiction to review the rule in accordance with [chapter 7 of title 5](#) and to grant appropriate relief as provided in such chapter. The judgement of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in [section 1254 of title 28](#).

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

(d) Federal and State implementation and enforcement

Implementation and enforcement of the standards promulgated pursuant to subsection (b) of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this chapter. States exercising authority pursuant to [section 2021\(b\)\(2\) of this](#)

title shall implement and enforce such standards in accordance with subsection (o) of such section.

(e) Other authorities of Administrator unaffected

Nothing in this chapter applicable to byproduct material, as defined in [section 2014\(e\)\(2\) of this title](#), shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended [42 U.S.C. 7401 et seq.], or the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.].

(f) Implementation or enforcement of Uranium Mill Licensing Requirements

(1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

(2) Following the proposal by the Administrator of standards under subsection (b), the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if-

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection (b). During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in [section 2014\(e\)\(2\) of this title](#)) under this chapter on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection (b) of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under [section 2114 of this](#)

title to promulgate regulations to protect the public health and safety and the environment.<sup>21</sup>

### **Title III—Study and Designation of Two Mill Tailings Sites in New Mexico**

**42 USC 7941. Sec. 301. Study of Authority for Regulation and Control of Residual Radioactive Materials at New Mexico Sites for Protection of Public Health, Safety, and the Environment; Report to Congress and Secretary; Basis for Determination of Inadequacy of Authority; Interim Regulation Pending Completion of Study**

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) [42 U.S.C. 2011 et seq.] or under State authority as permitted under section 274 of such Act [42 U.S.C. 2021] or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after November 8, 1978, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this chapter shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021] or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.<sup>22</sup>

**42 USC 7942. Sec. 302. Designation by Secretary as Processing Sites for Subchapter I Purposes**

(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees

Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 7941 of this title, notwithstanding the limitations contained in section 7911(6)(A)

<sup>21</sup> Aug. 1, 1946, ch. 724, title I, §275, as added Pub. L. 95–604, title II, §206(a), Nov. 8, 1978, 92 Stat. 3039 ; amended Pub. L. 97–415, §§18(a), 22(b), Jan. 4, 1983, 96 Stat. 2077 , 2080; renumbered title I, Pub. L. 102–486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.

<sup>22</sup> Pub. L. 95–604, title III, §301, Nov. 8, 1978, 92 Stat. 3042.

and in section 7925(a) of this title, if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 7941 of this title, the Secretary may designate either or both of the sites referred to in section 7941 of this title as a processing site for purposes of subchapter I. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such subchapter I concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) Effective date

(1) No designation under subsection (a) shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Subchapter I provisions applicable

Except as otherwise specifically provided in subsection (a) of this section, any remedial action under subchapter I with respect to any sites designated under this subchapter shall be subject to the provisions of subchapter I (including the authorization of appropriations referred to in section 7922(b) of this title).<sup>23</sup>

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<sup>23</sup> Pub. L. 95–604, title III, §302, Nov. 8, 1978, 92 Stat. 3042; H. Res. 549, Mar. 25, 1980.

**B. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT  
OF 1992 (REMEDIAL ACTION AND URANIUM  
REVITALIZATION) (PL 102-486), AS AMENDED**

**Pub. L. 102-486  
October 24, 1992**

**106 Stat. 2946**

**Title X—Remedial Action and Uranium Revitalization**

**Subtitle A—Remedial Action at Active Processing Sites**

**42 USC 2296a. Sec. 1001. Remedial Action Program**

**(a) In general**

Except as provided in subsection (b), the costs of decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under [section 2092 or 2111 of this title](#) for any activity at such site which results or has resulted in the production of byproduct material.

**(b) Reimbursement**

**(1) In general**

The Secretary of Energy shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the costs described in such subsection as are-

(A) determined by the Secretary to be attributable to byproduct material generated as an incident of sales to the United States; and

(B) either-

(i) incurred by such licensee not later than December 31, 2007; or

(ii) incurred by a licensee after December 31, 2007, in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Secretary.

**(2) Amount**

**(A) To individual active site uranium licensees**

The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to [section 2296a-1 of this title](#) and, for uranium mill tailings only, shall not exceed an amount equal to \$6.25 multiplied by the dry short tons of byproduct material located on October 24, 1992, at the site of the activities of such licensee described in subsection (a), and generated as an incident of sales to the United States.

**(B) To all active site uranium licensees**

Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed \$350,000,000.

**(C) To thorium licensees**

Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed \$365,000,000, and may only be made

for off-site disposal. Such payments shall not exceed the following amounts:

- (i) \$90,000,000 in fiscal year 2002.
- (ii) \$55,000,000 in fiscal year 2003.
- (iii) \$20,000,000 in fiscal year 2004.
- (iv) \$20,000,000 in fiscal year 2005.
- (v) \$20,000,000 in fiscal year 2006.
- (vi) \$20,000,000 in fiscal year 2007.

Any amounts authorized to be paid in a fiscal year under this subparagraph that are not paid in that fiscal year may be paid in subsequent fiscal years.

(D) Inflation escalation index

The amounts in subparagraphs (A), (B), and (C) of this paragraph shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) Additional reimbursement

(i) Determination of excess

The Secretary shall determine as of December 31, 2008, whether the amount authorized to be appropriated pursuant to section 2296a-2 of this title, when considered with the \$6.25 per dry short ton limit on reimbursement, exceeds the amount reimbursable to the licensees under subsection (b)(2).

(ii) In the event of excess

If the Secretary determines under clause (i) that there is an excess, the Secretary may allow reimbursement in excess of \$6.25 per dry short ton on a prorated basis at such sites where the costs reimbursable under subsection (b)(1) exceed the \$6.25 per dry short ton limitation described in paragraph (2) of such subsection.

(3) Byproduct location

Notwithstanding the requirement of paragraph (2)(A) that byproduct material be located at the site on October 24, 1992, byproduct material moved from the site of the Edgemont Mill to a disposal site as the result of the decontamination, decommissioning, reclamation, and other remedial action of such mill shall be eligible for reimbursement to the extent eligible under paragraph (1).<sup>1</sup>

**42 USC 2296a-1. Sec. 1002. Regulations**

Within 180 days of October 24, 1992, the Secretary shall issue regulations governing reimbursement under section 2296a of this title. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a request for the amount of reimbursement, together with reasonable documentation in support

<sup>1</sup> Pub. L. 102-486, title X, §1001, Oct. 24, 1992, 106 Stat. 2946 ; Pub. L. 104-259, §3(a), Oct. 9, 1996, 110 Stat. 3173 ; Pub. L. 105-388, §11(a), Nov. 13, 1998, 112 Stat. 3484 ; Pub. L. 106-317, §1, Oct. 19, 2000, 114 Stat. 1277 ; Pub. L. 107-222, §1(a), Aug. 21, 2002, 116 Stat. 1336.

thereof, to the Secretary. Any such request for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 2296a of this title.<sup>2</sup>

**42 USC 2296a-2. Sec. 1003. Authorization of Appropriations**

(a) In general

There is authorized to be appropriated \$715,000,000 to carry out this part. The aggregate amount authorized in the preceding sentence shall be increased annually as provided in section 2296a of this title, based upon an inflation index to be determined by the Secretary.

(b) Source

Funds described in subsection (a) shall be provided from the Fund established under section 2297g of this title.<sup>3</sup>

**42 USC 2296a-3. Sec. 1004. Definitions**

For purposes of this part:

(1) The term "active uranium or thorium processing site" means—

(A) any uranium or thorium processing site, including the mill, containing byproduct material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Secretary or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual byproduct material;

(2) The term "byproduct material" has the meaning given such term in section 11 e. (2) of the Atomic Energy Act of 1954,<sup>1</sup> (42 U.S.C. 2014(e)(2)); and

(3) The term "decontamination, decommissioning, reclamation, and other remedial action" means work performed prior to or subsequent to October 24, 1992, which is necessary to comply with all applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.), or where appropriate, with

<sup>2</sup> Pub. L. 102-486, title X, §1002, Oct. 24, 1992, 106 Stat. 2947.

<sup>3</sup> Pub. L. 102-486, title X, §1003, Oct. 24, 1992, 106 Stat. 2947; Pub. L. 104-259, §3(b), Oct. 9, 1996, 110 Stat. 3174; Pub. L. 105-388, §11(b), Nov. 13, 1998, 112 Stat. 3485; Pub. L. 107-222, §1(b), Aug. 21, 2002, 116 Stat. 1336.

requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).<sup>4</sup>

### **Subtitle B—Uranium Revitalization**

#### **42 USC 2296b. Sec. 1011. Overfeed Program**

##### **(a) Uranium purchases**

To the maximum extent permitted by sound business practice, the Corporation shall purchase uranium in accordance with subsection (b) and overfeed it into the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by enrichment services customers, taking into account costs associated with depleted tailings.

##### **(b) Use of domestic uranium**

Uranium purchased by the Corporation for purposes of this section shall be of domestic origin and purchased from domestic uranium producers to the extent permitted under the multilateral trade agreements (as defined in section 3501(4) of title 19) and the USMCA (as defined in section 4502 of title 19).<sup>5</sup>

#### **42 USC 2296b-1. Sec. 1012. National Strategic Uranium Reserve**

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of natural uranium and uranium equivalents contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on October 24, 1992, and for 6 years thereafter, use of the Reserve shall be restricted to military purposes and government research. Use of the Department of Energy's stockpile of enrichment tails existing on October 24, 1992, shall be restricted to military purposes for 6 years thereafter.<sup>6</sup>

#### **42 USC 2296b-2. Sec. 1013. Sale of Remaining DOE Inventories**

The Secretary, after making the transfer required under section 2297c–6 of this title, may sell, from time to time, portions of the remaining inventories of raw or low-enriched uranium of the Department that are not necessary to national security needs, to the Corporation, at a fair market price. Sales under this section may be made only if such sales will not have a substantial adverse impact on the domestic uranium

<sup>4</sup> Pub. L. 102–486, title X, §1004, Oct. 24, 1992, 106 Stat. 2947.

<sup>5</sup> Pub. L. 102–486, title X, §1011, Oct. 24, 1992, 106 Stat. 2948 ; Pub. L. 106–36, title I, §1002(g)(1), June 25, 1999, 113 Stat. 133 ; Pub. L. 116–260, div. O, title VI, §602(e), Dec. 27, 2020, 134 Stat. 2153.

<sup>6</sup> Pub. L. 102–486, title X, §1012, Oct. 24, 1992, 106 Stat. 2948.



mining industry. Proceeds from sales under this subsection shall be deposited into the general fund of the United States Treasury.<sup>7</sup>

**42 USC 2296b-3. Sec. 1014. Responsibility for the Industry**

**(a) Continuing Secretarial responsibility**

The Secretary shall have a continuing responsibility for the domestic uranium industry to encourage the use of domestic uranium. The Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to subsection (b).

**(b) Encourage export**

The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domestic uranium. Within 180 days after October 24, 1992, the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.<sup>8</sup>

**42 USC 2296b-4. Sec. 1015. Annual Uranium Purchase Reports**

**(a) In general**

By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator of the Energy Information Administration, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator; and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

**(b) Congressional access**

The information provided to the Secretary pursuant to this section shall be made available to the Congress by March 1 of each year.<sup>9</sup>

**42 USC 2296b-5. Sec. 1016. Uranium Inventory Study**

Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a study and report that includes—

(1) a comprehensive inventory of all Government owned uranium or uranium equivalents, including natural uranium, depleted tailings, low-enriched uranium, and highly enriched uranium available for conversion to commercial use;

<sup>7</sup> Pub. L. 102-486, title X, §1013, Oct. 24, 1992, 106 Stat. 2949.

<sup>8</sup> Pub. L. 102-486, title X, §1014, Oct. 24, 1992, 106 Stat. 2949.

<sup>9</sup> Pub. L. 102-486, title X, §1015, Oct. 24, 1992, 106 Stat. 2949.

- (2) a plan for the conversion of inventories of foreign and domestic highly enriched uranium to low-enriched uranium for commercial use;
- (3) an estimation of the potential need of the United States for inventories of highly enriched uranium;
- (4) an analysis and summary of technological requirements and costs associated with converting highly enriched uranium to low-enriched uranium, including the construction of facilities if necessary;
- (5) an estimation of potential net proceeds from the conversion and sale of highly enriched uranium;
- (6) recommendations for implementing a plan to convert highly enriched uranium to low-enriched uranium; and
- (7) recommendations for the future use and disposition of such inventories.<sup>10</sup>

**42 USC 2296b-6. Sec. 1017. Regulatory Treatment of Uranium Purchases**

**(a) Encouragement**

The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this part, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium, or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

**(b) Report**

Within 1 year after October 24, 1992, and annually thereafter, the Secretary shall report to the Congress on the progress of the Secretary in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this part.

**(c) Savings provision**

This section may not be construed to authorize the Secretary to take any action in violation of the multilateral trade agreements (as defined in section 3501(4) of title 19) or the USMCA (as defined in section 4502 of title 19).<sup>11</sup>

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<sup>10</sup> Pub. L. 102-486, title X, §1016, Oct. 24, 1992, 106 Stat. 2949.

<sup>11</sup> Pub. L. 102-486, title X, §1017, Oct. 24, 1992, 106 Stat. 2950; Pub. L. 106-36, title I, §1002(g)(2), June 25, 1999, 113 Stat. 133; Pub. L. 116-113, title V, §507(a), Jan. 29, 2020, 134 Stat. 78.

**42 USC 2296b-7. Sec. 1018. Definitions**

For purposes of this part:

(1) The term "Corporation" means the United States Enrichment Corporation established under section 2297b <sup>1</sup> of this title or its successor.

(2) The term "country of origin" means—

(A) with respect to uranium, that country where the uranium was mined;

(B) with respect to enriched uranium, that country where the uranium was mined and enriched; or

(C) with respect to enrichment services, that country where the enrichment services were performed.

(3) The term "domestic origin" refers to any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States.

(4) The term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment.

(5) The term "non-affiliated" refers to a seller who does not control, and is not controlled by or under common control with, the buyer.

(6) The term "overfeed" means to use uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(7) The term "utility regulatory authority" means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer. For purposes of this paragraph, the terms "electric utility", "State agency", "Federal agency", and "ratemaking authority" have the respective meanings given such terms in section 2602 of title 16.<sup>12</sup>

<sup>12</sup> Pub. L. 102-486, title X, §1018, Oct. 24, 1992, 106 Stat. 2950; Pub. L. 104-134, title III, §3117(b), Apr. 26, 1996, 110 Stat. 1321-350.

**C. PERTINENT SECTIONS OF THE NATIONAL DEFENSE  
AUTHORIZATION FISCAL YEAR 2001 (PROVISIONS  
PERTAINING TO REMEDIAL ACTION AT MOAB SITE) (PL  
106-398), AS AMENDED**

**Pub. L. 105-261  
October 17, 1998**

**112 Stat. 1920**

**Title XXXIV—Naval Petroleum Reserves**

**10 USC 8720  
note.**

**Sec. 3403. Disposal of Oil Shale Reserve Numbered 2**

Pub. L. 105-261, div. C, title XXXIV, Oct. 17, 1998, 112 Stat. 2265, as amended by Pub. L. 106-398, §1 [div. C, title XXXIV, §3403(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484, 1654A-489; Pub. L. 108-204, title I, §129, Mar. 2, 2004, 118 Stat. 547; Pub. L. 109-58, title III, §331(d), Aug. 8, 2005, 119 Stat. 695; Pub. L. 110-181, div. C, title XXXIV, §3402, Jan. 28, 2008, 122 Stat. 590, provided that:

"(a) Disposal of Ford City Lots Authorized.—(1) Subject to section 3406, the Secretary of Energy may dispose of the portion of Naval Petroleum Reserve Numbered 2 that is located within the town lots in Ford City, California, which are identified as 'Drill Sites Numbered 3A, 4, 6, 9A, 20, 22, 24, and 26' and described in the document entitled 'Ford City Drill Site Locations-NPR-2,' and accompanying maps on file in the office of the Deputy Assistant Secretary for Naval Petroleum and Oil Shale Reserves of the Department of Energy.

"(2) The Secretary of Energy shall carry out the disposal authorized by paragraph (1) by competitive sale or lease consistent with commercial practices, by transfer to another Federal agency or a public or private entity, or by such other means as the Secretary considers appropriate. Any competitive sale or lease under this subsection shall provide for the disposal of all right, title, and interest of the United States in the property to be conveyed. The Secretary of Energy may use the authority provided by the Act of June 14, 1926 (43 U.S.C. 869 et seq.; commonly known as the Recreation and Public Purposes Act), in the same manner and to the same extent as the Secretary of the Interior, to dispose of the portion of Naval Petroleum Reserve Numbered 2 described in paragraph (1).

"(3) Section 2696(a) of title 10, United States Code, regarding the screening of real property for further Federal use before disposal, shall apply to the disposal authorized by paragraph (1).

"[(b) Repealed. Pub. L. 109-58, title III, §331(d), Aug. 8, 2005, 119 Stat. 695.]

"(c) Relationship to Antitrust Laws.—This section does not modify, impair, or supersede the operation of the antitrust laws."

10 USC 8720  
note.

**Sec. 3405(i). Disposal of Oil Shale Reserve Numbered 2**

Pub. L. 105–261, div. C, title XXXIV, Oct. 17, 1998, 112 Stat. 2265, as amended by Pub. L. 106–398, §1 [div. C, title XXXIV, §3403(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484, 1654A-489; Pub. L. 108–204, title I, §129, Mar. 2, 2004, 118 Stat. 547; Pub. L. 109–58, title III, §331(d), Aug. 8, 2005, 119 Stat. 695; Pub. L. 110–181, div. C, title XXXIV, §3402, Jan. 28, 2008, 122 Stat. 590, provided that:

"(i) Remedial Action at Moab Site.

(1)(A) The Secretary of Energy shall prepare a plan for remediation, including ground water restoration, of the Moab site in accordance with title I of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7911 *et seq.*). The Secretary of Energy shall enter into arrangements with the National Academy of Sciences to obtain the technical advice, assistance, and recommendations of the National Academy of Sciences in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants. If the Secretary prepares a remediation plan that is not consistent with the recommendations of the National Academy of Sciences, the Secretary shall submit to Congress a report explaining the reasons for deviation from the National Academy of Sciences' recommendations.

"(B) The remediation plan required by subparagraph (A) shall be completed not later than one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], and the Secretary of Energy shall commence remedial action at the Moab site as soon as practicable after the completion of the plan.

"(C) The license for the materials at the Moab site issued by the Nuclear Regulatory Commission shall terminate one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, unless the Secretary of Energy determines that the license may be terminated earlier. Until the license is terminated, the Trustee, subject to the availability of funds appropriated specifically for a purpose described in clauses (i) through (iii) or made available by the Trustee from the Moab Mill Reclamation Trust, may carry out-

"(i) interim measures to reduce or eliminate localized high ammonia concentrations in the Colorado River, identified by the United States Geological Survey in a report dated March 27, 2000;

"(ii) activities to dewater the mill tailings at the Moab site; and

"(iii) other activities related to the Moab site, subject to the authority of the Nuclear Regulatory Commission and in consultation with the Secretary of Energy.

"(D) As part of the remediation plan for the Moab site required by subparagraph (A), the Secretary of Energy shall develop, in consultation with the Trustee, the Nuclear Regulatory Commission, and the State of

Utah, an efficient and legal means for transferring all responsibilities and title to the Moab site and all the materials therein from the Trustee to the Department of Energy.

"(2) The Secretary of Energy shall limit the amounts expended in carrying out the remedial action under paragraph (1) to-

"(A) amounts specifically appropriated for the remedial action in an appropriation Act; and

"(B) other amounts made available for the remedial action under this subsection.

"(3)(A) The royalty payments received by the Secretary of Energy under subsection (e) shall be available to the Secretary, without further appropriation, to carry out the remedial action under paragraph (1) until such time as the Secretary determines that all costs incurred by the United States to carry out the remedial action (other than costs associated with long-term monitoring) have been paid.

"(B) Upon making the determination referred to in subparagraph (A), the Secretary of Energy shall transfer all remaining royalty amounts to the general fund of the Treasury and release to the Tribe the royalty interest retained by the United States under subsection (e).

"(4)(A) Funds made available to the Department of Energy for national security activities shall not be used to carry out the remedial action under paragraph (1), except that the Secretary of Energy may use such funds for program direction directly related to the remedial action.

"(B) There are authorized to be appropriated to the Secretary of Energy to carry out the remedial action under paragraph (1) such sums as are necessary.

"(5) If the Moab site is sold after the date on which the Secretary of Energy completes the remedial action under paragraph (1), the seller shall pay to the Secretary of Energy, for deposit in the general fund of the Treasury, the portion of the sale price that the Secretary determines resulted from the enhancement of the value of the Moab site as a result of the remedial action. The enhanced value of the Moab site shall be equal to the difference between-

"(A) the fair market value of the Moab site on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], based on information available on that date; and

"(B) the fair market value of the Moab site, as appraised on completion of the remedial action.

"(6)(A) Not later than October 1, 2019, the Secretary of Energy shall complete remediation at the Moab site and removal of the tailings to the Crescent Junction site in Utah.

"(B) In the event the Secretary of Energy is unable to complete remediation at the Moab Site by October 1, 2019, the Secretary shall submit to Congress a plan setting forth the projected completion date and the estimated funding to meet the revised date. The Secretary shall submit the plan, if required, to Congress not later than October 2, 2019."

## Uranium Mill Tailings

### Processing Site Designations

(f) Designation of Moab Site as processing site

(1) Designation

Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the "Moab site") located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA-917, is designated as a processing site.

(2) Applicability

This subchapter applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that-

(A) sections 7913, 7914(b), 7917(a), 7922(a), and 7925(a) of this title shall not apply; and

(B) a reference in this subchapter to November 8, 1978, shall be treated as a reference to October 30, 2000.

(3) Remediation

Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 8720 note; Public Law 105-261), including-

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.

### Conforming Amendment

Pub. L. 105-261, div. C, title XXXIV, Oct. 17, 1998, 112 Stat. 2265, as amended by Pub. L. 106-398, §1 [div. C, title XXXIV, §3403(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484, 1654A-489; Pub. L. 108-204, title I, §129, Mar. 2, 2004, 118 Stat. 547; Pub. L. 109-58, title III, §331(d), Aug. 8, 2005, 119 Stat. 695; Pub. L. 110-181, div. C, title XXXIV, §3402, Jan. 28, 2008, 122 Stat. 590, provided that:

"(a) Protection of Existing Rights.-At the discretion of the Secretary of Energy, the disposal of property under this title shall be subject to any contract related to the United States ownership interest in the property in effect at the time of disposal, including any lease agreement pertaining to the United States interest in Naval Petroleum Reserve Numbered 2.

"(b) Deposit of Receipts.-Notwithstanding any other law, all monies received by the United States from the disposal of property under this title, including any monies received from a lease entered into under this title, shall be deposited in the general fund of the Treasury.

"(c) Treatment of Royalties.-Any petroleum accruing to the United States as royalty from any lease of lands transferred under this title shall be delivered to the United States, or shall be paid for in money, as the Secretary of the Interior may elect.

"(d) Elements of Lease.-A lease under this title may provide for the exploration for, and development and production of, petroleum, other than petroleum in the form of oil shale.

"(e) Waiver of Requirements Regarding Consultation and Approval.-Section 7431 [now 8731] of title 10, [United States Code](#), shall not apply to the disposal of property under this title.

"(f) Oil Shale Reserve Numbered 2.-This section does not apply to the transfer of Oil Shale Reserve Numbered 2 under section 3405."



<div><div><div>NRC FORM 335</div><div>(12-2010)</div><div>NRCMD 3.7</div></div><div><div>U.S. NUCLEAR REGULATORY COMMISSION</div><div></div></div></div> <div><div>BIBLIOGRAPHIC DATA SHEET</div><div>(See instructions on the reverse)</div></div>		<div>1. REPORT NUMBER</div> <div>(Assigned by NRC, Add Vol., Supp., Rev., and Addendum Numbers, if any.)</div> <div>NUREG 0980</div> <div>Vol. 1, No. 12</div>	
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