

August 27, 2002

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

Dear Mr. Chairman:

I am writing to express the NRC's appreciation for the Committee's interest in enhancing security at the Nation's commercial nuclear facilities, and to provide the Commission's views on S. 1746, the "Nuclear Security Act of 2002", as ordered reported by the Committee.

At the outset, I must emphasize that the NRC shares and fully supports the Committee's objectives and goals of further enhancing security at the Nation's commercial nuclear facilities. For its part, the Commission has been engaged since September 2001 in a comprehensive review of its programs and security of the nuclear facilities and activities it regulates. We have made a number of significant changes to our regulatory programs and have taken decisive action – the issuance of Orders to licensees – to improve security in the interim period while we complete our comprehensive review. We have established a new Office of Nuclear Security and Incident Response to focus and coordinate the agency's efforts and expertise in the security and emergency preparedness areas. In mid-August, we put in place our homeland security advisory system – the NRC Threat Advisory and Protective Measures System – which is a threat advisory system for NRC licensees based on guidance from the Office of Homeland Security.

We expect further significant milestones to be achieved in the coming months. Currently, we are on schedule to complete our review and revision of design basis threats (DBTs) by the first quarter of next year. We will then proceed to revise our safeguards and security requirements, consistent with the modified DBTs, and issue appropriate implementing Orders. We have already initiated a new round of tabletop exercises using expanded threat scenarios for power reactor facilities and "Category I" fuel cycle facilities, and we plan on reinitiating force-on-force exercises based on the expanded threat scenarios next year with a three-year exercise frequency.

In the course of our comprehensive review, we have had the benefit of continuing substantial interaction, consultation and coordination with the Department of Energy (DOE), the Office of Homeland Security (OHS), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), the Department of Transportation (DOT), the Federal Emergency Management Agency (FEMA), and the States. We have aggressively moved forward with DOE to enhance the control of radioactive material to prevent its use in radiological dispersion devices, and we are very significantly involved in a review of controls on radioactive sources initiated by the International Atomic Energy Agency with the same objectives.

The Commission's comprehensive review and its extensive interactions with other agencies and with Committee staff have served to confirm a long-held Commission conclusion - safeguards and security for commercial nuclear facilities and activities would benefit from legislation. Thus, to augment its administrative efforts and to assist the Committee in its consideration of needed legislation, the Commission, on July 22, 2002, provided the Committee with a comprehensive legislative proposal that expands upon earlier NRC security-related proposals and includes provisions that are intended to address what we believe to be the Committee's concerns. Much of the substance of a number of the provisions proposed by the Commission - Section 4, Fingerprinting and Background Checks; Section 5, Office of Nuclear Security and Incident Response; Section 6, Carrying of Weapons by Licensee Employees; Section 7, Sensitive Radioactive Material Security; Section 8, Unauthorized Introduction of Dangerous Weapons; and Section 9, Sabotage of Nuclear Facilities or Fuel - is included in S. 1746 as reported by the Committee. The Commission is most appreciative of the Committee's consideration of the Commission's proposals. At the same time, the Commission has significant concerns with certain other provisions of S. 1746.

The NRC's concerns are both administrative and substantive. A central concern is that S. 1746 does not provide the necessary procedural flexibility to issue many new regulatory requirements and continue to protect sensitive information. By their very nature, safeguards and security matters demand protecting information from disclosure to those who would use the information for terrorist purposes. In turn, those who regulate in the security area must have flexibility in the manner in which they develop and impose security requirements. Many of the new requirements will contain sensitive information that, if made available to the public, could be of use to terrorists. Therefore, we believe it would be inappropriate to spell out in regulations the specifics of many of the new requirements, such as the size of truck bombs to be protected against, the nature of the waterborne threat, or the number of attackers contemplated under the various DBTs. Similarly, it would be inappropriate to specify in regulations the circumstances under which the NRC would request the President to deploy the National Guard, provide for the protection of air space in the vicinity of a sensitive nuclear facility, or deploy the antiterrorism team. Thus, the Commission would urge that S.1746 be revised to provide the Commission with the flexibility to impose requirements either by Order or by regulation, as the Commission determines to be appropriate.

Another major concern involves the S. 1746 provisions on a Task Force on Nuclear Infrastructure and its functions and responsibilities. The Commission believes that the establishment of an interagency Task Force on Nuclear Infrastructure would unnecessarily replicate ongoing Commission efforts to enhance nuclear security. The Commission is currently focusing its efforts on developing revised Design Basis Threats because these decisions will have significant implications for all aspects of the security program. By working closely with the Office of Homeland Security, the Intelligence community, other Federal agencies, and the nuclear industry in a focused manner, the Commission is making substantial progress in developing a new security regime. We are very concerned that our ongoing efforts and, possibly, those of other Federal agencies and departments will be impeded by S. 1746's directive to start anew with a high-level interagency task force. Moreover, the Commission believes that it would be exceedingly difficult, if not impossible, for a task force comprised of so many high-level officials to meet regularly, to gather the pertinent data and analyses and to develop a consensus position on the multitude of complex issues in the time period prescribed in the legislation. We are further concerned that DOE is not listed as a Task Force member

because of DOE's intimate involvement with nuclear matters. The Commission believes that its current approach – an aggressive comprehensive NRC review and revision of security requirements in consultation with appropriate Federal agencies and departments – will be very effective, takes full advantage of NRC's expertise and experience with substantial and valuable input from other expert agencies, and should lead to the resolution of the most important commercial nuclear security issues in a timely fashion without impacting the work of other Federal agencies to improve the security of the Nation's critical infrastructure.

The Commission is further concerned that under S. 1746, almost all of the substantive requirements would be indiscriminately imposed on each "sensitive nuclear facility." The bill which explicitly identifies one class of facility, labeled "sensitive nuclear facilities," which would be subject to all of the requirements in the legislation. Such a broad reach is unnecessary and inappropriate. The Commission recommends that S. 1746 be revised to give the Commission flexibility in determining what classes of facilities, other than power reactors, should be designated as "sensitive" for each particular provision of the legislation. This is not a situation in which a one-size-fits-all approach is appropriate.

The NRC also has substantive concerns with those parts of S.1746 that would require the President to establish, maintain and deploy a Federal nuclear infrastructure antiterrorism team to protect the perimeter of sensitive nuclear facilities. The provisions relating to the team (or teams), its makeup, its functions and responsibilities and its reporting relationships are ambiguous, and we are uncertain as to what is envisioned. Nonetheless, as we understand the intent, we believe that the general concept of regional or national antiterrorist teams that appears to be reflected in S. 1746 has merit. However, we believe that these provisions may unnecessarily duplicate parts of Federal antiterrorism response strategies and processes that are already in place. In addition, we are concerned that the antiterrorism team and response process that S. 1746 would require is limited to the protection of commercial nuclear facilities and thus would not provide Federal protection and support for all of the Nation's critical infrastructure.

Finally, we anticipate that enactment of S. 1746 will require substantial additional appropriations that are not provided in the Energy and Water Development Appropriations Act for FY 2003. We would urge that some or all of the additional appropriations be provided from the general fund and not from the fees that the NRC is required to charge those that it regulates. The NRC is required to recover almost all of its budget through fees. However, in recent years the Congress has been reducing the proportion of the NRC's budget that must be recovered through fees, thus helping to ensure that regulated parties do not pay for programs that, though they contribute to the public health and safety and the common defense and security, do not directly benefit regulated parties. We believe that this more equitable approach should be followed here.

In addition to these overarching concerns, we have some technical suggestions with regard to specific sections of the legislation. At the Committee staff's suggestion, we have attached a line-by-line markup of S. 1746, which reflects the changes the Commission would urge the Committee to make before bringing the bill to the Senate floor. Because there has been no hearing on this legislation, we have not had the opportunity to provide formal Commission input before now.

The Commission is prepared to work with the Congress in drafting effective nuclear security legislation, and we ask that you consider our concerns and our line-by-line markup of S. 1746 as you proceed.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: As stated

cc: Senator Bob Smith

107TH CONGRESS
2^D SESSION

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Mr. REID (for himself, Mrs. CLINTON, Mr. LIEBERMAN, Mr. JEFFORDS, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY (legislative day,), 2002

Reported by Mr. JEFFORDS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

To amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3

4 ~~This Act may be cited as the "Nuclear Security Act~~
5 ~~of 2001".~~

1 ~~(b) AUTHORIZATION OF APPROPRIATIONS.—There~~
2 ~~are authorized to be appropriated such sums as are nec-~~
3 ~~essary to carry out this section.~~

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

8 *Section 11 of the Atomic Energy Act of 1954 (42*
9 *U.S.C. 2014) is amended—*

10 *(1) by redesignating subsection jj. as subsection*
11 *ii.; and*

12 *(2) by adding at the end the following:*

13 *“(jj) HOMELAND SECURITY OFFICER.—The term*
14 *‘Homeland Security Officer’ means a Federal official with*
15 *responsibility for coordinating efforts to maintain home-*
16 *land security against acts of terrorism, and designated by*
17 *the President to perform the duties of the Homeland Secu-*
18 *urity Officer under this Act.*

19 *“(kk) PRIVATE SECURITY FORCE.—The term ‘private*
20 *security force’, with respect to a sensitive nuclear facility, designated by the*
21 *Commission,*
22 *means personnel hired or contracted by the licensee of ~~the~~*
23 *~~sensitive~~ such nuclear facility to provide security at the ~~sensitive~~*
~~nuclear~~ facility.

24 *“(ll) SENSITIVE NUCLEAR FACILITY.—*

1 ~~“(1) IN GENERAL.—The term ‘sensitive nuclear~~
2 ~~facility’ means a facility licensed by the Commission~~
3 ~~(or the portion of a facility used in the conduct of an~~
4 ~~activity licensed by the Commission).—~~

5 ~~“(2) INCLUSIONS.—The term ‘sensitive nuclear~~
6 ~~facility’ includes—~~

7 ~~“(A) an operating commercial nuclear~~
8 ~~power plant; and such other facilities owned or operated by a~~
9 ~~Commission licensee or certificate holder as the Commission~~
10 ~~may determine.~~

11 ~~“(B) an independent spent fuel storage fa-~~
12 ~~cility;~~

13 ~~“(C) a commercial nuclear power plant that~~
14 ~~is being decommissioned or a portion of a de-~~
15 ~~commissioned fThe Reid technical amendment~~
16 ~~used the word “shutdown”. Isn’t that the same as~~
17 ~~“decommissioned”? If not, what does it mean?]~~
18 ~~commercial nuclear power plant that contains~~
19 ~~material licensed by the Commission;~~

20 ~~“(D) a category I fuel cycle facility; and~~

21 ~~“(E) a gaseous diffusion plant.”.~~

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

3 “(a) DEFINITIONS.—In this section:

4 ~~“(1) ANTITERRORISM TEAM.—The term~~
5 ~~‘antiterrorism team’ means the Nuclear Infrastructure~~
6 ~~Antiterrorism Team established under subsection (h).~~

7 “(2) FEDERAL SECURITY COORDINATOR.—The
8 term ‘Federal security coordinator’ means the Federal
9 security coordinator assigned to a sensitive nuclear
10 facility under subsection (k g).

11 ~~“(3) TASK FORCE.—The term ‘task force’ means~~
12 ~~the task force on nuclear infrastructure security estab-~~
13 ~~lished by subsection (b).~~

14 “(4 2) DESIGN BASIS THREATS .—The term
15 ‘design basis threats’ means a the design basis threats
16 identified under subsection (e).

for sensitive nuclear facilities as determined by the Commission under this Section.

17 ~~“(5) THREAT LEVEL.—The term ‘threat level’~~
18 ~~means a threat level determined under subsection (d).~~

“(b) DESIGN BASIS THREATS -

18 ~~“(b) TASK FORCE ON NUCLEAR INFRASTRUCTURE SE-~~

19 ~~“(1) EVALUATION - Not later than 180 days~~
20 ~~CURITY.—~~

21 ~~“(1) ESTABLISHMENT.—There is established a~~
22 ~~after enactment of this Act, the Commission,~~
23 ~~task force on nuclear infrastructure security.~~

24 ~~“(2) MEMBERSHIP.—The task force shall be com-~~
25 ~~prised of—~~

“(A) the chairman of the Commission, who

25 ~~shall serve as chairperson of the task force;~~
in consultation with
26 ~~“(B) the Secretary of Defense;~~

1 ~~“(C) the Secretary of Transportation;~~
Energy, the Director of the Federal Bureau of Investigation,

2 ~~“(D) the Administrator of the Environ-~~
3 ~~mental Protection Agency;~~

4 ~~“(E) the Attorney General; ,~~

5 ~~“(F) the Secretary of State;~~

6 ~~“(G) the Director of the Central Intelligence~~
7 ~~Agency; ,~~

8 ~~“(H) the Secretary of Health and Human~~
9 ~~Services;~~

10 ~~“(I) the Director of the Federal Emergency~~
11 ~~Management Agency; and~~

12 ~~“(J) the Homeland Security Officer; 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

13 ~~“(3) DUTIES.—~~

14 ~~“(A) IN GENERAL.—The task force, in con-~~
15 ~~sultation with other Federal, State, and local~~
16 ~~agencies, stakeholders, and members of the pub-~~
17 ~~lic, as appropriate, shall examine the protection~~
18 ~~of sensitive nuclear facilities from potential ter-~~
19 ~~rorist threats.~~

20 ~~“(B) SECURITY REVIEW.—~~

21 ~~“(i) IN GENERAL.—The task force shall~~
22 ~~examine—~~

23 ~~“(I) the classification of threats~~
as—

1 ~~“(aa) an act by an enemy of~~
2 ~~the United States (whether a for-~~
3 ~~ign government or other person,~~
4 ~~or otherwise falling under the re-~~
5 ~~sponsibilities of the Federal Gov-~~
6 ~~ernment); or~~

7 ~~“(bb) an act involving a type~~
8 ~~of risk that the licensees of the~~
9 ~~Commission should be responsible~~
10 ~~for guarding against;~~

11 ~~“(H) coordination of Federal,~~
12 ~~State, and local security efforts for~~
13 ~~protection of land, water, and ground~~
14 ~~access to sensitive nuclear facilities in~~
15 ~~the event of a terrorist attack or at-~~
16 ~~tempted terrorist attack;~~

17 ~~“(III) the adequacy of existing~~
18 ~~emergency planning zones to protect~~
19 ~~the public health and safety in the~~
20 ~~event of a terrorist attack against a~~
21 ~~sensitive nuclear facility;~~

22 ~~“(IV) the adequacy and coordina-~~
23 ~~tion of Federal, State, and local emer-~~
24 ~~gency planning, evacuation, and other~~
25 ~~public safety measures in the event of~~

1 ~~a terrorist attack against a sensitive~~
2 ~~nuclear facility, to protect the public~~
3 ~~health and safety;~~

4 ~~“(V) the threats that sensitive nu-~~
5 ~~clear facilities must protect against to~~
6 ~~prevent acts of radiological sabotage~~
7 ~~and theft of special nuclear material;~~

8 ~~“(VI) the system of threat levels,~~
9 ~~consistent with the Homeland Security~~
10 ~~Advisory System, used to categorize the~~
11 ~~threats against a sensitive nuclear fa-~~
12 ~~cility, including—~~

13 ~~“(aa) procedures to ensure~~
14 ~~coordinated Federal, State, and~~
15 ~~local responses to changing threat~~
16 ~~levels for sensitive nuclear facili-~~
17 ~~ties;~~

18 ~~“(bb) monitoring of threats~~
19 ~~against sensitive nuclear facilities;~~
20 ~~and~~

21 ~~“(cc) procedures to notify li-~~
22 ~~censees of a sensitive nuclear facil-~~
23 ~~ity of changes in threat levels;~~

1 ~~“(VII) the development, imple-~~
2 ~~mentation, and revision of security~~
3 ~~plans for sensitive nuclear facilities;~~
4 ~~“(VIII) the establishment of the~~
5 ~~antiterrorism team under subsection~~
6 ~~(h);~~
7 ~~“(IX) the hiring and training~~
8 ~~standards for members of private secu-~~
9 ~~rity forces at sensitive nuclear facili-~~
10 ~~ties, in accordance with subsection (i);~~
11 ~~“(X) the coordination of Federal~~
12 ~~resources to expedite and improve the~~
13 ~~process of performing background~~
14 ~~checks on employees with access to sen-~~
15 ~~sitive nuclear facilities; and~~
16 ~~“(XI) the creation of a program to~~
17 ~~provide technical assistance and train-~~
18 ~~ing for the national guard, State law~~
19 ~~enforcement agencies, and local law en-~~
20 ~~forcement agencies to respond, as ap-~~
21 ~~propriate, to threats against a sensitive~~
22 ~~nuclear facility, including rec-~~
23 ~~ommendations for the establishment of~~
24 ~~a grant program for State and local~~
25 ~~governments to carry out any rec-~~

1 ~~ommended requirements under this sec-~~
2 ~~tion.~~
3 ~~“(ii) THREATS.—The threats to be ex-~~
4 ~~amined include—~~
5 ~~“(I) threats comparable to the~~
6 ~~events of September 11, 2001;~~
7 ~~“(HA) (i) cyber or biochemical threats;~~
8 ~~“(HH ii) attacks on a sensitive nu-~~
9 ~~clear facility by multiple coordinated~~
10 ~~teams of a large number of individuals;~~
11 ~~“(HV iii) assistance in the attacks from several~~
12 ~~reasonably knowledgeable persons~~
13 ~~employed at the sensitive nuclear facil-~~
14 ~~ity, some of whom may have sophisti-~~
15 ~~cated knowledge of the operations of the~~
16 ~~sensitive nuclear facility;~~
17 ~~“(V iv) attacks from individuals~~
18 ~~willing to commit suicide to carry out~~
19 ~~the attacks;~~
20 ~~“(VI v) water-based attacks; (vi) and air-based~~
21 ~~attacks;~~
22 ~~“(VII vii) attacks using land vehicles, explosive de-~~
23 ~~vices of considerable size and available modern~~
24 ~~weaponry;~~
25 ~~“(VIII viii) vehicle bombs; especially fire of long;~~
~~(ix) fires,~~
~~duration; and~~
~~“(B) any other threat that the Commission determines~~

should be included as an element of the design basis threats evaluation, and

1 ~~“(IX) any combination of those~~
2 ~~threats.~~

~~“(C) the appropriate allocation of responsibility for threats for which private security forces should be primarily responsible and threats for which Federal, State and local homeland defense forces should be primarily responsible.”~~

3 ~~“(4) REPORT.—~~

4 ~~“(A) IN GENERAL.—Not later than 120~~
5 ~~days after the date of enactment of this section,~~
6 ~~the task force shall submit to the President and~~
7 ~~Congress, in classified form and unclassified~~
8 ~~form, a report with recommendations and find-~~
9 ~~ings.~~

~~“(2) IMPLEMENTATION - Not later than 180 days after completion of the evaluation required by subparagraph (1), the Commission shall revise the design basis threats as the Commission determines to be appropriate based on the evaluation. If the Commission chooses to implement revised design basis threats by rule,~~

10 ~~“(B) REVISION.—The task force shall revise~~
11 ~~the recommendations periodically, but not less~~
12 ~~than once every 3 years.~~

13 ~~“(c) THREATS TO SENSITIVE NUCLEAR FACILITIES.—~~

14 ~~“(1) IN GENERAL.—Not later than 150 days~~
15 ~~after the task force submits the report under sub-~~
16 ~~section (b)(4), the Commission shall promulgate regu-~~
17 ~~lations, based on and consistent with the findings and~~
18 ~~recommendations of the task force, identifying the~~
19 ~~threats that sensitive nuclear facilities must protect~~
20 ~~against to prevent acts of radiological sabotage and~~
21 ~~the theft of special nuclear material at sensitive nu-~~

22 ~~clear facilities.~~

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29

S.L.C.

23 ~~“(2) PROTECTION OF SENSITIVE f safeguards?”~~

24 ~~INFORMATION.—In promulgating regulations under~~

25 ~~this subsection, the Commission shall ensure protec-~~

1 tion of sensitive ~~†safeguards‡~~ information in ac-
2 cordance with section 147, ~~†While section 147 has the~~ and the Commission is
3 authorized to undertake rulemaking in a manner that will fully protect safeguards
4 and classified national security information associated with the design basis threat
5 in the rule, notwithstanding any requirements arising from the Administrative
6 Procedure Act. In revising the design basis threats, the Commission shall also
7 ensure that licenses establish appropriate relationships and communication with
8 Federal, State and local homeland defense forces.
9 ~~heading “Safeguards Information” and the term is~~
10 ~~used in that section and sections 149, 181, and 313,~~
11 ~~there is nothing in the Act to indicate what the term~~
12 ~~means.‡~~
13 ~~“(d) THREAT LEVELS.—Not later than 150 days after~~
14 ~~the task force submits the report under subsection (b)(4),~~
15 ~~the Commission shall promulgate regulations, based on and~~
16 ~~consistent with the findings and recommendations of the~~
17 ~~task force, establishing a system for the determination of~~
18 ~~multiple threat levels to describe the threat conditions at~~
19 ~~sensitive nuclear facilities.~~
20 “(e c) SECURITY PLANS.—
21 “(1) IN GENERAL.—Not later than 1 year after
22 the date on which the Commission establishes the design basis
23 threats under subsection (e b), the Commission shall ~~re~~ require the licensees for
24 designated nuclear facilities to revise their
25 view, based on and consistent with the findings and
26 recommendations of the task force, the security plans
27 for each sensitive nuclear facility to ensure that each designated

- 21 ~~sensitive nuclear~~ facility protects against those
- 22 appropriate design basis threats. The Commission shall review
the revised security plans on a schedule established in
accordance with subparagraph(3).
- 23 “(2) ASPECTS OF REVIEW.—The Commission
- 24 shall ensure that the security plan provides for—

- 1 “(A) the deployment and capabilities of the
2 private security force at the sensitive designated nuclear fa-
3 cility for the appropriate design basis each threats level;
- 4 “(B) coordination between the licensee private secu-
5 rity force and the antiterrorism team for the sen-
6 sitive designated nuclear facility and Federal, State and local
7 authorities, as appropriate for each
8 threat level;
- 9 “(C) secure operation of vital equipment,
10 such as control room equipment and backup
11 warning systems needed to maintain the facility
12 in a safe condition;
- 13 “(D) access restrictions;
- 14 “(E) security cameras, fire protection bar-
15 riers, and other physical security measures;
- 16 “(F) protection of spent fuel, including op-
17 tions such as placement of spent fuel in dry cask
18 storage; and
- 19 “(G) background security checks for employ-
20 ees and prospective employees; and
- 21 ~~“(H) coordination among licensees of sen-
22 sitive nuclear facilities and appropriate Federal,
23 state, and local emergency response personnel.~~
- 24 “(3) SCHEDULE.—The Commission shall estab-
25 lish a priority schedule for conducting reviews of se-
26 curity plans based on the vulnerability of each sen- designated

1 ~~sitive nuclear facility and the proximity of the sen-~~
2 ~~sitive nuclear such facility to large population areas.~~

3 ~~“(4) FINDINGS.—~~

4 ~~“(A) IN GENERAL.—Not later than 30 days~~
5 ~~after the review of each emergency response plan,~~
6 ~~the Commission shall submit to Congress and the~~
7 ~~licensee of each sensitive nuclear facility rec-~~
8 ~~ommendations, findings, and a schedule for im-~~
9 ~~plementation of changes to security that shall be~~
10 ~~made not later than 18 months after completion~~
11 ~~of the review of the security plan.—~~

12 ~~“(B) FORM.—The report submitted to Con-~~
13 ~~gress under subparagraph (A) shall be submitted~~
14 ~~in classified and unclassified form.—~~

15 ~~“(5) UPGRADES TO SECURITY PLAN.—Not later~~
16 ~~than 30 days after the review of each security plan,~~
17 ~~the Commission shall ensure that the licensee of each~~
18 ~~sensitive nuclear facility revises, as necessary, its se-~~
19 ~~curity plan consistent with the findings under para-~~
20 ~~graph (4).~~

21 ~~“(6 4) UPGRADES TO SECURITY.—The Commission~~
22 ~~shall ensure that the licensee of each sensitive designated nuclear~~
23 ~~facility makes any changes to security and its required by the~~
24 ~~security plan required from according to the Commission review~~
~~on a schedule: established by the Commission.~~

~~“(5) REPORT - Not later than 2 years after enactment of this Act,~~
~~and annually thereafter, the Commission shall submit to Congress, in~~
~~classified form or unclassified form as appropriate, a report on the state of~~
~~security for sensitive nuclear facilities regulated by the Commission.~~

25 ~~“(f)d) EMERGENCY RESPONSE PLANS.—~~

1 “(1) IN GENERAL.—Not later than ~~150 days~~ 2 years
2 after enactment of this Act, ~~the task force submits the report under sub-~~
3 ~~section (b)(4)~~, the Commission, in consultation with the Director of the Federal
4 Emergency Management Agency and such other federal agencies, State or local
5 entities as the Commission may deem appropriate, shall review, ~~based on~~
6 ~~and consistent with the findings and recommenda-~~
7 ~~tions of the task force~~, the emergency response plans
8 for each sensitive designated nuclear facility to ensure that each
9 emergency response plan provides protection for per-
10 sons living in the emergency response planning zones
11 required under the Commission’s regulations. The Commission shall conduct the
12 reviews on a schedule established in accordance with subparagraph (3).

13 “(2) ASPECTS OF REVIEW.—The Commission
14 shall ensure that each emergency response plan pro-
15 vides for—

16 “(A) the protection of public health and
17 safety, including the ability to implement protec-
18 tive measures;

19 “(B) clear definition and assignment of re-
20 sponsibilities of emergency response personnel;

21 “(C) notification procedures;

22 “(D) communication and coordination
23 among emergency response personnel;

24 “(E) dissemination of information to the
25 public, including both pre-emergency and post-
26 emergency education;

27 “(F) adequate emergency facilities and
28 equipment at and around the sensitive designated nuclear
29 facility;

1 “(G) the use of methods, systems, and equip-
2 ment for assessing and monitoring actual or po-
3 tential impacts of a radiological emergency;

4 “(H) ~~appropriate evacuation and sheltering~~
5 ~~and the prophylactic use of potassium iodide;~~ a range of protective actions for the
6 public

7 “(I) means for controlling radiological expo-
8 sures for emergency workers;

9 “(J) appropriate medical services for contaminated injured individuals;

10 “(K) general plans for recovery and reentry; and

11 “(L) radiological emergency response train-
12 ing.

13 “(3) SCHEDULE.—The Commission shall estab-
14 lish a priority schedule for conducting reviews of
15 emergency response plans for sensitive designated nuclear facili-
16 ties based on the relative degrees of vulnerability of
17 sensitive nuclear such facilities and the proximity of sen-
18 sitive nuclear such facilities to large population areas.

19 ~~“(4) FINDINGS.—~~

20 ~~“(A) IN GENERAL.—Not later than 30 days~~
21 ~~after the review of each emergency response plan,~~
22 ~~the Commission shall submit to Congress and the~~
23 ~~licensee of each sensitive nuclear facility rec-~~
24 ~~ommendations and findings. [Should this be~~
 ~~changed to read like subsection (c)(4)(A)?]~~

1 ~~“(B) FORM.—The report submitted to Con-~~
2 ~~gress under subparagraph (A) shall be submitted~~
3 ~~in classified and unclassified form.~~

4 “(54) UPGRADES TO EMERGENCY RESPONSE
5 PLAN.—~~Not later than 30 days after completion of the~~
6 ~~review of each emergency response plan, t~~The Commis-
7 sion shall ensure that the licensee of each sensitive designated nu-
8 clear facility revises, as necessary, the emergency re-
9 sponse plan for the sensitive nuclear facility con-
10 sistent with the findings under paragraph (4). Commission’s review on a
schedule established by the Commission.

“(5) REPORT - Not later than 3 years after enactment of this Act,
and annually thereafter, the Commission shall submit to Congress, in
classified form or unclassified form as appropriate, a report on the
state of emergency preparedness for designated nuclear facilities regulated
by the Commission.

11 ~~“(g) FEDERAL COORDINATION.—Not later than 90-~~
12 ~~days after the task force submits the report under subsection~~
13 ~~(b)(4), the Commission shall promulgate regulations, based~~
14 ~~on and consistent with the findings and recommendations~~
15 ~~of the task force, establishing the circumstances under which~~
16 ~~the Commission shall request the President to—~~

17 ~~“(1) deploy the Coast Guard to a sensitive nu-~~
18 ~~clear facility;~~

19 ~~“(2) provide for the protection of air space in the~~
20 ~~vicinity of a sensitive nuclear facility; or~~

21 ~~“(3) deploy the antiterrorism team.~~

22 ~~“(h) NUCLEAR INFRASTRUCTURE ANTITERRORISM~~
23 ~~TEAM.—~~

24 ~~“(1) ESTABLISHMENT.—Not later than 1 year~~
25 ~~after the task force submits the report under sub-~~

1 ~~section (b)(4), the President shall establish, based on~~
2 ~~and consistent with the findings and recommenda-~~
3 ~~tions of the task force, the Nuclear Infrastructure~~
4 ~~Antiterrorism Team.~~

5 ~~“(2) PURPOSE.—The purpose of the~~
6 ~~antiterrorism team shall be to provide protection for~~
7 ~~the perimeter of sensitive nuclear facilities against the~~
8 ~~threats identified under subsection (c), in coordina-~~
9 ~~tion with other Federal, State, local, and private enti-~~
10 ~~ties, as appropriate, consistent with the security plan~~
11 ~~for each sensitive nuclear facility.~~

12 ~~“(ie) TRAINING PROGRAM.—~~

13 ~~“(1) IN GENERAL.—Not later than 180 days 1 year~~
14 ~~after the task force submits the report under sub-~~
15 ~~section (b)(4)(B), enactment of this Act, the President shall may establish. based~~
16 ~~on and consistent with findings and recommendations~~
17 ~~of the task force, a program to provide technical as-~~
18 ~~sistance and training for the National Guard and~~
19 ~~State and local law enforcement agencies in respond-~~
20 ~~ing to threats against a sensitive nuclear facility.~~

21 ~~“(2) GRANTS.—The President may provide~~
22 ~~grants, consistent with the findings and recommenda-~~
23 ~~tions of the task force, to State and local governments~~
24 ~~to assist in carrying out this section.~~

1 “(3) AUTHORIZATION OF APPROPRIATIONS.—

2 *There are authorized to be appropriated such sums as*
3 *are necessary to carry out this subsection.*

4 “~~(f)~~ (f) EMPLOYEE SECURITY.—

5 “(1) REVIEW.—Not later than ~~90~~ 180 days after ~~the~~
6 enactment of this Act, ~~task force submits the report under subsection (b)(4),~~
7 the Commission, ~~taking into consideration rec-~~
8 ~~ommendations of the task force,~~ shall review and up-
9 date ~~as appropriate the access~~ ~~the hiring~~ and training standards for employees
10 who would be given unescorted access to ~~of a sensitive~~ designated nuclear facilities
and employees who would be given access to safeguards information.

11 “(2) DISQUALIFICATION OF INDIVIDUALS THAT

12 PRESENT NATIONAL SECURITY RISKS.—The Commis-
13 sion, ~~based on and consistent with the findings and~~
14 ~~recommendations of the task force,~~ shall establish
15 qualifications and procedures, in addition to any
16 background check conducted under section 149, ~~to be applied by licensees to en-~~
17 sure that no individual that presents a threat to na-
18 tional security is ~~employed~~ given access to safeguards information or is given
unescorted access to ~~at~~ a sensitive nuclear fa-
19 cility.

20 “~~(h)~~ (g) FEDERAL SECURITY COORDINATORS.—

21 “(1) IN GENERAL.—Not later than 120 days
22 after the task force submits the report under sub-
23 section (b)(4), the Commission, ~~based on and con-~~
24 sistent with findings and recommendations of the task

1 ~~force, shall promulgate regulations for the hiring and~~
2 ~~training of Federal security coordinators.~~

3 ~~“(2)~~ (1) ASSIGNMENT OF FEDERAL SECURITY COOR-
4 DINATORS.—Not later than ~~60~~ 180 days after the ~~Commis-~~
5 ~~sion promulgates regulations under paragraph (1); enactment of this Act,~~
6 the Commission shall assign a Federal security coor-
7 dinator, under the employment of the Commission, at
8 each sensitive nuclear facility that the Commission designates. The Commission
may assign Federal Security coordinator responsibilities and Functions to resident
inspectors at sensitive nuclear facilities.

9 ~~“(3)~~ (2) RESPONSIBILITIES.—The Federal security
10 coordinator shall be responsible for—

11 “(A) communicating with the Commission
12 and other Federal, State, and local authorities
13 concerning threats, including threats against the
14 sensitive designated nuclear facility;

15 “(B) ensuring that the sensitive designated nuclear fa-
16 cility maintains security consistent with the se-
17 curity plan in accordance with the appropriate
18 threat level; and

19 “(C) ~~ensuring full and active~~ assisting in the coordination and
communication

20 ~~of on security matters measures~~ among—

21 “(i) the ~~private security force at~~ licensee for the
22 sensitive designated nuclear facility; and

23 “(ii) the ~~antiterrorism team; and~~

24 ~~“(iii) other~~ Federal, State, and local
25 authorities, as appropriate.

1 “(C) a person that is otherwise permitted—
2 “(i) to operate a utilization facility
3 under section 103 or 104b.; or
4 “(ii) to possess, use or transport—
5 ~~“(I) radioactive material; or~~
6 ~~“(II) other property regulated by~~
7 the Commission and determined by the
8 Commission to be of significance to the
9 public health and safety or the common
10 defense and security.

11 “(3) REPETITION OF FINGERPRINTING.—
12 Fingerprinting shall be repeated for each individual
13 described in paragraph (1) at least once every 5
14 years.

15 “(4) SUBMISSION OF FINGERPRINTS—
16 “(A) IN GENERAL.—A licensee, certificate
17 holder, or applicant shall submit to the Attorney
18 General of the United States through the Commission, all finger-
19 prints obtained under paragraph (2)—

20 “(i) for identification and comparison
21 against all categories of individuals ~~whose~~ covered
22 ~~fingerprints appear in—~~

23 “(I) the National Crime Informa-
24 tion Center data sets;

1 licensee, certificate holder, or applicant sub-
2 mitting the fingerprints the results of an
3 identification, comparison and records check review under this
4 paragraph.

(iii) Information developed through the identification, comparison and records review conducted under this paragraph that involves safeguards information or classified national security information shall be conveyed to the Commission and to the licensee, certificate holder or applicant in accordance with standard procedures and requirements for handling such information.

5 “b. RELIEF FROM OBLIGATIONS.—

6 “(1) IN GENERAL.—The Commission may, by
7 regulation, relieve any person from the obligations
8 imposed by this section, under terms and conditions
9 and for periods of time specified by the Commission,
10 if the Commission determines that the provision of re-
11 lief is consistent with the responsibilities of the
12 Commission—

13 “(A) to promote the common defense and se-
14 curity; and

15 “(B) to protect the health and safety of the
16 public.

17 “(2) REQUIREMENTS OF ANOTHER AGENCY.—A
18 person that is subject to the fingerprinting require-
19 ments of another agency of the United States shall not
20 be subject to the obligations imposed by this section,
21 if the Commission determines that those
22 fingerprinting requirements afford security protection
23 similar to that resulting from the application of this
24 section.”; and

1 (2) in subsection c. (2), by striking subparagraph
2 (B) and inserting the following:

3 “(B) to ensure that the information is used
4 solely for the purpose of determining whether an
5 individual shall be permitted access to a facility
6 or radioactive material or property of a licensee,
7 certificate holder, or applicant, or shall be per-
8 mitted access to safeguards information under
9 section 147;”.

10 (b) ACCESS TO NUCLEAR FACILITIES.—Chapter 12 of
11 the Atomic Energy Act of 1954 (42 U.S.C. 2161 et seq.)
12 is amended by adding at the end the following:

15 “(a) DEFINITIONS.—In this section:

16 “(1) APPLICANT.—The term ‘applicant’ means a
17 person that has applied to the Commission for a li-
18 cense or a certificate of compliance.

 “(2) BACKGROUND CHECK—The term ‘background check’
 means actions undertaken to confirm the identity of an individual,
 comparison of data submitted on an individual with data on record
 regarding that individual, and reviews of criminal history records of any
 individual for which a request has been made.”

19 “~~(2)~~ (3) CERTIFICATE HOLDER.—The term ‘certifi-
20 cate holder’ means a person that has received from the
21 Commission a certificate of compliance with stand-
22 ards established by the Commission.

23 “~~(3)~~ (4) CHIEF LAW ENFORCEMENT OFFICER.—The
24 term ‘chief law enforcement officer’ means a chief of
25 police, sheriff, or equivalent officer.

1 “~~(4)~~ (5) COMMISSION.—The term ‘Commission’
2 means the United States Nuclear Regulatory Commission.

3 “~~(5)~~ (6) LICENSEE.—The term ‘licensee’ means a
4 person that is—

5 “(A) licensed to operate a utilization facil-
6 ity under section 103 or 104b.; or

7 “(B) licensed to possess or use radioactive
8 material or other property regulated by the Com-
9 mission and determined by the Commission to be
10 of significance to the public health and safety or
11 the common defense and security.

12 “(b) SUBMISSION OF INFORMATION.—

13 “(1) IN GENERAL.—Not later than 60 days after
14 the date of enactment of this section, the Commission
15 shall require each person that is—

16 “(A) licensed or certified by the Commis-
17 sion;

18 “(B) an applicant for a license or certifi-
19 cate; and

20 “(C) otherwise permitted—

21 “(i) to operate a utilization facility
22 under section 103 or 104b.; or

23 “(ii) to possess, use, or transport ra-
24 dioactive material or other property regu-
25 lated by the Commission that the Commis-

1 *sion determines to be of significance to the*
 2 *public health and safety or the common de-*
 3 *fense and security;*

4 *to submit to the Commission the statements described*
 5 *in subsections (c) and (d) with respect to each person*
 6 *described in paragraph (2).*

7 *“(2) PERSONS WITH RESPECT TO WHOM INFOR-*
 8 *MATION IS REQUIRED.—Information shall be sub-*
 9 *mitted under paragraph (1) with respect to—*

10 *“(A) each current officer or employee of the*
 11 *licensee, certificate holder, or applicant (includ-*
 12 *ing an employee of a contractor of the licensee,*
 13 *certificate holder, or applicant); and*

14 *“(B) any other individual (except an em-*
 15 *ployee of the Commission) that—*

16 *“(i) is proposed to have access to—*

17 *“(⊕) the facility, or to*

18 *“(⊕) radioactive material or*

19 *“(⊕) other property regulated by*

20 *the Commission that the Commission*

21 *determines to be of significance to the*

22 *public health and safety or the common*

23 *defense and security;*

24 *within the such 60-day period †To what does*

25 *this time period relate?‡ without being ac-*

1 *accompanied by an employee of the licensee,*
2 *certificate holder, or applicant for a license*
3 *or certificate that has been the subject of the*
4 *background check described in paragraph*
5 *(4); or*

6 *“(ii) is proposed to be provided access*
7 *to safeguards information under section*
8 *147.*

9 *“(3) PROVISION OF ACCESS.—*

10 *“(A) IN GENERAL.—Not later than 60 days*
11 *after the date of enactment of this section, a li-*
12 *cence, certificate holder, or applicant for a li-*
13 *cence or certificate shall take such actions as are*
14 *necessary to ensure that—*

15 *“(i) no individual that is not accom-*
16 *panied by an employee of the licensee, cer-*
17 *tificate holder, or applicant for a license or*
18 *certificate that has been the subject of a*
19 *background check under section 149 and*
20 *section 170C is allowed access to—*

21 *“(I) any facility operated pursu-*
22 *ant to section 103 or 104b.; or*

23 *“(II) radioactive material or*

24 *“(HH) other property regulated by*
25 *the Commission that the Commission*

1 *determines to be of significance to the*
2 *public health and safety or the common*
3 *defense and security; or*
4 *“(ii) no access to safeguards informa-*
5 *tion is allowed to any individual under sec-*
6 *tion 147, unless—*
7 *“(I) the individual has been the*
8 *subject of a background check under*
9 *section 149a. and section 170C; and*
10 *“(II) a response to the request for*
11 *the background check has been ~~received~~ provided*
12 *that to the Commission. ~~determines to be~~*
13 *satisfactory.*
14 *“(B) EXCEPTION.—The prohibition of ac-*
15 *cess under subparagraph (A) does not apply to*
16 *employees of the Commission.*
17 *“(4) SUBMISSION TO THE ATTORNEY GEN-*
18 *ERAL.—The Commission shall submit the statements*
19 *required by paragraph ~~(2)~~ (1) in addition to a complete and legible fingerprint card*
20 *to the Attorney General for*
21 *the purpose of initiating a background check under—*
22 *“(A) the National Crime Information Cen-*
23 *ter;*
24 *“(B) the United States National Central*
Bureau of Interpol;

1 “(C) the National Instant Criminal Back-
2 ground Check system; and

3 “(D) the Immigration and Naturalization
4 Service data sets.

5 “(5) TIME REQUIREMENT.—Background checks
6 and access authorization reviews ~~required by this sec-~~
7 ~~tion~~ shall be conducted at least once every 5 years for
8 each individual for whom a background check is re-
9 quired.

10 “(c) STATEMENT BY A LICENSEE, CERTIFICATE HOLD-
11 ER, OR APPLICANT.—For each individual for whom a li-
12 censee, certificate holder, or applicant is required to submit
13 background check statements under subsection (b), the li-
14 censee, certificate holder, or applicant shall submit to the
15 Commission—

16 “(A) a statement that the licensee, certifi-
17 cate holder, or applicant has verified the identity
18 of the individual by examining identification
19 documents presented by the individual; and

20 “(B) a statement that the licensee, certifi-
21 cate holder, or applicant—

22 “(i) has furnished, to the chief law en-
23 forcement officer of the place of residence of
24 the individual, the statement required by
25 ~~†~~subsection (d)~~‡~~; and

1 “(ii) the individual requests the rea-
2 sons for the determination.

3 “(B) *PROCEDURE.*—The licensee, certificate holder or
4 applicant *Attorney General*

5 shall provide the individual the reasons under
6 paragraph (A)—

7 “(i) in writing; and

8 “(ii) not later than 5 business days
9 after the date of the request.

10 “(f) *CRIMINAL PENALTY.*— A person that knowingly
11 falsifies a statement required by subsection (c) or (d), or
12 knowingly fails to obtain a background check as required
13 by subsection (b), shall be imprisoned not more than 5
14 years, fined not more than \$50,000, or both.

16 (a) *IN GENERAL.*—Title II of the Energy Reorganiza-
17 tion Act of 1974 (42 U.S.C. 5841 et seq.) is amended by
18 adding at the end the following:

21 “(a) *DEFINITIONS.*—In this section:

22 “(1) *ANTITERRORISM TEAM.*—The term
23 ~~‘antiterrorism team’ has the meaning given the term~~
24 ~~in section 170C(a) of the Atomic Energy Act of 1954.~~

1 ~~“(2) ASSISTANT DIRECTOR.—The term ‘Assistant~~
2 ~~Director’ means the Assistant Director for Security~~
3 ~~Response.~~

4 “(3) (1) DIRECTOR.—The term ‘Director’ means the
5 Director of Nuclear Security and Incident Response
6 appointed under subsection (c).

7 ~~“(4) MOCK TERRORIST TEAM.—The term ‘mock~~
8 ~~terrorist team’ means the mock terrorist team de-~~
9 ~~scribed in subsection (d)(3).~~

10 ~~“(5) (2) OFFICE.—The term ‘Office’ means the Office~~
11 ~~of Nuclear Security and Incident Response established~~
12 ~~by subsection (b).~~

13 ~~“(6) (3) SENSITIVE NUCLEAR FACILITY.—The term~~
14 ~~‘sensitive nuclear facility’ has the meaning given the~~
15 ~~term in section 11 of the Atomic Energy Act of 1954~~
16 ~~(42 U.S.C. 2014).~~

17 ~~“(7) THREAT.—The term ‘threat’ has the mean-~~
18 ~~ing given the term in section 170C(a) of the Atomic~~
19 ~~Energy Act of 1954.~~

20 ~~“(8) UNIT.—The term ‘Unit’ means the Security~~
21 ~~Response Unit established under subsection (d)(1).~~

22 “(b) ESTABLISHMENT OF OFFICE.—There is estab-
23 lished in the Commission the Office of Nuclear Security and
24 Incident Response.

25 “(c) DIRECTOR.—

1 “(1) APPOINTMENT.—The Commission may ap-
2 point and terminate a Director of Nuclear Security
3 and Incident Response to head the Office.

4 “(2) DUTIES.—The Director shall perform ~~any~~ such functions
5 as
6 ~~duties delegated by the Commission in its discretion delegates~~ to the
7 Director. Such
8 ~~including~~ functions may include -

9 “(A) carrying out security, safeguards, and
10 incident responses relating to—

11 “(i) any facility owned or operated by
12 a Commission licensee or certificate holder;

13 “(ii) any property owned or in the
14 possession of a Commission licensee or cer-
15 tificate holder that—

16 “(I) is significant to the common
17 defense and security; or

18 “(II) is being transported to or
19 from a facility described in clause (i);
20 and

21 “(iii) ~~performing~~ any other activity of
22 a Commission licensee or certificate holder
23 that is significant to the common defense
24 and security;

25 “(B) for a facility or material licensed or
26 certified under the Atomic Energy Act of 1954

(42 U.S.C. 2011 et seq.)—

1 ~~“(2) HEAD OF UNIT.—The Unit shall be headed~~
2 ~~by an Assistant Director for Security Response.~~
3 ~~“(3) MOCK TERRORIST TEAM.—The personnel of~~
4 ~~the Unit shall include a mock terrorist team com-~~
5 ~~prised of—~~
6 ~~“(A) a number of individuals, consistent~~
7 ~~with the threat, who have advanced knowledge of~~
8 ~~special weapons and tactics comparable to spe-~~
9 ~~cial operations forces of the Armed Forces;~~
10 ~~“(B) nuclear engineers, as appropriate;~~
11 ~~“(C) individuals with knowledge of the op-~~
12 ~~erations of the sensitive nuclear facility who are~~
13 ~~capable of actively disrupting the normal oper-~~
14 ~~ations of the sensitive nuclear facility; and~~
15 ~~“(D) any other individual that the Commis-~~
16 ~~sion determines should be a member of the mock~~
17 ~~terrorist team.~~
18 ~~“(4) SECURITY RESPONSE EVALUATIONS.—~~
19 ~~“(A) IN GENERAL.—Not later than 1 year~~
20 ~~after the date of enactment of this section, the~~
21 ~~Commission shall establish a security response~~
22 ~~evaluation program to assess the ability of each~~
23 ~~sensitive nuclear facility designated by the Commission to defend~~
24 ~~against the~~
25 ~~threats in accordance with the security plan for~~
 ~~the sensitive such nuclear facility.~~

1 “(B) FREQUENCY OF EVALUATIONS.—Not
2 less than once every 3 years, the Commission
3 shall conduct and document security response
4 evaluations at each sensitive designated nuclear facility to
5 assess the ability of the private security force, ~~in~~
6 ~~cooperation with the antiterrorism team, at the~~
7 sensitive designated nuclear facility to defend against the
8 appropriate design basis threats.

9 “(C) SECURITY EXEMPTION.—The Commis-
10 sion may suspend activities under this section if
11 the Commission determines that the security re-
12 sponse evaluations would compromise security at
13 any sensitive nuclear facility in accordance with
14 a heightened threat level.

15 “(D) ACTIVITIES.—The security response
16 evaluation shall include force-on-force exercises
17 ~~by the mock terrorist team against the sensitive~~
18 ~~nuclear facility that simulate air, water, and~~
19 land assaults, as appropriate, against the designated nuclear
 facility.

20 “(E) PERFORMANCE CRITERIA.—The Com-
21 mission shall establish performance criteria for
22 judging the security response evaluations.

23 “(F) CORRECTIVE ACTION.—

24 “(i) IN GENERAL.—If a sensitive designated
 nu-
25 clear facility fails to satisfy 1 or more of the

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*performance criteria established under sub-
paragraph (E)—*

*“(I) the licensee shall promptly
correct any defects in performance
identified by the Commission in the se-
curity response evaluation; and*

*“(II) the Commission shall con-
duct an additional security response
evaluation within 6 months to confirm
that the licensee satisfies ~~fall of~~ the
performance criteria established under
subparagraph (E).*

*“(ii) 2 CONSECUTIVE FAILURES TO
SATISFY ALL PERFORMANCE CRITERIA.—*

*“(I) IN GENERAL.—If a sensitive designated
nuclear facility fails to satisfy all of
the performance criteria established
under subparagraph (E) in 2 consecu-
tive security response evaluations, the
Commission shall issue an order speci-
fying the corrective actions that must
be taken by the licensee of ~~the sensitive~~
~~nuclear~~ such facility.*

*“(II) FAILURE TO TAKE CORREC-
TIVE ACTION.—If the licensee of a ~~sen-~~ designated*

1 ~~sitive~~ nuclear facility does not take the
2 corrective action specified by the Com-
3 mission within 30 days after the date
4 of issuance of an order under subclause
5 (I), the Commission shall assess a civil
6 penalty under section 234.

7 “(G) REPORTS.—Not less often than once
8 every year, the Commission shall submit to Con-
9 gress and the President a report, in classified
10 form and unclassified form, that describes the re-
11 sults of ~~each~~ the security response evaluations under
12 this ~~paragraph~~ section for the previous year. *This report may be included
as part of the annual report on the state of security for sensitive nuclear
facilities required by Section 170C (c).*

13 “(e) EMERGENCY RESPONSE EXERCISES.—

14 “(1) IN GENERAL.—Not less than once every 2
15 years, the Commission, in coordination with the Di-
16 rector of the Federal Emergency Management Agency,
17 shall ~~conduct~~ observe and evaluate emergency response exercises to ~~evaluate~~ assess
18 the ability of Federal, State, ~~and~~ local ~~and~~ licensee emergency re-
19 sponse personnel to respond to a radiological emer-
20 gency at ~~the sensitive~~ designated nuclear facilityies in accordance
21 with the emergency response plans.

22 “(2) ACTIVITIES.—The emergency response exer-
23 cises shall evaluate—

1 “(A) the response capabilities, response
2 times, and coordination and communication ca-
3 pabilities of the response personnel; and

4 “(B) the effectiveness and adequacy of emer-
5 gency response and ~~evacuation plans; and~~ the ability to take protective
6 actions.

7 ~~“(C) the availability of potassium iodide or
8 other prophylactic medicines.~~

9 “(3) REVISION OF EMERGENCY RESPONSE
10 PLANS.—The Commission shall ensure that the emer-
11 gency response plans for a sensitive designated nuclear facility ~~is~~ are
12 revised to correct for any deficiencies identified by an
13 evaluation under this subsection.

14 “(4) REPORTS.—Not less than once every year,
15 the Commission shall submit to the President and
16 Congress a report, in classified form and unclassified
17 form, that describes—

18 “(A) the results of each emergency response
19 exercise under this subsection conducted in the
20 previous year; and

21 “(B) each revision of an emergency response
22 plan made under paragraph (3) for the previous
23 year.

*This report may be included as part of the annual report on the State of emergency
preparedness for sensitive nuclear facilities required by Section 170C(d).*

24 “(f) EFFECT.—Nothing in this section limits any au-
thority of the Department of Energy relating to the safe

1 *operation of facilities under the jurisdiction of the Depart-*
2 *ment.”.*

3 **(b) CONFORMING AMENDMENTS.**—*Title II of the En-*
4 *ergy Reorganization Act of 1974 is amended—*

5 **(1) in section 203(b) (42 U.S.C. 5843(b))—**

6 **(A) in paragraph (1), by striking “licensing**
7 **and regulation involving” and inserting “licens-**
8 **ing, regulation, and, except as otherwise pro-**
9 **vided under section 212, carrying out safety re-**
10 **views, safeguards, and physical security of” ;**
11 **and**

12 **(B) in paragraph (2), by striking “and**
13 **safeguards”;** **and**

14 **(2) in section 204(b) (42 U.S.C. 5844(b))—**

15 **(A) in paragraph (1)—**

16 **(i) by striking “including” and insert-**
17 **ing “not including”;** **and**

18 **(ii) by striking at the end “and materials.” and**
19 **inserting “and materials, to the extent that**
20 **the safeguards and security functions are**
21 **delegated to the Office of Nuclear Security**
22 **and Incident Response under section 212.”;**
23 **and**

24 **(B) in paragraph (2)—**

25 **(i) by ~~striking~~ inserting after “and safeguards”;**
~~and~~ the following- “, except to the extent that specific
safeguards and security functions are delegated by the
Commission to the Office of Nuclear Security and Incident
Response as authorized under Section 212.”

1 (ii) by striking “~~as amended,~~ review shall” and
2 ~~all that follows through the period and in-~~ inserting
3 “review may”
serting “(42 U.S.C. 2011 et seq.)”.

5 Chapter 14 of title I of the Atomic Energy Act of 1954
6 (42 U.S.C. 2201 et seq.) (as amended by section 3(a)) is
7 amended—

8 (1) in section 161, by striking subsection k. and
9 inserting the following:

10 “k. authorize—

11 “(1) to carry and use a firearm in the performance of of-
12 ficial duties such of its members, officers, and employ-
13 ees, such of the employees of its contractors and sub-
14 contractors (at any tier) engaged in the protection of
15 property under the jurisdiction of the United States
16 located at facilities owned by or contracted to the
17 United States or being transported to or from such fa-
18 cilities, and such of the employees of persons licensed
19 or certified by the Commission (including employees
20 of contractors of licensees or certificate holders) en-
21 gaged in the protection of facilities owned or operated
22 by a Commission licensee or certificate holder that
23 are designated by the Commission or in the protection
24 of property of significance to the common defense and
25 security located at facilities owned or operated by a

1 *Commission licensee or certificate holder or being*
2 *transported to or from such facilities, as the Commis-*
3 *sion considers necessary, ~~in view of site-specific condi-~~*
4 *~~tions~~, in the interest of the common defense and secu-*
5 *rity; and*

6 “(2) to carry and use any other weapons, de-
7 *VICES, or ammunition in the performance of officials*
8 *duties, any employees of persons licensed or certified*
9 *by the Commission (including employees of contrac-*
10 *tors of licensees or certificate holders) who are trained*
11 *and qualified as guards and whose duty is the protec-*
12 *tion of facilities or property described in paragraph*
13 *(1), regardless of whether the employees are Federal,*
14 *State, or local law enforcement officers;” and*

15 (2) by adding at the end the following:

17 “(a) *AUTHORITY TO MAKE ARREST.—*

18 “(1) *IN GENERAL.—*A person authorized under
19 *section 161k. to carry and use a firearm, other weapon, de-*
20 *vice, or ammunition may, while in the performance*
21 *of, and in connection with, official duties, detain or*
22 *arrest an individual without a warrant for any of-*
23 *fense against the United States committed in the*
24 *presence of the person or for any felony under the*
25 *laws of the United States if the person has a reason-*

1 able ground to believe that the individual has com-
2 mitted or is committing such a felony.

3 “(2) LIMITATION.—An employee of a contractor
4 or subcontractor or of a Commission licensee or cer-
5 tificate holder (or a contractor of a licensee or certifi-
6 cate holder) authorized to make an arrest under para-
7 graph (1) may make an arrest only ~~after the Commis-~~
8 ~~sion, licensee, or certificate holder has applied for and~~
9 ~~been granted authorization from the Commission—~~

10 “(A) when the individual is within, or is in
11 flight directly from, the area in which the offense
12 was or is being committed; and

13 “(B) in the enforcement of—

14 “(i) a law regarding the property of
15 the United States in the custody of the De-
16 partment of Energy, the Commission, or a
17 contractor of the Department of Energy or
18 Commission or a licensee or certificate hold-
19 er of the Commission;

20 “(ii) a law applicable to facilities
21 owned or operated by a Commission licensee
22 or certificate holder that are designated by
23 the Commission under section 161k.;

24 “(iii) a law applicable to property of
25 significance to the common defense and se-

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(a) AMENDMENT.—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:

“(a) DEFINITIONS.—In this section:

“(1) SENSITIVE RADIOACTIVE MATERIAL.—

“(A) IN GENERAL.—The term ‘sensitive radioactive material’ means—

“(i) a material—

“(I) that is a source material, by-product material, or special nuclear material as defined in the Atomic Energy Act of 1954; and or

“(II) that is any other radioactive material (regardless of whether the material is or has been licensed or otherwise regulated under this Act) produced or made radioactive before or after the date of enactment of this section; and

“(ii) that is in such a form or quantity or concentration that the Commission determines, based on and consistent with the re-evaluation required by section (b) ~~ommendations of the task force~~, should be classified as ‘sensitive radioactive material’

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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 due primarily to radiological properties of the sensitive radioactive material, as determined by the Commission ~~based on and consistent with the recommendations of the task force.~~

“(3) TASK FORCE.—The term ‘task force’ has the meaning given the term in section 170C(a).

“(b) DUTIES.—

“(1) IN 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—The task
force shall—*

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“(A) evaluate the security of sensitive radio-

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active material against security threats; and

1 “(C) develop a national system for recovery
2 of sensitive radioactive material that is lost or
3 stolen, taking into account the classification sys-
4 tem established under subparagraph (B);

5 “(D) provide for the storage of sensitive ra-
6 dioactive material that is not currently in use in
7 a safe and secure manner;

8 “(E) develop a national tracking system for
9 sensitive radioactive material, taking into ac-
10 count the classification system established under
11 subparagraph (B);

12 “(F) develop methods to ensure the return
13 or proper disposal of sensitive radioactive mate-
14 rial;

15 “(G) ~~consider modify current~~ export controls on sen-
16 sitive radioactive materials so that, to the extent
17 feasible, exports from the United States of sen-
18 sitive radioactive materials are made ~~only~~ to for-
19 eign recipients that are willing and able to con-
20 trol the sensitive radioactive materials in ~~the a~~
21 ~~same~~ manner ~~similar to~~ ~~as~~ recipients in the United States;
22 and

23 “(H) establish procedures to improve the se-
24 curity of sensitive radioactive material in use,
25 transportation, and storage.

1 “(c) REPORT.—Not later than ~~90 days~~ 1 year after the date
2 of enactment of this section, and not less frequently than
3 once every 3 years thereafter, the ~~task force~~ Commission shall submit
4 to the President and Congress a report in unclassified form
5 (with a classified annex, if necessary) describing the admin-
6 istrative and legislative actions recommended under sub-
7 section (b)(1). 7

8 “(d) ADMINISTRATIVE ACTION.—Not later than 60
9 days after the date of submission of the report under sub-
10 section (b), the Commission shall, based on and consistent
11 with the ~~recommendations of the task force~~, evaluation required by section (b) take
such ac-
12 tions as are appropriate to—

13 “(1) revise the system for licensing sensitive ra-
14 dioactive materials ~~based on and consistent with the~~
15 ~~recommendations of the task force~~; and

16 “(2) ~~delegate its authority to implement regulatory programs and~~
~~requirements to those States that enter into agreements with the~~
~~Commission to perform inspections and other functions on a cooperative~~
~~basis as the Commission deems appropriate. ensure that States that have~~
~~entered into an~~
17 ~~agreement under section 274b. establish compatible~~
18 ~~programs in a timely manner.”.~~

21 Section 229a. of the Atomic Energy Act of 1954 (42
22 U.S.C. 2278a(a)) is amended in the first sentence by insert-
23 ing “or subject to the licensing authority of the Commission
24 or to certification by the Commission under this Act or any
25 other Act” before the period at the end.

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Section 236a. of the Atomic Energy Act of 1954 (42

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U.S.C. 2284(a) is amended—

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(1) in the first sentence, by striking “or who intentionally and willfully attempts” and inserting “or who attempts or conspires”;

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(2) in paragraph (2), by striking “storage facility” and inserting “storage, treatment, or disposal facility”;

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(3) in paragraph (3)—

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(A) by striking “such a utilization facility”

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and inserting “a utilization facility licensed

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under this Act”; and

14

(B) by striking “or” at the end;

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(4) in paragraph (4)—

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(A) by striking “facility licensed” and in-

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serting “, uranium conversion or nuclear fuel fabrication facility licensed or certified”; and

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(B) by striking the period at the end and

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inserting “; or”; and

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(5) by inserting after paragraph (4) the fol-

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lowing:

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“(5) any production, utilization, waste storage,

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waste treatment, waste disposal, uranium enrichment,

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or nuclear fuel fabrication facility subject to licensing

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or certification under this Act during construction of

1 *the facility, if the destruction or damage caused or at-*
2 *tempted to be caused could adversely affect public*
3 *health and safety during the operation of the facil-*
4 *ity;”.*

7 *Not later than 90 days after the date of enactment of*
8 *this Act, the Attorney General and the Nuclear Regulatory*
9 *Commission shall submit to Congress a report that assesses*
10 *the adequacy of the criminal enforcement provisions in*
11 *chapter 18 of the Atomic Energy Act of 1954 (42 U.S.C.*
12 *221 et seq.).*

14 *Section 211(a)(2) of the Energy Reorganization Act*
15 *(42 U.S.C. 5851) is amended—*

16 *(1) in subparagraph (C), by striking “and” at*
17 *the end;*

18 *(2) in subparagraph (D), by striking the period*
19 *at the end and inserting “; and”; and*

20 *(3) by adding at the end the following:*

21 *“(E) a contractor or subcontractor of the*
22 *Commission.”.*

SECTION 12. 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.”

SECTION 13. 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 sets, 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.”

SECTION 14. TRANSPORTATION SECURITY.

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

“SECTION 170F. 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.”

24 The table of contents of the Atomic Energy Act of 1954
25 (42 U.S.C. prec. 2011) is amended—

1 (1) by inserting after the item relating to section

2 149 the following:

 “Sec. 149A. Access to nuclear facilities.”;

3 and

4 (2) by adding at the end of the item relating to 4

5 chapter 14 the following:

 “Sec. 170B. Uranium supply.

 “Sec. 170C. Protection of sensitive nuclear facilities.

 “Sec. 170D. Carrying of weapons.

 “Sec. 170E. Sensitive Radioactive Material Security.”;

 “Sec. 170F. Security in Transport.”.

7 There are authorized to be appropriated such sums as

8 are necessary to carry out this Act. Except for the costs of fingerprints,
identification, comparison and records reviews required by section 149.a. of the
Atomic Energy Act as amended by this Act, and notwithstanding any other
provision of law, amounts appropriated in any fiscal year to the Nuclear Regulatory
Commission to carry out this Act may not be recovered through fees charged by the
Commission.