

July 22, 2002

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

Dear Mr. Chairman:

In recent weeks there have been numerous meetings between the Nuclear Regulatory Commission (NRC) and Committee staffs to develop legislation that would strengthen security at NRC-licensed facilities. As a result of these discussions, the NRC has developed the enclosed legislation for your consideration. We believe that our draft addresses the Committee's concerns, while reflecting the Commission's judgment as to the best approach based on its comprehensive review of security at NRC-regulated facilities.

The Commission finds the attached proposal to be far preferable to the Committee's July 19th Discussion Draft. While the Committee's latest draft attempts to address some of the problems we have expressed concerning the June 10th Discussion Draft, the latest draft does not satisfactorily address many of the concerns that the Commission articulated in its letter of July 12, 2002, to the Committee.

I would welcome the opportunity to discuss this matter with you if such a discussion would be helpful to you.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: Draft Legislation

A BILL

To amend the Atomic Energy Act of 1954 to strengthen security at sensitive nuclear facilities.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Nuclear Security Act of 2002”.

SEC. 2. PROTECTION OF SAFEGUARDS INFORMATION

Section 147a(3)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2167(a)(3)(B)) is amended by revising the closing paragraph of that subsection by deleting the last three sentences and inserting the following:

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

SEC. 3. ACCESS RECORDS CHECKS

(1) Section 149 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(a)) is amended to read as follows:

“a.(1) The Commission shall require any person who is licensed or certified by the Commission or who is an applicant for a license or certificate and any person who is otherwise permitted --

(A) to operate a utilization facility under section 103 or 104b. or

(B) to possess, use or transport radioactive material or other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security,

to fingerprint each individual who is permitted--

unescorted access to such facility, activity, radioactive material or property or access to safeguards information under section 147.

and to repeat the fingerprinting process for such individual no less frequently than every 5 years.

(2) All fingerprints obtained by a licensee, certificate holder, or applicant as required in the preceding paragraph shall be submitted to the Attorney General of the United States through

the Commission, (i) for identification and comparison against all categories of individuals covered in the National Crime Information Center data sets, the U.S. National Central Bureau of Interpol, the National Instant Criminal Background Check, and the Immigration and Naturalization Service data sets (including the Student and Exchange Visitor Information System), and (ii) to obtain a criminal history records check conducted to determine past criminal history on record with the Federal Bureau of Investigation. The costs of any identification and records check conducted pursuant to this paragraph shall be paid by the licensee, certificate holder or applicant. Notwithstanding any other provision of law, the Attorney General should provide the pertinent results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.”

(2) Section 149 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(a)) is amended to read as follows:

“b.(1) 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.

(2) Persons who are subject to the fingerprinting requirements of another agency of the United States shall not be subject to the obligations imposed by this section, if the Commission determines that such fingerprinting requirements afford security protection similar to that resulting from the application of this section.”

(3) Section 149 c.(2)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2133 c.(2)(B)) is amended to read as follows:

“(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted access to a facility or radioactive material or property of a licensee, certificate holder or applicant for a license or certificate, or shall be permitted access to safeguards information under section 147;”.

(4) Chapter 12 of the Atomic Energy Act of 1954 is amended by adding after section 149 the following section:

“SEC. 150. ACCESS TO NUCLEAR FACILITIES.

a. Requirement for Background Check. --

(1) Within 60 days after the enactment of this subsection, any person who is licensed or certified by the Nuclear Regulatory Commission or who has applied to the Commission for the issuance of a license or certificate and any person who is otherwise permitted--

(A) to operate a utilization facility under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)), or

(B) to possess, use or transport radioactive material or other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security,

shall furnish to the Commission statements containing the information described in subsections b. and c. with respect to-

(A) each current officer or employee of the licensee, certificate holder, or applicant (including an employee of a contractor of the licensee, certificate holder, or applicant), and

(B) any other individual, except a Commission employee, who--

(i) is proposed to have access to the facility or to radioactive material or other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security within such 60-day period without being accompanied by an employee of the licensee, certificate holder, or applicant for a license or certificate who has already been the subject of the background check described in subsection (3), or

(ii) is proposed to be provided access to safeguards information under section 147.

(2) Within 60 days after the enactment of this subsection, a licensee, certificate holder, or applicant for a license or certificate may not--

(A) provide access to any facility operated pursuant to section 103 or 104 b. of the Atomic Energy Act of 1954 or to radioactive material or other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security to any individual, except a Commission employee, who is not accompanied by an employee of the licensee, certificate holder, or applicant for a license or certificate who has already been the subject of a background check described in section 149a., as amended by this Act, and section 170C, or

(B) provide access to safeguards information to any individual, except a Commission employee, under section 147,

unless the individual has been the subject of a background check described in section 149a., as amended by this Act, and section 170C and a response to the request for the background check has been received that the Commission determines to be satisfactory.

“(3) The Commission shall submit the statements required by subsection (1) to the Attorney General of the United States for the purpose of initiating a background check under the National Crime Information Center, the U.S. National Central Bureau of Interpol, the National Instant Criminal Background Check and the Immigration and Naturalization Service data sets.

(4) Frequency - Background checks and access authorization reviews required by this section shall be conducted no less frequently than every 5 years.

b. Statement Furnished to Commission by Licensee, Certificate Holder, or Applicant. -- The following shall be submitted to the Commission by a licensee, certificate holder, or applicant for each individual for whom the licensee, certificate holder, or applicant is required to submit background check statements pursuant to subsection a.:

“(1) a statement that the licensee, certificate holder, or applicant has verified the identity of the individual by examining identification documents presented by the individual;
(2) a statement that the licensee, certificate holder, or applicant has furnished to the chief law enforcement officer of the place of residence of the individual the statement required by section 5, and has not, within 7 calendar days after the statement has been furnished to the chief law enforcement officer, received a notice from the officer that the individual has been convicted of a violation of State or Federal law, or has a record of exhibiting behavior that would make the individual unsuitable for access to the facilities, materials or safeguards information described in subsection a.

c. Statement Furnished by Individual Proposing Access to Facility, Materials or Safeguards Information. -- A statement containing the following information shall be submitted to the licensee, certificate holder, or applicant, as the case may be, by any individual for whom access is proposed to the facilities, materials or safeguards information described in subsection a.:

(1) the name, address, and date of birth appearing on a valid identification document of the individual containing a photograph of the individual, and a description of the identification used;

(2) a statement that the individual

(A) is not under indictment for, and has not been convicted in any court, of a crime punishable by imprisonment;

(B) is not a fugitive from justice;

(C) is not an unlawful user of or addicted to any controlled substances (as defined in the Controlled Substances Act);

(D) has not been committed to a mental institution;

(E) is not an alien who is illegally or unlawfully in the United States;

(F) has not been discharged from the Armed Forces under dishonorable conditions; and

(G) has not renounced United States citizenship.

The statement shall be signed by the individual and shall contain the date on which it was signed.

d. Penalties. -- Whoever knowingly falsifies a statement required by subsections b. or c., or knowingly fails to obtain a background check as required by subsection a., shall, upon conviction thereof, be subject to a penalty of not more than \$50,000, imprisonment for not more than five years, or both.

e. Authority to Obtain Official Information. -- Notwithstanding any other law, the Attorney General may secure directly from any Department or agency of the United States such information on an individual proposed to be given access to a facility or materials or safeguards information as described in subsection a. as is necessary to a background check on the individual. A response to a request for a background check under this Act shall be provided by the Attorney General, or the Attorney General's designee, to the NRC no later than 30 days after the

statements described by subsections b. or c. have been submitted to the Attorney General. If the response to the background check is that the individual should not be given access to such a facility or materials or safeguards information and the individual requests the reasons for the determination, the Attorney General shall provide such reasons to the individual, in writing within 5 business days after the date of the request.

f. Definitions. -- As used in this Act,

(1) 'Applicant' means a person who has applied to the Commission for a license or a certificate of compliance.

(2) 'Certificate holder' means a person who has received from the Commission a certificate of compliance with standards established by the Commission.

(3) 'Chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(4) 'Commission' means the United States Nuclear Regulatory Commission.

(5) 'Licensee' means a person licensed to operate a utilization facility under section 103 or 104 b. of the Atomic Energy Act of 1954 or a person licensed to possess or use radioactive material or other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security."

SEC. 4. AUTHORITY TO CARRY FIREARMS AND MAKE ARRESTS

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"k.(1) 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;

(2) authorize-

(A) 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; and

(B) such of those employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors or licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certified holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities -

to carry firearms while in the discharge of their official duties.

(3) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described in paragraph (2)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless of whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161i. of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the concurrence of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described under paragraph (2)(B)(ii) shall not be implemented until such guidelines have become effective.

(4) A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without a warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) 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 -

(A) 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 a licensee or certificate holder of the Commission;

(B) laws applicable to facilitate owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

(C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both.

(5) The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Nuclear Regulatory Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection.”

SEC. 5. FACILITATION OF SECURITY INFORMATION SHARING

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

“, and to establish such procedures as the Commission deems necessary for coordination with the Central Intelligence Agency, the Federal Bureau of Investigation, the Office of Homeland Security or its successor, the Federal Aviation Administration, the National Security Council and other Federal agencies, as appropriate, to identify and respond to an actual or threatened malevolent act concerning any activity regulated by the Commission.”

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

“y. gain access to Federal databases, including the Social Security Administration data set, the National Crime Information Center data sets, the U.S. National Central Bureau of Interpol, the National Instant Criminal Background Check data sets, and the Immigration and Naturalization Service data sets.”

SEC. 6. NUCLEAR FACILITY SECURITY.

Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following:

“SEC. 170C. PROTECTION OF SENSITIVE NUCLEAR FACILITIES

(1) DEFINITIONS. – In this section:

(a) “Design basis threats” means the design basis threats for sensitive nuclear facilities as determined by the Commission under this section;

(b) “Sensitive nuclear facilities” shall include commercial nuclear power plants, category I fuel cycle facilities, and such other facilities as the Commission may determine.

(2) DESIGN BASIS THREATS

(a) EVALUATION -- Not later than 180 days after enactment of this Act, the Commission, in consultation with the Secretary of Defense, the Secretary of Energy, the Director of Central Intelligence, the Director of the FBI, the Attorney General, and the Director of the Office of Homeland Security, and such other Federal agencies, States or local entities as the Commission may deem appropriate, shall complete an evaluation on what should be included in the Commission’s design basis threats for sensitive nuclear facilities. The evaluation should include consideration of –

- (A)(i) air-based threats;
- (ii) water-based threats;
- (iii) vehicle bombs;
- (iv) fires;

- (v) skilled attackers;
- (vi) suicide attacks;
- (vii) assistance in the attacks from reasonably knowledgeable persons employed at the facility;
- (viii) the use of land vehicles, available modern weaponry and explosive devices;

(B) any other threats that the Commission determines should be included as an element of the design basis threats evaluation; and

(C) the appropriate allocation of responsibility for threats for which licensee guard forces should be primarily responsible and threats for which Federal, State and local homeland defense forces should be primarily responsible.

(b) IMPLEMENTATION – Not later than 90 days after completion of the evaluation required by subparagraph (a), the Commission shall revise the design basis threats, by rule or order, as the Commission determines to be appropriate based on the evaluation. If the Commission chooses to implement revised design basis threats by rule, the Commission is authorized to undertake rulemaking in a manner that will fully protect safeguards and classified national security information associated with the design basis threats in the rule, notwithstanding any requirements arising from the Administrative Procedure Act. In revising the design basis threats, the Commission shall also ensure that licensees and certificate holders establish appropriate relationships and communications with Federal, State, and local homeland defense forces.

(3) GUARD FORCE QUALIFICATION AND TRAINING STANDARDS

(a) GENERAL – The Commission, in consultation with other Federal agencies as appropriate, shall prescribe standards governing the qualifications and training of guard force personnel by licensees or certificate holders at those sensitive nuclear facilities that the Commission designates.

(b) QUALIFICATION STANDARDS – Not later than one year after the date of enactment of this section, the Commission shall establish qualification standards that individuals shall be required to meet to be employed as members of guard forces for the sensitive nuclear facilities designated by the Commission. Such qualification standards shall include psychological and medical evaluation, drug and alcohol abuse screening, physical fitness evaluation, tactical weapons training and qualification, and such other training and qualification requirements as the Commission may deem necessary.

(c) GUARD FORCE TRAINING –

(i) GENERAL – The Commission shall require that its licensees and certificate holders provide for the training of each member of the guard force for the sensitive nuclear facilities designated by the Commission to ensure that each member has the knowledge and skills to

provide for the security of the designated facility against the applicable design basis threat.

(ii) TRAINING PLAN – Not later than 60 days after the effective date of the standards issued pursuant to subsection (3)(b), licensees and certificate holders shall develop and submit to the Commission a plan providing for the training of members of the guard force to be implemented at designated sensitive nuclear facilities after approval by the Commission.

(d) REQUIREMENTS FOR CONTINUATION ON GUARD FORCE –

(i) An individual employed as a member of the guard force at those sensitive nuclear facilities designated by the Commission may not continue to be employed in that capacity unless the licensees' or certificate holders' evaluations demonstrate that the individual

(1) meets the qualification standards;

(2) has a satisfactory record of performance; and

(3) has the knowledge and skills necessary to provide for the security of the designated sensitive nuclear facility against the design basis threat.

(ii) The Commission shall require that licensees or certificate holders complete the review of guard force member qualifications required by this paragraph on a schedule established by the Commission.

(e) EXAMINATION – The Commission may, in its discretion, establish requirements for a guard force personnel examination to be developed and administered by the applicable Commission licensee or certificate holder to determine whether individuals meet the qualification standards established under subsection (b) and the training standards established under subsection (c).

(4) SAFEGUARDS AND SECURITY PERFORMANCE EVALUATION

(a) GENERAL – (i) Not later than 90 days after the date of enactment of this subsection, the Commission shall establish a safeguards and security performance evaluation program to assess the ability of designated facilities to carry out their safeguards and security responsibilities.

(ii) The program established pursuant to subparagraph (i) shall include the conduct of exercises to demonstrate the overall security effectiveness of the facility and the ability of the security force to carry out response and contingency plan responsibilities, including the performance of individual skills in assigned security force duties. Such exercises shall include, as appropriate, table top exercises, force-on-force exercises using mock terrorist teams, and simulated responses by local, State, and Federal agencies.

(b) FREQUENCY OF EVALUATIONS – Not less than once every three years after enactment of this subsection, and at least once every three years thereafter, the Commission shall observe and evaluate the conduct of exercises at each facility required to conduct an evaluation under this paragraph. In addition,

the Commission shall require each such facility to conduct such exercises on a periodic schedule established by the Commission, and to provide to the Commission documentation and written evaluation of the performance of such exercises and corrective actions taken. The Commission may deviate from the evaluation frequency for good cause.

(c) CRITERIA – The Commission shall establish appropriate criteria for evaluating the performance of each nuclear facility subject to this paragraph.

(d) CORRECTIVE ACTION – When the performance criteria established by the Commission pursuant to paragraph (c) are not satisfied -

(i) Prompt correction-- the licensee or certificate holder shall promptly correct any defects in performance identified by the Commission in the evaluation.

(ii) Increased frequency of evaluations – The Commission shall conduct an additional evaluation within one year to confirm that the licensee or certificate holder satisfies the performance criteria established under paragraph (c). The Commission may deviate from the remedial evaluation frequency for good cause.

(iii) Enforcement action – Nothing in this section affects the Commission’s existing authority to take enforcement action, including the imposition of civil penalties, as appropriate.”

SEC. 7. SECURITY FOR SENSITIVE RADIOACTIVE MATERIALS

Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding, after Section 170C, the following:

“SEC. 170D. SECURITY FOR SENSITIVE RADIOACTIVE MATERIAL.

(a) DEFINITIONS. -- In this section:

(1) SENSITIVE RADIOACTIVE MATERIAL. --

(A) IN GENERAL. -- The term “sensitive radioactive material” means

(i) source material, byproduct material and special nuclear material as defined in the Atomic Energy Act of 1954, and

(ii) any other radioactive material (regardless of whether the material is or has been licensed or regulated under the Atomic Energy Act of 1954) produced or made radioactive before or after enactment of this section

in such form or quantity or concentration that the Commission determines, pursuant to the evaluation required by subsection (b)(1)(C) should be classified as “sensitive radioactive material” that warrants improved security and protection against loss, theft or sabotage.

(B) EXCLUSION. -- The term “sensitive radioactive material” does not include nuclear fuel or spent nuclear fuel.

(2) SECURITY THREAT. -- The term “security threat” means --

(A) a threat of sabotage or theft of sensitive radioactive material;

(B) a threat of use of sensitive radioactive material in a radiological dispersal device; and

(C) any other threat of terrorist or other criminal activity involving sensitive radioactive material that could harm the health or safety of the public.

as determined by the Commission.

(b) ASSESSMENT OF SENSITIVE RADIOACTIVE MATERIAL SECURITY.

(1) DUTIES. --

(A) GENERAL. -- In consultation with the Secretary of Energy, the Secretary of Transportation, the Attorney General, the Secretary of State, the Director of the Office of Homeland Security or its successor, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Director of the Customs Service, the Administrator of the Environmental Protection Agency and the Director of the Federal Emergency Management Agency, the Commission shall --

(i) evaluate the security of sensitive radioactive materials against security threats consistent with the potential harm; and

(ii) identify administrative and legislative actions to be taken to provide an acceptable level of security .

(B) PARTICIPATION. -- In carrying out paragraph (A), the Commission shall solicit, and give due consideration to, the views of --

(i) appropriate State and local agencies; and

(ii) stakeholders, persons in industry and academia with relevant expertise, and the public.

(C) CONSIDERATIONS. -- (1) In carrying out paragraph (A), the Commission shall consider administrative actions and legislative proposal, as appropriate, to --

(a) develop a classification system for sensitive radioactive material that --

(i) is based on the the extent of the threat to public health and safety posed by malevolent use of sensitive radioactive material; and

(ii) takes into account --

(I) radioactivity levels and decay rates of the radioactive material;

(II) the dispersibility of the radioactive material;

(III) the chemical, physical and material form of the radioactive material; and

(IV) other factors that the Commission determines to be appropriate;

(b) develop a program for life cycle management of sensitive radioactive material including appropriate controls over manufacturing, distribution, use and disposal of sensitive radioactive material.

(c) develop a national system for recovery of sensitive radioactive materials that are lost or stolen, taking into account the classification system established under subparagraph (1); and

(d) develop a national registration and tracking system for sensitive radioactive materials, taking into account the classification system established under subparagraph (1); and

(2) Within two years of the date of enactment of this Act, the Department of Energy shall establish a national system for storage and disposal of sensitive radioactive material that is not in use.

(D) PROCEDURES TO IMPROVE SECURITY. --

The Commission shall establish those procedures it determines to be appropriate to improve the security of sensitive radioactive materials. These actions may include --

(1) periodic audits or inspections by the Commission to ensure that sensitive radioactive materials are properly secured and can be fully accounted for;

(2) evaluation by the Commission of existing vulnerabilities of sensitive radioactive material to theft or sabotage and security measures taken by persons that possess sensitive radioactive material to mitigate these vulnerabilities;

(3) imposition of increased fines for violation of regulations or license or certificate requirements relating to security and safety measures applicable to persons that possess sensitive radioactive material;

(4) conduct of background checks on individuals with access to or who seek access to sensitive radioactive material;

(5) development and implementation of training and qualification requirements for guards and other persons responsible for security of sensitive radioactive material.

(6) measures to ensure the physical security of facilities that contain sensitive radioactive material;

(7) screening of shipments of sensitive radioactive materials that are particularly at risk for sabotage to ensure that the shipments do not contain explosives; and

(8) controls on the import and export of sensitive radioactive material, including material transhipped through the United States.

(E) REPORT. -- Not later than one year after the date of enactment of this section, and not less frequently than once every 5 years thereafter, the Commission shall submit to the President and Congress a report in unclassified form (with a classified annex, if necessary) describing the administrative and legislative actions identified under subparagraph (1)(A)(ii).

(2) ADMINISTRATIVE ACTION. -- Not later than one year after the date of submission of the report under subsection (1)(E), the Commission shall take such actions as the Commission determines to be necessary to revise the system for regulating sensitive radioactive materials, as defined in subsection (a)(1), to adopt those administrative measures identified in the report that the Commission determines to be appropriate; and

(3) AUTHORITY AND RESPONSIBILITY - The programs and requirements for the security and protection of sensitive radioactive material under this section are the exclusive authority of the Nuclear Regulatory Commission to promote the common defense and security. The Commission is authorized to delegate its authority to implement these programs and requirements to those states that enter

into agreements with the Commission to perform inspections or other functions on a cooperative basis as the Commission deems appropriate.

(c) **AUTHORIZATION OF APPROPRIATIONS.** -- There are authorized to be appropriated such sums as are necessary to carry out this section 170D.”

SEC. 8. TRANSPORTATION SECURITY

Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding, after Section 170D, the following:

“SEC. 170E. SECURITY IN TRANSPORT -

For certain large quantity shipments, as determined by the Commission, of source, byproduct, or special nuclear material by rail, water or highway modes, the Commission shall establish requirements by rule or by order related to notification and protection of such shipments that are at least equivalent to the notification and protection provisions established by the United States Department of Transportation for highway route controlled quantity shipments applicable to a shipper or receiver.”

SEC. 9. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by inserting before the period at the end of the first sentence the following: “or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act.”

SEC. 10. SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

“a. Any person who intentionally and willfully destroys or causes physical damage to, or who attempts or conspires to destroy or cause physical damage to -

(1) any production or utilization facility licensed under this Act;

(2) any nuclear waste storage, treatment or disposal facility licensed under this Act;

(3) any nuclear fuel for a utilization facility licensed under this Act, 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 or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility; or

(6) any primary or backup facility from which radiological emergency preparedness alert and warning systems are activated;

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.”

SEC. 11. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE

(1) Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) is amended by adding the following new section:

“Sec. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE

“(a) There is hereby established in the Commission an Office of Nuclear Security and Incident Response under the direction of a Director of Nuclear Security and Incident Response, who shall be appointed by the Commission and who shall serve at the pleasure of and be removable by the Commission.

(b) Subject to the provisions of this Act, the Director of Nuclear Security and Incident Response shall perform such functions as the Commission may delegate, including:

(1) Performance of such security, safeguards, and incident response functions designated by the Commission that relate to (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, (B) property owned or in the possession of a Commission licensee or certificate holder that is of significance to the common defense and security or being transported to or from a facility owned or operated by a Commission licensee or certificate holder, and (C) activities of a Commission licensee or certificate holder that are of significance to the common defense and security;

(2) Monitoring, review, and evaluation of security and safeguards of facilities and materials licensed or certified under the Atomic Energy Act of 1954;

(3) Development of contingency plans for dealing with threats, thefts, and sabotage relating to facilities or materials licensed or certified under the Atomic Energy Act of 1954;

(4) Recommending upgrading of internal accounting systems for special nuclear and other materials licensed or certified under the Atomic Energy Act of 1954;

(5) Developing and recommending Commission standards and amendment of Commission standards for such purposes; and

(6) Such other safeguards, security and incident response functions as the Commission may delegate.

(c) To the extent relevant and feasible, the Director shall consult and coordinate with other NRC offices and other Federal agencies in performing the functions described in subsection (b). Nothing in this section shall be construed to limit in any way the functions of the Department of Energy relating to the safe operation of facilities resulting from activities within the jurisdiction of the Department pursuant to this Act.”

(2) Section 203(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5843(b)(1)) is amended to read as follows:

“(1) Principal licensing, regulation, and safety review involving all facilities and materials licensed under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) associated with the construction and operation of nuclear reactors licensed under that Act, except such safeguards and physical security functions as the Commission shall delegate to the Office of Nuclear Security and Incident Response pursuant to Section 212 of this Act.”

(3) The first clause of section 203(b)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5845(b)(2)) is amended by deleting “and safeguards”.

(4) Section 204(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5845(b)(1)) is amended by deleting “including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials” and inserting “except the provision and maintenance of security and safeguards against threats, thefts, and sabotage of such licensed facilities and materials to the extent that the Commission delegates such security and safeguards functions to the Office of Nuclear Security and Incident Response pursuant to section 212.”

(5) Reorganization Plan No. 1 of 1980 (Public Law 98-614, 5 U.S.C. App.1) is amended--

(a) by adding “(vi) Director of Nuclear Security and Incident Response” at the end of section 1(b)(2).

(b) by amending section 4(c) to delete “and Nuclear Regulatory Research” and insert “Nuclear Regulatory Research, and Nuclear Security and Incident Response”.

Identical letter sent to:

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

The Honorable Bob Smith, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510