

POLICY ISSUE INFORMATION

May 4, 2006

SECY-06-0099

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

Jesse L. Funches
Chief Financial Officer

SUBJECT: ENERGY POLICY ACT OF 2005 IMPLEMENTATION STATUS

PURPOSE:

To provide the Commission with a status of the staff's implementation of U.S. Nuclear Regulatory Commission (NRC) responsibilities under the Energy Policy Act of 2005.

BACKGROUND:

On August 8, 2005, President Bush signed into law H.R. 6, the Energy Policy Act of 2005. On October 31, 2005, in SECY-05-0201, the staff provided the Commission with its plan to implement the Act and requested approval of the staff's recommendations for funding specific activities. On January 5, 2006, the Commission issued its Staff Requirements Memorandum for implementation of the Act. The staff incorporated the Commission direction into the plan and has been addressing each of the applicable sections of the Act.

DISCUSSION:

The attached updated version of the implementation plan contains only those sections of the Act in which NRC was specifically authorized or required to take action. All necessary resources have been budgeted for FY 2006 and FY 2007 to accomplish the actions, except as noted for Sections 644, 645, 652, 653, and 656 of the Act. For Sections 644 and 645, related to the next generation nuclear plant (NGNP) project, NRC resources will be funded by an interagency transfer from the Department of Energy (DOE). The details of the agreement

CONTACT: Stephen O'Connor, OEDO
(301) 415-1067

between NRC and DOE will be documented in a Memorandum of Understanding (MOU). The MOU is currently being developed to outline how the two agencies will cooperatively interact, and to facilitate the transfer of funds from DOE to NRC. The DOE will determine the amount of the transfer based on the availability of its NGNP project resources. For Sections 652, 653, and 656, the Office of Administration (ADM) can absorb an additional 2,000 requests (i.e., fingerprint or weapons checks) per month, or a combined total of 24,000 additional requests per year, to implement the provisions of Sections 652, 653, and 656 of the Act. Projections from the pertinent program offices regarding the number and timing of these requests have not been finalized. If the volume or timing of all requests combined causes additional requests to exceed 2,000 per month, or the number of requests submitted in paper form exceeds 50 percent of the total additional requests received per month, ADM will seek additional resources, as necessary. Note that this work is cost-reimbursable.

Many actions and key milestones relevant to provisions contained in the Act have been completed and many more are on schedule to be completed over the next several years. Some examples of significant milestones the staff has completed are as follows:

- Final rule to implement revised Price Anderson Act and eliminate NRC antitrust reviews;
- Final rule on import/export controls;
- Proposed rule on Design Basis Threat;
- Confirmatory Order for emergency notification system backup power at Indian Point;
- Final rule on National Source Tracking System submitted to the Commission;
- Grant awarded to National Academy of Sciences for a study of industrial, research, and commercial uses of radiation sources;
- Proposed rule broadening the definition of byproduct material submitted to the Commission; and
- Proposed rule for protection of safeguards information submitted to the Commission.

However, at least one action will not be completed in accordance with the Act and one other may potentially not be completed in accordance with the Act.

The one action that will not be completed on time is related to Section 656 of the Act, "Secure Transfer of Materials." This section of the Act requires the Commission to establish a system such that all byproduct material, source material, special nuclear material, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste, when transferred or received in the United States by a party pursuant to an import or export license issued by the NRC are accompanied by a manifest describing the type and amount of materials being transferred or received. More significantly, this section requires that each individual receiving or accompanying the transfer of such material be subject to a security background check conducted by an appropriate Federal entity. The staff has focused most of its efforts on this second requirement since it believes that it can rely on DOT's manifest requirements to address the first requirement. This section also directs the Commission to issue regulations within one year of the Act (i.e., August 8, 2006) identifying radioactive materials or classes of individuals to be given exceptions to these requirements. The staff has been coordinating its rulemaking activities with stakeholders and has been working to resolve several significant issues associated with implementation of the rule. As a result, the staff anticipates that it is feasible to issue a final rule on this section by the end of November 2006.

Additionally, on April 26, 2006, the staff briefed the Commission's Technical Assistants on an alternate approach to addressing Section 656. If the Commission agrees with this approach, the staff would revise its proposed plan of action. However, the staff has not yet received approval from the Commission to pursue the alternate approach, and is continuing with the approach discussed in the attachment.

The issues that staff are attempting to resolve prior to issuing the proposed rule are as follows:

- Coordination with other Federal agencies responsible for transportation security and background checks;
- Coordination with States over regulatory basis and rule language;
- Defining extent of individuals subject to background checks; and
- Defining acceptance criteria for background checks.

The other action that may potentially not be completed in accordance with the Act is Section 651(d)(1), "Radiation Source Protection, National Academy of Sciences Study." This action requires the Commission to enter into an arrangement with NAS within 60 days to conduct a study of industrial, research, and commercial uses for radiation sources. The study must identify if there are other processes which either can replace radiation sources with economically and technically appropriate alternatives, or can use radiation sources that pose a lower risk to the public. The NRC is required to submit the results of the study to Congress by August 7, 2007. On January 11, 2006, the staff awarded a grant to NAS and on February 15, 2006, held a kick-off meeting with NAS for conduct of the study. However, NAS has not yet begun work on this study. Further, the NAS Committee member selection process takes several weeks, which would indicate that NAS may not have the first Committee meeting until June 2006. The staff has requested a draft report from NAS by Spring 2007 in order to meet the August 2007 due date, but it does not appear likely that NAS will have a draft report available at that time.

CONCLUSION:

Many actions have been completed and many more are on schedule to be completed over the next several years. However, at least one action will not be completed in accordance with the Act and one other may potentially not be completed in accordance with the Act. All necessary resources have been budgeted for FY 2006 and FY 2007 to accomplish the actions, except as noted for Sections 644 and 645 of the Act.

RESOURCES:

Resource considerations associated with this issue have been discussed above.

The Commissioners

-4-

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection.

/RA by W. Kane for/

Luis A. Reyes
Executive Director
for Operations

/RA/

Jesse L. Funches
Chief Financial Officer

Enclosure:
Energy Policy Act Implementation Status

**ENERGY POLICY ACT OF 2005
IMPLEMENTATION PLAN STATUS**

TITLE VI - NUCLEAR MATTERS

SUBTITLE A - PRICE-ANDERSON ACT AMENDMENTS.

Sections- 601-609. Price Anderson Act Renewal.

These sections extend the Price-Anderson Act until December 31, 2025, increase the maximum statutory base for each reactor's secondary tier contribution, and increase the maximum annual installment for the secondary layer contribution. Section 606 also requires the Commission to submit a report to Congress by December 31, 2021 providing the Commission's views on whether the Price-Anderson Act should be renewed when it expires at the end of 2025.

Status: The staff issued a final rule amending 10 CFR Part 140 to incorporate the new maximum annual licensee installment from \$10 million to \$15 million and address modular reactors. At least once every five years, the staff will revise the maximum licensee contribution in Part 140 for inflation. In addition, the staff will prepare a report from the Commission to the Congress on Price-Anderson renewal to be submitted by December 31, 2021.

Lead: OGC

Support: NRR, ADM

Schedule: Part 140 Final Rule (*Complete*) 10/27/05
Inflation Adjustment to Part 140 08/20/08

Resources: Budgeted resources are adequate to support this activity.

SUBTITLE B – GENERAL NUCLEAR MATTERS

Section 622. Nuclear Regulatory Commission Scholarship and Fellowship Program.

Section 622 authorizes the establishment of a program to award scholarships to undergraduate students or fellowships to graduate students in science, engineering, or another field of study that the Commission determines is a critical skill area.

Status: The staff will issue an interim policy via Yellow Announcement to describe the program and specify criteria for implementation and will prepare an application form and Management Directive to support competitive undergraduate scholarship and graduate fellowship programs in science, engineering or other fields of study that are determined to be critical to the Commission's regulatory

Enclosure

mission. The program would begin in FY06 for the Fall 2006 semester and would include approximately 20 students per year. HR will coordinate this program with SBCR to assure that awards are made through a competitive process based on academic merit and with consideration to a goal of participation by individuals identified in Sections 33 and 34 of the Science and Engineering Equal Opportunities Act in support of the Commission's diversity goals.

Lead: HR

Support: SBCR

Schedule: Draft Program Description (including criteria) 05/15/06
OMB Application Form Approval 07/31/06
Management Directive 09/30/06

Resources: Budgeted resources are adequate to support this activity.

Section 623. Cost Recovery from Government Agencies.

Section 623 authorizes the Commission to charge fees to recover costs from Federal agencies for licensing and inspection services.

Status: The staff will incorporate the provisions of this subsection into the FY06 fee rule, modifying Part 170 to allow the Commission to charge fees to Federal agencies for licensing and inspection services.

Lead: CFO

Support: ADM, OGC

Schedule: Issue proposed FY06 fee rule (*Complete*) 02/10/06
Issue final FY06 fee rule 06/30/06

Resources: Resources are already included within the scope of the Offices' budgeted activity to prepare the fee rule each year.

Section 624. Elimination of Pension Offset for Certain Rehired Federal Retirees.

Section 624 allows the NRC to hire retired Federal employees as consultants without having their pay reduced by the sum they are receiving as their Federal pension.

Status: The staff prepared a draft Management Directive to implement this authority beginning in FY06. There is no projected cost to NRC to implement this authority as the Agency will be filling budgeted FTE with rehired annuitants. In

addition, through the rehiring of Federal retirees, the agency may realize certain operational efficiencies and improved knowledge transfer.

Lead: HR

Support: Other Offices

Schedule: Issue draft Management Directive (*Complete*) 11/15/05
Issue final Management Directive 06/30/06

Resources: Budgeted resources are adequate to support this activity.

Section 625. Antitrust Review.

Section 625 eliminates NRC's antitrust review of new utilization or production facility applications filed on or after August 8, 2005.

Status: The staff issued a final rule amending 10 CFR Parts 2, 50 and 52 to delete references to NRC antitrust reviews. A minor resource savings is projected to be realized in future years from not having to perform these reviews for new utilization or production facility applications.

Lead: OGC

Support: NRR, ADM

Schedule: Final Rule (*Complete*) 10/27/05

Resources: N/A

Section 629. Whistleblower Protection.

Section 629 allows NRC employees, contractors, and subcontractors, and Department of Energy (DOE) employees who claim that they have been subject to retaliatory action for raising safety issues (whistleblowers) to seek relief from the Department of Labor (DOL). The section also provides whistleblowers the right to file suit in Federal district court if the Secretary of Labor fails to issue a final order within 1 year from the date the complainant sought relief from DOL.

Status: The staff performed a review of NRC Management Directives (MDs) to determine whether any revisions are necessary to reflect the additional protections provided by this section. OGC is also performing a review of the MDs and has developed, in coordination with the staff, contract clauses to reflect these protections and, as appropriate, will incorporate them into active contracts through bilateral modifications. The staff expects to amend a number of MDs to specifically identify the availability of the Department of Labor process.

Lead: OGC

Support: HR, ADM, OIG

Schedule: Develop contract language (*Complete*) 04/17/06
Complete review of Management Directives 06/30/06
Incorporate contract language Ongoing

Resources: Budgeted resources are adequate to support this activity.

Section 630. Medical Isotope Production.

Section 630 authorizes the Commission to issue a license to export to specified countries, high-enriched uranium (HEU) targets for the production of medical isotopes, provided the Commission makes certain determinations. One such determination is that HEU will be irradiated in a reactor that is either utilizing low-enriched uranium (LEU) fuel or that has agreed to convert to use of LEU fuel when feasible. The Commission is required to review the adequacy of physical protection requirements applicable to transportation and storage of HEU for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

Status: The staff has issued a final rule revising 10 CFR Part 110 to address the revised export licensing criteria contained in Section 630. This rule also addresses export and import control provisions of Section 651(e) as they relate to the revised definition of byproduct material in that Section. The staff plans to continue its current practice of reviewing transportation security aspects as part of its licensing review, but does not plan any overall review of the adequacy of physical protection requirements for transport of HEU.

Lead: IP

Support: NMSS, OGC, STP, NSIR, ADM

Schedule: Issue final rule (*Complete*) 04/20/06

Resources: N/A

Section 632. Prohibition on Nuclear Exports to Countries that Sponsor Terrorism.

This section prohibits any Federal agency, including NRC, from licensing, approving or authorizing the export or transfer of certain nuclear materials, equipment, or sensitive technology to countries which have been identified by the Department of State as repeatedly supporting acts of international terrorism.

Status: In a letter dated March 30, 2006, the Department of State, on behalf of the Executive Branch, requested that the provisions implementing section 632 be

deleted from NRC final rule implementing the import/export provisions of the Act given unresolved questions regarding the construction of that section. Consequently, OIP in consultation with OGC, removed that section from the draft final rule. OIP is working closely with the Department of State to resolve the matter.

Lead: IP

Support: NSIR, NMSS, OGC, ADM

Schedule: TBD

Resources: TBD

Section 637. Nuclear Regulatory Commission User Fees and Annual Charges.

Section 637 permanently extends NRC authority to collect 90 percent of its budget authority in fees commencing in fiscal year 2007. It also removes from the fee base beginning that same year generic homeland security costs.

Status: The staff will incorporate the provisions of this subsection into the FY2007 annual fee rulemaking.

Lead: CFO

Support: All other Offices

Schedule: Issue proposed FY07 fee rule 03/07
Issue final FY07 fee rule 06/07

Resources: Resources are included within the scope of the Offices' budgeted activity to prepare annual fee rule.

Section 638. Standby Support for Certain Nuclear Plant Delays.

Section 638 authorizes DOE to enter into contracts that cover a total of 6 nuclear reactors and are with persons who have applied for or been granted an NRC combined license for an advanced nuclear facility. Under such a contract, DOE will be required to pay for delays in achieving full power operations that occur for specified reasons. DOE is required to issue an interim final rule regulating such contracts NLT 270 days following enactment of the Act and a final rule NLT one year after enactment. In addition, the Commission is required to submit quarterly reports to Congress and DOE on the status of licensing actions associated with each facility covered by a contract under this Section.

Status: The staff met with DOE in a workshop associated with the planned rulemaking and plans to interact closely with DOE over the next year as DOE develops its

rule. The staff's focus will be on the criteria for defining regulatory delays in construction or operation of advanced nuclear facilities that will trigger payments under the contracts entered into by DOE under this Section. These criteria are of significance to the agency as they may provide the basis for payments of as much as \$500 million by DOE to sponsors of such facilities should NRC fail to meet established licensing schedules. The staff plans to prepare quarterly reports to Congress and DOE on the status of licensing actions associated with facilities covered by the DOE program, once applications are received.

Lead: NRR

Support: OGC

<u>Schedule:</u>	Participate in DOE workshop (<i>Complete</i>)	12/15/05
	Review and comment on rule language	As provided by DOE
	Provide first of quarterly reports for DOE and Congress to Commission	TBD

Resources: Budgeted resources are adequate to support this activity.

Section 639. Conflicts of Interest Relating to Contracts and Other Arrangements.

Section 639 allows the NRC to enter into a contract with DOE, or the operator of a DOE facility, even if an organizational conflict of interest exists that cannot be mitigated, if adequate justification exists for proceeding without mitigating the conflict of interest.

Status: The staff has developed policy in coordination with OGC and the NRC Offices for incorporation into Management Directive (MD) 11.7 and provided it to the Commission for approval. If the Commission approves the proposed policy, the staff plans to incorporate it into MD 11.7 by October 1, 2006.

Lead: ADM

Support: OGC

<u>Schedule:</u>	Provide proposed policy to Commission (<i>Complete</i>)	04/07/06
	Incorporate policy into revised MD 11.7	10/01/06

Resources: Budgeted resources are adequate to support this activity.

SUBTITLE C – NEXT GENERATION NUCLEAR PLANT PROJECT

Section 644. Nuclear Regulatory Commission.

This section provides that the NRC shall have licensing and regulatory authority for any reactor authorized under Sections 641-645 of the Act. The Secretary of DOE and the Chairman of the NRC are required to develop and jointly submit a licensing strategy for the prototype nuclear reactor within 3 years of the date of enactment (August 7, 2008). This section also directs DOE to seek the active participation of the NRC throughout the project.

Status: The staff is working with DOE in carrying out the licensing and regulatory authority provided to NRC by this section. Specifically, the staff will develop, in consultation with DOE, a licensing strategy for submittal to the Congress by August 7, 2008. The licensing strategy will outline how NRC will adapt its existing regulatory processes to license the Next Generation Nuclear Plant (NGNP) reactor and will describe the analytical tools, data and expertise that NRC will need to develop to support design review and licensing. The staff plans to participate with DOE throughout the duration of the project and plans to begin interacting with DOE early in the development process to understand the technological issues and proposed approaches for the project, in order to identify potential regulatory and licensing issues. Funding for the staff's activities relative to this project will be transferred to NRC by DOE (see Section 645 below).

In late 2005, the staff contacted DOE staff to initiate discussion on the NGNP licensing strategy development. Both NRC and DOE staff agreed that a Memorandum of Understanding (MOU) should be developed to outline how the two agencies would cooperatively interact, and to facilitate the transfer of funds from DOE to NRC. The staff has developed a proposed MOU and has provided it to the Commission for approval. If the Commission approves the MOU, it will be forwarded to DOE for review.

DOE staff informally indicated in early 2006 that DOE's Global Nuclear Energy Partnership (GNEP) program has overtaken the NGNP project in priority, thereby limiting funding that would be available for transfer to the NRC.

Lead: RES/NRR

Support: OGC, NSIR

Schedule:	Initiate meetings with DOE on NGNP (<i>Complete</i>)	11/30/05
	Provide Commission with proposed MOU with DOE (<i>Complete</i>)	04/03/06
	Forward proposed MOU to DOE for review	06/30/06
	Sign MOU and transfer of funds from DOE to NRC	12/31/06
	Joint NRC/DOE Report to Congress on licensing strategy	08/07/08

Resources: NRC resources for the NGNP Project are not budgeted, but will be funded by an interagency transfer from DOE in accordance with Section 645. DOE will determine the amount of the transfer based on the availability of its NGNP

project resources. The transfer amount will be identified in the MOU. NRC anticipated \$5M per year. DOE staff has indicated only \$2M may be available for NRC in FY 2007.

Section 645. Project Timelines and Authorization of Appropriations.

By September 30, 2011, DOE is required to either select the technology to be used for the project or submit a report to Congress establishing an alternate date for selection of the technology. Not later than September 30, 2021, DOE is required to complete construction and begin operation of the prototype nuclear reactor and associated energy or hydrogen facilities, or submit to Congress a report establishing an alternative date for completion. This section also calls for funds to be transferred from DOE's appropriation to NRC to cover NRC's activities under Section 644.

Status: The staff is arranging for transfer of funds from DOE to support its near-term activities (i.e., development of the joint licensing strategy) under Section 644, through a Memorandum of Understanding (MOU). The Commission is expected to issue any licenses for the prototype reactor by September 30, 2021, unless DOE establishes an alternative schedule for the project.

Lead: NRR

Support: OGC, RES, NSIR, CFO

Schedule:	Provide Commission with proposed MOU with DOE (<i>Compete</i>)	04/03/06
	Forward proposed MOU to DOE for review	06/30/06
	Sign MOU and transfer of funds from DOE to NRC	12/31/06
	Issue License	09/30/21

Resources: Included in resources for Section 644.

SUBTITLE D - NUCLEAR SECURITY

Section 651. Nuclear Facility and Materials Security.

Section 651 (a)(1). Security Evaluations.

Section 651 (a)(1) requires the Commission, at least once every 3 years, to conduct security evaluations, including force-on-force inspections, at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate. The purpose of the evaluations is to assess the ability of the private security forces to defend against the applicable design basis threat at licensed facilities designated by the Commission. It also requires NRC to mitigate any potential conflict of interest that could influence the results of force-on-force exercises. NRC is also required to ensure that affected licensees correct material defects in performance and to report to Congress annually on its security evaluations and corrective actions.

Status: The staff will continue to conduct security evaluations that include force-on-force inspections. As part of an ongoing rulemaking to revise 10 CFR 73.55, the staff plans to include language to codify the 3-year force-on-force interval and address potential conflicts of interest that could influence the results of such evaluations. The staff compiled the results of security inspections and corrective actions taken to support preparation of an annual report to Congress.

Lead: NSIR, technical basis
NRR, rulemaking for reactors
NMSS, rulemaking for Cat. 1 fuel facilities

Support: OE, ADM

<u>Schedule:</u>	Compile results of CY05 security inspections (<i>Complete</i>)	02/15/06
	Provide proposed rule to Commission	05/31/06
	Provide Annual Congressional report on security evaluations to Commission	06/14/06
	Start rulemaking plan for Cat. 1 fuel cycle facilities	04/30/07
	Provide Final Rule to Commission amending 73.55	10/31/07

Resources: Budgeted resources are adequate to support this activity.

Section 651 (a)(1). Design Basis Threat Rulemaking.

Section 651 (a)(1) requires the Commission to initiate a rulemaking proceeding within 90 days after enactment of this section (November 7, 2005) to revise its design basis threat. This rulemaking is to be completed no later than 18 months after enactment (February 7, 2007). The Act identifies 12 factors that the Commission shall consider in its rulemaking.

Status: The staff published a proposed rule addressing the Design Basis Threat and has taken the position that the 12 specific factors in this Section have generally been considered in the development of the rule. However, staff is requesting specific comments on those factors in the public comment period. As part of the comment resolution process, the staff also plans to develop an explanation of the detailed technical basis for its conclusion regarding the 12 factors.

Lead: NSIR

Support: OGC, NRR, NMSS, ADM

<u>Schedule:</u>	Issue proposed rule on DBT (<i>Complete</i>)	11/07/05
	Complete technical basis for review of 12 factors	09/30/06
	Provide final rule on DBT to Commission	10/31/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (a)(3). Federal Security Coordinators.

Section 651 (a)(3) also requires the NRC within 18 months after enactment of this section (February 7, 2007), to assign a Federal Security Coordinator (FSC) in each NRC region.

Status: The staff has assigned FSCs in each Region, including alternates, and is developing position descriptions, clarification of expectations and appropriate adjustments to existing procedures for communication with other Federal, State and local authorities.

Lead: NSIR

Support: Regions, HR, OGC, NRR, ADM

Schedule:	Assign FSC in each Region (<i>Complete</i>)	03/01/06
	Revision/development of procedures for FSC's external communications	06/30/06
	Assess effectiveness after first year	12/31/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (b). Backup Power for Certain Emergency Notification Systems.

Section 651 (b) directs the NRC, within 18 months, to require that backup power be available for the emergency notification system (ENS), including the emergency siren warning system, of any reactor that has a permanent population of more than 15 million within a 50-mile radius of the plant. This section, as a practical matter, applies solely to the Indian Point nuclear power plant.

Status: The staff held an open meeting with the licensee in November 2005 and issued a Confirmatory Order on January 31, 2006. System design review, implementation and testing will be reviewed by the Region.

Lead: NSIR

Support: NRR, Region I, OGC

Schedule:	Issue Confirmatory Order (<i>Complete</i>)	01/31/06
	Monitor design, implementation and testing of system	Ongoing

Resources: Budgeted resources are adequate to support this activity.

Section 651 (c)(1). Provision of Support to University Nuclear Safety, Security, and Environmental Protection Programs.

Section 651(c)(1) authorizes the NRC to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education 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.

Status: The staff will issue an interim policy to describe the program and specify criteria for implementation and prepare an application form and Management Directive to implement this new Commission authority. Program development would begin in FY06 with funding being provided to qualifying institutions beginning in FY07. The Commission requested staff (SRM for SECY-05-0201) to establish performance metrics for the human capital program to provide leading indicators for determining success in achieving hiring and retention goals. The staff is planning to provide a template to the Commission for incorporation into the agency's performance assessment metrics.

Lead: HR

Support: SBCR, ADM, Other Offices as necessary

Schedule: Issue Draft Program Description (with criteria)	06/30/06
Post vacancy announcement	05/01/06
Provide Performance Metrics Template to Commission	06/30/06
Issue Management Directive	12/31/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (c)(3). Expenses Authorized to be Paid by the Commission.

Section 651(c)(3) authorizes the payment of transportation, lodging, and subsistence expenses of employees who: (1) assist scientific, professional, administrative, or technical employees of the Commission; and (2) are students in good standing at an institution of higher education pursuing courses related to the field in which the students are employed by the NRC.

The NRC is also authorized to pay the costs of health and medical services furnished, pursuant to an agreement between the NRC and the Department of State, to employees of the Commission and dependents serving in foreign countries.

Status: The staff prepared a program description, criteria and procedures to implement this new Commission authority, beginning in FY06 and expanding in FY07. The staff also amended its MOU with the Department of State to cover health services for employees and dependents in Vienna, Austria.

The staff has drafted a program description with criteria (Yellow Announcement) and internal Standard Operating Procedure for paying transportation, lodging and subsistence expenses for students which is being coordinated with the CFO. Implementation is set for May 30, 2006.

Lead: HR, IP

Support: Other offices

<u>Schedule:</u> Draft program description (<i>Complete</i>)	03/31/06
Amend MOU with State Department (<i>Complete</i>)	04/06/06
Program implementation	05/30/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (c)(4). Partnership Program with Institutions of Higher Education.

Section 651(c)(4) authorizes the Commission to establish and participate in programs and activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-Serving Institutions (HSI), Historically Black Colleges and Universities (HBCU), and Tribal Colleges and Universities (TCU), to strengthen the capacity of these institutions to educate and train students (including present or potential employees of the NRC) and faculty, and 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. This Section authorizes the NRC to establish and operate an outreach Partnership Program with Institutions of Higher Education.

Status: The FY 2006-2007 budget includes funds for HBCU Research Assistance Program and seed money for HSIs and TCUs. The staff is establishing a Minority Serving Institutions Program (MSIP), which will go beyond NRC's current program of funding research activities at HBCUs and will include HSIs and TCUs. NRC currently has a cooperative agreement with the Oak Ridge Institute for Science and Education (ORISE) to administer the HBCU Research Participation program. The staff has begun the process of modifying this agreement to have ORISE administer the HSI and TCU programs. The modification will also require ORISE to develop a system for tracking participants in training programs and activities funded through the agreement. The modification of the agreement requires that the dollar ceiling be increased significantly. The staff will prepare a Chairman notification paper to justify the dollar ceiling increase.

Lead: SBCR

Support: HR, ADM

<u>Schedule:</u>	Develop MSIP Policy and Procedures	05/19/06
	Modify interagency agreement with ORISE	05/31/06
	Award initial grants to qualifying institutions	09/30/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (d)(1). Radiation Source Protection, Import/Export Controls.

Section 651(d) requires the Commission to issue regulations within 180 days (February 7, 2006) prohibiting a person from exporting or importing certain radiation sources or selling or transferring such sources within the United States unless the Commission has made certain determinations.

Status: The staff issued final regulations amending 10 CFR Part 110 to provide additional controls on the import and export of radioactive sources. These regulations meet the requirements of this section for import/export. The staff will issue licenses in accordance with the revised Part 110 and will work with US trading partners on their efforts to control exports and imports of sources. At the time the July 2005 rule was issued, the Commission did not have the authority to regulate radium-226. On April 20, 2006, Part 110 was amended under Section 630 of the Act to include Category 1 and Category 2 quantities of discrete sources of radium-226. OGC has examined the Commission's current and proposed (in the form of the National Source Tracking System rule) regulations and has determined that the regulations meet the Act's requirements on sale and/or transfer of sources within the United States.

Lead: IP

Support: OGC, OSTP, NSIR, OE, ADM

Schedule: Issue Final rule (*Complete*) 07/01/05

Resources: N/A

Section 651 (d)(1). Radiation Source Protection, Tracking System

Section 651(d) also requires the NRC to issue regulations within one year of enactment (August 7, 2006) establishing a mandatory tracking system for all radiation sources in the United States.

Status: The staff published proposed regulations establishing a nationwide mandatory tracking system (National Source Tracking System, or NSTS) for Category 1 and 2 radioactive sources. These regulations meet the requirements of this section with the exception of the requirement to coordinate the tracking system with any radiation source tracking system of the Department of Transportation. The Commission requested staff (SRM for SECY-05-0201) to consider the comments

on including Category 3 sources in NSTS rule. If the Category 3 sources are not included in the rule, the staff should consider a separate rulemaking or document its decision not to pursue a separate rulemaking. In SECY-06-0080, the staff recommends that Category 3 sources not be included in the current NSTS final rule. The staff is preparing a paper that outlines several options related to Category 3 sources. The staff will also consider whether changes to the enforcement policy are necessary to address the civil penalty limit of \$ 1 million in the Act.

Lead: NMSS

Support: OGC, STP, NSIR, OE, ADM

<u>Schedule:</u>	Publish proposed rule on NSTS (<i>Complete</i>)	07/28/05
	Hold public meetings on proposed rule (<i>Complete</i>)	(NRC) 08/29/05
		(Houston) 09/20/05
	Provide final rule to Commission (<i>Complete</i>)	04/06/06
	Provide Information Paper to Commission on Category 3 Sources (<i>Complete</i>)	04/24/06
	Issue final rule	08/07/06

Resources: Budgeted resources are adequate to support this activity in FY 2006. NMSS has requested an additional \$399K in FY 2007 for system development as part of the ongoing FY08 budget process.

Section 651 (d)(1). Radiation Source Protection, National Academy of Sciences Study

Section 651(d) requires the Commission to enter into an arrangement with the National Academy of Sciences (NAS) within 60 days to conduct a study of industrial, research, and commercial uses for radiation sources. The study must identify if there are other processes which either can replace radiation sources with economically and technically appropriate alternatives, or can use radiation sources that pose a lower risk to the public. The NRC is required to submit the results of the study to Congress within 2 years of enactment of this provision (August 7, 2007).

Status: On January 11, 2006, the staff awarded a grant to NAS and on February 15, 2006, held a kick-off meeting with NAS for conduct of the study. However, NAS has not yet begun work on this study. Further, the NAS Committee member selection process takes several weeks, which would indicate that NAS may not have the first Committee meeting until June 2006. The staff has requested a draft report from NAS by Spring 2007 in order to meet the August 2007 due date, but it does not appear likely that NAS will have a draft report available at that time.

Lead: RES

Support: NMSS, NSIR, STP, ADM

<u>Schedule:</u> Grant awarded to NAS (<i>Complete</i>)	01/11/06
NRC kick-off meeting with NAS (<i>Complete</i>)	02/15/06
NAS to provide final report to NRC (tentative)	04/30/07
NRC to submit report to Congress	08/07/07

Resources: Budgeted resources are adequate to support this activity.

Section 651 (d)(1). Radiation Source Protection, Task Force on Radiation Source Protection and Security

Section 651(d) establishes a new task force to evaluate and provide recommendations to Congress and the President on security of radiation sources in the United States from potential terrorist threats. It states that the task force will be headed by the Chairman of the NRC and its members shall include the heads (or designees) of DHS, DOD, DOE, DOT, DOJ, State, National Intelligence, CIA, FEMA, FBI, and EPA. Within one year of enactment (August 7, 2006), and not less than once every 4 years thereafter, the task force is required to submit a report to Congress and the President. In accordance with the recommendations of the task force, the Commission is required, within 60 days of the date of receipt of the report by Congress and the President, to take any action the Commission deems appropriate and ensure that the Agreement States take similar action in a timely manner.

Status: The Task Force was initiated and has been meeting regularly. Two additional agencies beyond those named in the Act were included in the Task Force: HHS and the Office of Science and Technology Policy. A Federal Register Notice was published on January 11, 2006 requesting public comment. A closed facilitated stakeholder meeting was held on January 31, 2006. The Task Force has formed 10 subgroups to evaluate the topics specified by the Act. A preliminary draft has been developed and is under review by the Task Force members. The Commission was also provided a copy of this preliminary draft report. The Task Force report is due to Congress and the President in August 2006.

Lead: NMSS

Support: NSIR, STP, OGC, RES

<u>Schedule:</u> Issue letter of invitation to Task Force member agencies (<i>Complete</i>)	10/03/05
Hold initial Task Force meeting (<i>Complete</i>)	11/30/05
Finalize charter (<i>Complete</i>)	02/01/06
Issue report to Congress	08/07/06
NRC actions on recommendations	10/07/06

Resources: Budgeted resources are adequate to support this activity.

Section 651 (e)(1)-(4). Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material

Section 651(e) modifies the definition of byproduct material in the AEA to include accelerator-produced material, discrete sources of Radium-226, and certain discrete sources of naturally-occurring radioactive material (NORM), other than source material, under NRC regulatory authority, if they are produced, extracted or converted for use in commercial, medical, or research activities. The section requires the Commission to develop final regulations to implement this section within 18 months of enactment (February 7, 2007). In developing the regulations, the Commission: 1) must define the term "discrete source;" 2) must consult with other Federal and State agencies and other stakeholders; and 3) must consider the impact on availability of radiopharmaceuticals to physicians and patients. In issuing the regulations, the NRC is required to prepare and publish a transition plan for States. It is also authorized to grant a time-limited waiver of the requirements of Section 651(e) to any entity.

Status: The staff plans to issue a final rule that incorporates the revised definition of byproduct material and makes other appropriate changes in the existing regulations as necessary. In developing the proposed rule, the staff consulted with States and other Federal agencies as well as other stakeholders. In particular, the staff consulted with such entities regarding the definition of a "discrete source". Throughout the rulemaking process, the cooperated with States to the maximum extent practicable, and used the Suggested State Regulations for control of radiation as model State standards.

The staff has already issued a waiver of the requirements of this subsection to allow individuals to continue to use the newly defined byproduct material and to allow States to continue to regulate under their existing programs until the Commission adopts regulations and develops a plan for orderly transition of this material. This Notice of Waiver was published in the Federal Register on August 31, 2005.

A roundtable public meeting was held in November 9, 2005, to discuss rulemaking activities for the newly expanded byproduct material and to solicit stakeholder input. A draft proposed rule package was forwarded to the Commission in SECY-06-0069 on March 27, 2006, made publically available and posted on the NRC website. A Commission briefing is scheduled for May 15, 2006 with participation from certain stakeholders.

The transition plan required by the Act will be developed by the staff in conjunction with the rulemaking. The staff will receive and track certifications provided by States in accordance with the transition plan. As warranted, revisions to existing 274b Agreements will be made by the staff. Staff will analyze existing programs and IT systems to determine any needed changes to address the new material.

On April 20, 2006, Part 110 was amended under Section 630 of the Act to include the expanded definition of byproduct material.

Lead: NMSS

Support: NSIR, RES, STP, OGC, ADM, Regions

Schedule: Provide proposed rule to Commission (<i>Complete</i>)	03/27/06
Issue proposed rule	05/31/06
Final rule to Commission	12/31/06
Issue transition plan for States	02/07/07
Issue final rule	02/07/07
Begin licensing and inspection activities	02/07/07
Complete changes to programs and IT systems	08/07/07

Resources: Budgeted resources are adequate to support this activity.

Section 652. Fingerprinting and Criminal History Record Checks.

Section 652 requires the Commission to issue orders or regulations requiring fingerprinting, for criminal history check purposes, by broader classes of entities/individuals. This section mandates the Commission to require fingerprinting by NRC licensees and certificate holders, persons who have filed an application for a license or certificate, and persons who have notified the Commission of an intent to file an application for licensing, certification, permitting or approval of a product or activity subject to NRC regulation. This section further mandates the Commission require the fingerprinting of any individual who: (1) is permitted unescorted access to a power reactor or 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 (2) is permitted access to safeguards information under Section 147 of the AEA.

Status: In response to the January 5 and February 8, 2006, Staff Requirements Memoranda (SRMs), the staff is preparing a Commission paper that will include: (1) a request for the Commission to approve issuing Orders to certain licensees for access to radioactive material, and (2) an implementation plan for issuing those Orders. In addition, the staff plans to propose a new rule, 10 CFR 73.59, to address personnel access authorization requirements for materials licensees.

Further, Section 652 also requires fingerprinting of individuals authorized access to safeguards information prior to such access and limits the exceptions the Commission may establish to this requirement. Accordingly, staff is developing Orders for licensees to require fingerprinting for access to SGI. These Orders would be issued to licensees other than those covered by the current 10 CFR 73.57 (i.e, individuals other than those at power reactor licensees and those involved in transporting spent nuclear fuel).

Finally, on February, 3, 2006, the staff provided a re-proposed rule to the Commission with changes to § 73.21 for protection of safeguards information. Staff expects to provided the final rule to the Commission approximately four months after the proposed rule is published in the *Federal Register*.

Lead: NSIR, technical basis
OGC, rulemaking for access to safeguards information
NRR, rulemaking for power reactor (includes Cat. I facilities)
NMSS, rulemaking for other materials facilities

Support: ADM

<u>Schedule:</u>	Proposed rule amending 73.21 to Commission (<i>Complete</i>)	02/03/06
	Final 73.21 rule to Commission	TBD
	Proposed rule (73.59) to Commission	09/30/07
	Final 73.59 rule to Commission	09/30/08

Resources: Budgeted resources for offices other than ADM are adequate to support this activity. If the volume or timing of all requests combined to implement the provisions of Sections 652, 653, and 656 of the Act cause additional requests to exceed 2,000 per month, or the number of requests submitted in paper form exceeds 50 percent of the total additional requests received per month, ADM will seek additional resources, as necessary.

Section 653. Use of Firearms by Security Personnel.

Section 653 authorizes the Commission, notwithstanding certain Federal laws and any law of a State or political subdivision of a State, to allow security personnel at licensed facilities to transfer, receive, possess, transport, import or use handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machine guns, semiautomatic assault weapons and large capacity ammunition feeding devices, if the NRC determines such authorization is necessary to the discharge of the security personnel's official duties and other requirements are met. (Security personnel who receive such authority are subject to a background check, including fingerprints and a check against the Federal Bureau of Investigation's (FBI's) National Instant Criminal Background Check System [NICS].) NRC is required to issue guidelines, with the approval of the Attorney General, for this section to take effect.

Status: The staff plans to incorporate this authorization, insofar as it relates to power reactors and Category I fuel cycle facilities, into its ongoing power reactor security proposed rulemaking (under new § 73.19). New § 73.18 would also be included to address the NICS check requirements for these licensees. Staff began discussions with the Department of Justice (DOJ) in October 2005 to help assure that guidelines to implement this section are approved by the Attorney General. Staff provided draft guidelines to DOJ in February 2006 and has met with FBI and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) staffs at their respective West Virginia facilities to discuss the draft guidelines and associated implementing issues. Following resolution of the remaining issues with DOJ, FBI, and ATF staffs, staff will provide the Commission final guidelines for review and will also address the need to issue Orders to all licensees possessing firearms which would require a NICS check for current armed security personnel. Such Orders would be in parallel with the ongoing power reactor security proposed rulemaking. In FY07, the staff will provide the

Commission with recommendations regarding categories of licensees for which facilities, beyond power reactors, would benefit from authorizing security personnel to carry and utilize a broader class of weapons, and will begin development of revisions to §§ 73.18 and 73.19 to codify that approach.

Lead: NSIR

Support: NRR, NMSS, OGC, ADM

<u>Schedule:</u> Initial meetings with DOJ on approach (<i>Complete</i>)	10/11/05
Proposed power reactor security rule to Commission	05/31/06
Development of guidelines w/ DOJ, FBI, & ATF	06/30/06
Papers on guidelines and NICS check Orders to Commission	08/31/06
Issuance of guidelines and NICS check Orders	01/31/07
Paper considering expansion of §§ 73.18 and 19 to facilities other than power reactors and Cat 1 fuel facilities to Commission	03/31/07
Final power reactor security rule to Commission	10/31/07

Resources: Budgeted resources for offices other than ADM are adequate to support this activity. If the volume or timing of all requests combined to implement the provisions of Sections 652, 653, and 656 of the Act cause additional requests to exceed 2,000 per month, or the number of requests submitted in paper form exceeds 50 percent of the total additional requests received per month, ADM will seek additional resources, as necessary.

Section 654. Unauthorized Introduction of Dangerous Weapons.

Section 654 criminalizes under Federal law, the unauthorized introduction of dangerous weapons, explosives, and other dangerous instruments likely to produce substantial injury or damage to any designated NRC-regulated facilities.

Status: The staff will prepare a proposed rule for Commission approval which designates the facilities to which the provisions of this section apply. This rulemaking will address the requirements of both Section 654 and Section 655 below.

Lead: NSIR, technical basis
NMSS, rulemaking

Support: NRR, OGC, ADM

<u>Schedule:</u> Provide rulemaking plan to Commission	03/31/08
Issue proposed rule	03/31/09
Issue final rule	03/31/10

Resources: Budgeted resources are adequate to support this activity.

Section 655. Sabotage of Nuclear Facilities, Fuel, or Designated Material.

Section 655 provides criminal sanctions for sabotage of commercial nuclear facilities, fuel, and Commission-designated material or property not previously covered. It also provides the Commission with the authority to include additional classes of radioactive material or property not specifically mandated in the statute through rulemaking.

Status: The staff will provide the Commission with information to determine additional facilities to which this section should apply, such as panoramic irradiators, and will develop a rule designating those facilities. This rule will be developed in combination with the rule implementing Section 654.

Lead: NSIR, technical basis
NMSS, rulemaking

Support: STP, OGC, ADM

<u>Schedule:</u> Provide rulemaking plan to Commission	03/31/08
Issue proposed rule	03/31/09
Issue final rule	03/31/10

Resources: Budgeted resources are adequate to support this activity.

Section 656. Secure Transfer of Nuclear Materials.

Section 656 requires the Commission to establish a system such that all byproduct material, source material, special nuclear material, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste transferred or received in the U.S. by a party pursuant to an import or export license issued by the NRC are accompanied by a manifest describing the type and amount of materials. Additionally, each individual accompanying the transfer of material is subject to a security background check conducted by an appropriate Federal authority. This section also directs the Commission to issue regulations within 1 year excepting radioactive materials or classes of individuals to be excepted from these requirements.

Status: Existing IAEA and Department of Transportation (DOT) regulations are adequate regarding shipping papers or other documents accompanying a shipment that describe the type and amount of materials being shipped. The requirement for a manifest appear to be satisfied by these existing requirements (for exports pursuant to existing DOT regulations requiring shipping papers and for imported material pursuant to existing IAEA safety standards requiring transport documents). The staff is preparing a proposed rule that addresses background checks for licensees and entities covered by this Section, including identifying materials or classes of individuals that the Commission wishes to except. These exceptions will be coordinated with activities under Section 652 with respect to materials licensees and transportation. The staff has been coordinating its rulemaking activities with stakeholders and has been working to resolve several

significant issues associated with implementation of the rule. As a result, the staff anticipates that it is feasible to issue a final rule on this section by the end of November 2006.

Lead: NMSS

Support: IP, OGC, STP, NSIR, ADM

Schedule: Provide proposed rule to Commission 06/01/06
Issue final rule 11/30/06

Resources: Budgeted resources for offices other than ADM are adequate to support this activity. If the volume or timing of all requests combined to implement the provisions of Sections 652, 653, and 656 of the Act cause additional requests to exceed 2,000 per month, or the number of requests submitted in paper form exceeds 50 percent of the total additional requests received per month, ADM will seek additional resources, as necessary.

Section 657. Department of Homeland Security Consultation.

This section requires the NRC to consult with the Department of Homeland Security, prior to issuing a license for a proposed utilization facility, to determine any vulnerabilities of the proposed location of that facility to a terrorist attack.

Status: The staff plans to develop, in concert with DHS, a protocol for Commission approval on the consultation process. The staff envisions having the protocol in place in advance of receiving an application for a new nuclear power plant. Based on a projected application in FY07, staff is targeting to define and document the consultation process in FY06.

Lead: NSIR

Support: NRR, OGC

Schedule: Initial contact with affected parties (*Complete*) ~~10/18/05~~
Definition of consultation process 07/30/06
Submit protocol to Commission 10/30/06

Resources: Budgeted resources are adequate to support this activity.

TITLE IX – RESEARCH AND DEVELOPMENT

SUBTITLE E – NUCLEAR ENERGY

Section 953. Advanced Fuel Cycle Initiative.

DOE is directed to conduct an advanced fuel recycling technology research and development initiative to evaluate proliferation-resistant fuel recycling and transmutation technologies.

Action: The staff will track DOE's efforts under this section of the Act as they may apply to NRC's responsibilities for licensing a reprocessing facility at some point in the future. The staff will provide periodic reports to the Commission on the status of DOE's efforts and an assessment of the potential for reprocessing to be pursued as a viable option and NRC's role in licensing such a facility. On March 22, 2006, the staff provided a Commission paper (SECY 06-0066) requesting approval of staff's plans for addressing the regulatory and resource implications of DOE's spent nuclear fuel recycling program. The SECY paper also summarized the schedule outlined for DOE to follow in the Energy Policy Act.

Lead: NMSS

Support: RES, NSIR, NRR

Schedule: Provide Commission paper on policy and resource implications (*Complete*) 03/22/06
DOE Spent Fuel Recycling Plan to Congress (estimated date) 04/30/06

Resources: Budgeted resources are adequate to support this activity.