

March 16, 2012

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
Washington, D.C. 20510

Dear Mr. Biden:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to provide an NRC draft bill that would amend the Atomic Energy Act of 1954 (AEA) and the Energy Reorganization Act of 1974. These provisions are intended to streamline the NRC licensing process and to improve its administrative efficiency.

More specifically, this legislation would accomplish the following objectives:

(1) Authorizing the NRC to permit criminal investigators of the Commission's Office of Investigations to possess and use firearms while in the discharge of their official duties. While in the performance of official duties, a criminal investigator could also make an arrest without a warrant for an offense committed in the presence of the criminal investigator.

(2) Expediting waiver of fingerprinting for criminal history records checks by authorizing the Commission to relieve persons of such requirements by order.

(3) Expanding the NRC's authority to issue civil penalties by adding violations of certain sections of the Nuclear Waste Policy Act of 1982.

(4) Authorizing the Commission to require fingerprinting of individuals not covered by existing fingerprinting requirements, but who have significant security responsibilities.

(5) Authorizing a Commissioner whose term has expired to continue in office for a limited period of time.

(6) Strengthening of criminal sanctions imposed by sections of the Atomic Energy Act that address violations relating to NRC-regulated facilities, material, or related property that could result in significant harm to persons or property.

(7) Naming the NRC headquarters building heretofore known as "One White Flint North" as the "Lando W. Zech, Jr. Building," in honor of the former Commission Chairman who died on January 9, 2011.

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A draft bill and a legislative memorandum explaining the need for the provisions of the bill are enclosed with this letter.

Sincerely,

***/RA/***

Gregory B. Jaczko

Enclosures:

1. [Draft Bill](#)
2. [Legislative Memorandum](#)

Identical letter sent to:

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
Washington, D.C. 20510

The Honorable John A. Boehner  
Speaker of the House of Representatives  
Washington, D.C. 20515

The Honorable Barbara Boxer  
Chairman, Committee on Environment  
and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator James M. Inhofe

The Honorable Thomas R. Carper  
Chairman, Subcommittee on Clean Air  
and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator John Barrasso

The Honorable Fred Upton  
Chairman, Committee on Energy  
and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Henry A. Waxman

The Honorable Ed Whitfield  
Chairman, Subcommittee on Energy and Power  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Bobby L. Rush

The Honorable John Shimkus  
Chairman, Subcommittee on Environment  
and the Economy  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Gene Green

The Honorable Rodney Frelinghuysen  
Chairman, Subcommittee on Energy  
and Water Development  
Committee on Appropriations  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Peter J. Visclosky

The Honorable Dianne Feinstein  
Chairman, Subcommittee on Energy  
and Water Development  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510  
cc: Senator Lamar Alexander

## BILL

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

SEC. 2.        AUTHORIZATION OF NRC CRIMINAL INVESTIGATORS  
TO CARRY FIREARMS AND MAKE ARRESTS.

The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding the following section after section 161A. (42 U.S.C. 2201a):

**“Sec. 161B. Authority of Criminal Investigators**

“(a)(1) As used in this section, the term ‘criminal investigator’ means an employee of the Commission who is assigned to the Commission’s Office of Investigations for the purpose of investigating suspected violations of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) that may subject an offender to a fine, imprisonment, or both.

“(2) In this section, the terms ‘handgun’, ‘rifle’, ‘firearm’, and ‘ammunition’ have the meanings given the terms in section 921(a) of title 18, United States Code.

“(b) The Commission may authorize a criminal investigator to carry and use a handgun, rifle, and ammunition for a handgun or rifle, while in the discharge of the criminal investigator’s official duties, if the Commission determines --

“(1) the authorization is necessary to the discharge of the official duties of the criminal investigator;

“(2) the criminal investigator is not otherwise prohibited from possessing or receiving a handgun, rifle, or ammunition for a handgun or rifle under Federal law relating to possession of firearms by a certain category of persons; and

“(3) the criminal investigator has successfully completed any requirement under this section for training in the use of firearms, and such other training as the Commission may find necessary for carrying out the duties of a criminal investigator.

“(c) A criminal investigator may, while in the performance of official duties to conduct investigations in connection with the enforcement and administration of statutes, regulations, and orders within the jurisdiction of the Nuclear Regulatory Commission or to carry out other related duties authorized by law, make an arrest without a warrant for an offense committed in the presence of the criminal investigator or for a felony cognizable under the laws of the United States if the investigator has reasonable grounds to believe that the individual to be arrested has committed or is committing such an offense or felony.

“(d) A criminal investigator who is authorized by the Commission to carry and use a handgun, rifle, and ammunition for a handgun or rifle while in the discharge of the investigator’s official duties shall be subject to a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159; 18 U.S.C. 922 note) to determine whether the investigator

is prohibited from possessing a handgun, a rifle, or ammunition for a handgun or rifle under Federal or State law.”

**SEC. 3. EXPEDITING WAIVER OF FINGERPRINTING FOR CRIMINAL HISTORY RECORDS CHECKS.**

Subsection b. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(b)) is amended to read as follows:

“b. The Commission, by rule or order, may relieve any person from the obligations imposed by this section, under specified terms and conditions and for designated 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.”

**SEC. 4. CIVIL MONETARY PENALTIES.**

The first sentence of section 234 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2282(a)) is amended by—

(1) inserting “(including a contractor or subcontractor of a licensee or certificate holder of the Commission or of an applicant for a Commission license or certificate)” after “Any person”;

(2) deleting “thereunder, or (2)” and inserting “thereunder, (2)”; and

(3) inserting “or (3) violates any Commission regulatory requirement issued pursuant to section 133, 137, 180, or 218(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 101 et seq.),” after “section 186,”.

**SEC. 5. ENHANCED FINGERPRINTING REQUIREMENTS.**

Section 149 a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2169) is amended by adding the following new subparagraph after subparagraph (B):

“(C) In addition to the foregoing fingerprinting requirements of this paragraph, the Commission may require an individual or entity described in subparagraph (A)(ii) to fingerprint—

“(i) any individual who has been designated by the individual or entity described in subparagraph A(ii) (or by a contractor or subcontractor of such individual or entity) to determine the trustworthiness and reliability of an individual who is required to be fingerprinted under subparagraph (B);

"(ii) any individual who is in the employ of the individual or entity described in subparagraph (A)(ii) (or a contractor or subcontractor of such individual or entity) and who has authority relating to provision of unescorted access to a utilization facility, radioactive material, or other property described in subparagraph (B)(i), or access to safeguards information as described in subparagraph (B)(ii); or

"(iii) any individual who is, or holds a position equivalent to, the principal operating officer, or alternate principal operating officer, of the individual or entity described in subparagraph (A)(ii)."

SEC. 6. CONTINUATION OF COMMISSIONER SERVICE.

Section 201(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(c)) is amended --

(a) by inserting "(1)" after "(c)", and

(b) by adding the following paragraph after paragraph (1) (as so designated):

"(2) A member of the Commission whose term of office has expired may, subject to the removal power of the President described in subsection (e), continue to serve after the expiration of the member's



term until the member's successor has taken office, but not beyond the end of the session of Congress in which such fixed term of office expired.”.

SEC. 7. STRENGTHENING CRIMINAL SANCTIONS.

Sections 222, 223, 229, and 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) are amended as follows:

(a) Subsection a. of section 222 of the Atomic Energy Act of 1954 (42 U.S.C. 2272(a)), is amended by—

(1) deleting “by a fine of not more than \$10,000 or”, and by inserting “or a fine specified in 18 U.S.C. 3571” after “not more than ten years”; and

(2) deleting “of not more than \$20,000” and inserting “specified in 18 U.S.C. 3571,”.

(b) Section 223 of the Atomic Energy Act of 1954 (42 U.S.C. 2273), is amended—

(1) in subsection a., by deleting “a fine of not more than \$5,000 or by imprisonment for not more than two years,” and inserting “imprisonment for not more than five years or by a fine specified in 18 U.S.C. 3571,”, and by deleting “a fine of not more than \$20,000 or by imprisonment for not more than twenty years” and inserting “imprisonment for not more than twenty years or by a fine specified in 18 U.S.C. 3571”.

(2) in subsection b., by deleting “subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years” and inserting “punished by imprisonment for not to exceed seven years, or by a

fine specified in 18 U.S.C. 3571”, and deleting “not more than two years” and inserting “not more than seven years”.

(c) Section 229 of the Atomic Energy Act of 1954 (42 U.S.C. 2278a), is amended--

(1) in subsection b., by striking “a fine of not more than \$1,000” and inserting “imprisonment for not more than five years or a fine specified in 18 U.S.C. 3571, or both”;

(2) in subsection c., by striking “shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year” and inserting “, upon conviction thereof, shall be punished by imprisonment for not more than ten years or a fine specified in 18 U.S.C. 3571”; and

(3) by adding the following subsection after subsection c.:

“d. Whoever shall willfully violate any of the foregoing provisions with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for not more than 20 years or a fine specified in 18 U.S.C. 3571, or both.”.

(d) Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended—

(1) by deleting the language that follows paragraph (7) of subsection a. and inserting the following:

“or attempts or conspires to do such an act, shall be punished by imprisonment for not more than 20 years, or by a fine specified in 18

U.S.C. 3571, or both, and if death results to any person shall be imprisoned for any term of years or for life.”; and

(2) in subsection b., by deleting “shall be fined not more than \$10,000 or imprisoned for not more than 20 years” and inserting “shall be punished by imprisonment for not more than 20 years or by a fine specified in 18 U.S.C. 3571”.

**SEC. 8. NAMING OF NUCLEAR REGULATORY COMMISSION BUILDING.**

(a) The Nuclear Regulatory Commission building located at 11555 Rockville Pike, Rockville, Maryland, heretofore known as “One White Flint North,” shall be known and redesignated as the “Lando W. Zech, Jr., Building” upon the enactment of this section.

(b) Upon the enactment of this section, any reference in a law, map, regulation, document, paper, or other record of the United States to the Nuclear Regulatory Commission building shall be deemed to be a reference to the “Lando W. Zech, Jr., Building.”

## LEGISLATIVE MEMORANDUM

### SEC. 2. AUTHORIZATION OF NRC CRIMINAL INVESTIGATORS TO CARRY FIREARMS AND MAKE ARRESTS.

This section would authorize the Nuclear Regulatory Commission to permit criminal investigators (also referred to as “special agents”) of the Commission’s Office of Investigations (OI) to possess and use handguns and rifles, and ammunition for those firearms, while in the discharge of their official duties. In addition, this section would authorize an OI criminal investigator to make an arrest without a warrant for an offense committed in the presence of the criminal investigator, while the criminal investigator is in the performance of official duties to conduct investigations in connection with the enforcement and administration of statutes, regulations, and orders within the jurisdiction of the Commission or to carry out other related duties authorized by law. OI criminal investigators who are authorized to carry handguns and rifles would be subject to the same background check as is required under the Atomic Energy Act of 1954 for Commission licensees’ and certificate holders’ security personnel who are authorized to possess and use firearms.

OI conducts investigations of alleged wrongdoing by Commission licensees, certificate holders, or applicants, or by their contractors, employees, or vendors. The responsibilities of OI criminal investigators are associated with both regulatory and criminal law. Among other things, the investigators conduct witness interviews and collect evidence. There is a known potential for violence in such circumstances.

For some time, the U.S. Marshals Service deputized OI criminal investigators, enabling them to carry firearms and to make arrests in carrying out their official duties. However, the Marshals Service has notified agencies that it plans to terminate this practice, and that the

individuals whom they have deputized in the past should seek their authority to carry firearms and make arrests from laws specific to their own agencies. Enactment of this section would achieve that goal.

Granting OI criminal investigators authority to carry firearms and make arrests would not be unusual; there are other Federal agencies that grant such authority to employees in similar positions. The Commission's inability to provide such authority makes it more difficult to find experienced professional law enforcement personnel who are interested in employment by the Commission as OI criminal investigators.

SEC. 3. EXPEDITING WAIVER OF FINGERPRINTING FOR CRIMINAL HISTORY RECORDS CHECKS.

This section would provide the U.S. Nuclear Regulatory Commission with the ability to more efficiently provide waivers of the fingerprinting requirements of subsection a. of section 149 of the Atomic Energy Act of 1954. Section 149 a. provides that the Commission must require its licensees and certificate holders, among others, to fingerprint individuals who are permitted unescorted access to utilization facilities or to Commission-designated radioactive material or other property subject to Commission regulation. This fingerprinting requirement also applies to safeguards information under section 147 of the Act.

Subsection b. of section 149 currently authorizes the Commission to relieve persons, by rule, of the requirements of the section. However, action by rule is time-consuming, because of requirements imposed by the Administrative Procedures Act, such as issuance of notice of proposed rulemaking, providing opportunity for comments, and responding to comments. This amendment of subsection b. would also provide the Commission with the alternative of relieving persons of fingerprinting requirements by order, a much more time-efficient procedure.

Providing relief under current subsection b. requires a Commission finding that such action is consistent with its obligations to promote the common defense and security and the

protection of the health and safety of the public. That standard would apply equally to rules and orders, under the proposed amendment.

SEC. 4. CIVIL MONETARY PENALTIES.

This section would expand the Nuclear Regulatory Commission's authority to issue civil penalties. The Commission currently has authority, under section 234 of the Atomic Energy Act of 1954 (AEA), to issue civil penalties to licensees and certificate holders of the Commission. However, that authority only extends to violations of licensing or certification provisions listed in section 234 of the Atomic Energy Act of 1954 (or any rule, regulation, or order, or any term, condition, or limitation of a license or certificate issued thereunder).

The amendment would add to the list of sections any regulatory requirement issued under certain sections of the Nuclear Waste Policy Act of 1982 that bestow responsibilities upon the Commission with respect to such matters as storage and transportation of spent nuclear fuel. For example, certificates of compliance are also issued by the NRC for the design of spent fuel storage casks under provisions of the Nuclear Waste Policy Act of 1982. Since these provisions are not listed in section 234 of the Atomic Energy Act, the Commission does not currently have the authority under section 234 of the AEA to issue civil penalties based on these certificates of compliance. There is no basis to distinguish certificate holders from licensees for the purpose of allowing a civil penalty to be imposed as an enforcement sanction.

SEC. 5. ENHANCED FINGERPRINTING REQUIREMENTS.

Currently, NRC is required to direct certain persons (generally, those licensed or certified to engage in or who have filed an application for a license or certificate to engage in activities subject to NRC licensing or certification, or who have given written notice to the NRC of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to NRC regulation) to fingerprint individuals who have unescorted access to

utilization facilities or to designated materials or other property subject to regulation by the Commission, or who are permitted access to safeguards information. This amendment would expand that authority with respect to certain other individuals who have security-related responsibilities.

For example, this amendment would authorize the Commission to extend fingerprinting requirements to any individual designated by a licensee or certificate holder to review the trustworthiness and reliability of individuals who are fingerprinted under section 149 a.(1) of the Atomic Energy Act of 1954, based on the results of the identification and criminal records check information obtained from the Attorney General. Because some licensees' reviewing officials or Trustworthiness and Reliability Officials do not have unescorted access to a utilization facility or to designated radioactive material or other property subject to regulation by the Commission, or access to safeguards information, the Commission currently is not authorized to require their fingerprinting. (In this context, the terms "reviewing official" and "Trustworthiness and Reliability Official" refer to individuals who are responsible for analyzing the results of identification and background checks based on the fingerprints of employees currently required to be fingerprinted under section 149 of the Act.)

Other examples of individuals in positions that may be subject to NRC fingerprinting requirements under this proposed amendment are individuals who have authority relating to provision to others of unescorted access to a utilization facility, radioactive material, or other designated property, individuals who have access to safeguards information, and individuals who hold the position of principal operating officer or an equivalent position in an enterprise. Individuals in the positions described can have a significant impact on security.

This amendment would give the Commission the authority to determine which of the employees and officers referred to above should be fingerprinted for purposes of an identification and criminal history records check, and when their fingerprinting should begin.

SEC. 6. CONTINUATION OF COMMISSIONER SERVICE.

The Energy Reorganization Act of 1974 provides that the NRC shall be headed by five Commissioners. The NRC has experienced periods of some length in which there were fewer than five Commissioners at the agency's helm. Such gaps in agency leadership can affect important decisionmaking. Subject to the removal power of the President provided in section 201(e) of the Energy Reorganization of 1974 (42 U.S.C. 5841(e)), this section would authorize a Commissioner whose fixed term has expired to continue in office, until whichever of the following occurs first: (1) the Commissioner's successor takes office, or (2) the end of the session of Congress in which the Commissioner's fixed term of office expires. Such a holdover provision could allow the Commission to maintain the organization intended by the Congress for a period of time, even when no successor has been appointed for a Commissioner whose fixed term has expired and who has not been reappointed. It would also apply where a Commissioner whose term has expired is renominated, but not in time for the Senate to act before the end of the session in which the Commissioner's fixed term expires.

Holdover provisions are found in the organizational statutes of the majority of independent regulatory agencies. This amendment was drafted to make the holdover period effective until the expiration of the session of Congress in which the Commissioner's fixed term of office expires. Thus, the period for which an NRC Commissioner's service might be extended could rarely be longer than six months, since an NRC Commissioner's fixed term expires at the end of June of a calendar year and a session of Congress typically ends at or before the end of the calendar year.

SEC. 7. STRENGTHENING CRIMINAL SANCTIONS.

This section would amend criminal penalties contained in several provisions of the Atomic Energy Act of 1954. The criminal penalties that would be amended were, for the most



part, developed during periods of lesser sensitivity to the dangers posed by reckless and malicious acts against important national infrastructure, such as nuclear power plants. For example, under current law, an individual who intentionally brings an explosive into a nuclear power plant for the purpose of destroying portions of the facility would be subject to imprisonment for not more than a year or a fine that does not exceed \$5,000.

Accordingly, this section would amend sections 222 (Violations of Specific Sections), 223 (Violations of Sections Generally), 229 (Trespass on Commission Installations), and 236 (Sabotage of Nuclear Facilities or Fuel) of the Atomic Energy Act by increasing the penalties that they now provide. The changes in the penalties applicable for violation of these provisions range from increase of the amount of a fine that may be imposed, to increase of the term of years to which a convicted individual may be sentenced, to, in the most egregious circumstances, a sentence of life imprisonment.

Given the seriousness of the threats addressed by the sections of the Atomic Energy Act that would be amended and the severe harm to individuals and property that may result from perpetration of the acts covered by those sections, imposition of lesser penalties is no longer tenable.

The Atomic Energy Act criminal penalties that NRC proposes to amend would be changed to refer to general penalty-setting provisions, particularly 18 U.S.C. 3571, rather than specifying an exact maximum dollar criminal fine for each AEA section (as is now the case). Under section 3571, the permissible amount of a criminal fine varies. For a felony, the permissible amount of a fine for an individual may be not more than \$250,000. For a misdemeanor, the permissible amount of a fine for an individual may range between not more than \$250,000 for a misdemeanor resulting in death to not more than \$5,000 for a misdemeanor not resulting in death (or for an infraction). In addition, section 3571 provides fines for organizations found guilty of a felony or misdemeanor.

SEC. 8. NAMING OF NUCLEAR REGULATORY COMMISSION BUILDING.

This section would designate the Nuclear Regulatory Commission headquarters building heretofore known as “One White Flint North” as the “Lando W. Zech, Jr. Building,” in honor of the former Commission Chairman who died on January 9, 2011.

On July 5, 1984, following a distinguished 39-year career in the United States Navy, during which he commanded both surface ships and submarines and rose to the rank of Vice Admiral, Lando W. Zech, Jr., was sworn in as a Commissioner at the Nuclear Regulatory Commission. Two years later, on July 1, 1986, he was designated as the Commission’s chairman. From that date until his departure from the Nuclear Regulatory Commission in June of 1989, Admiral Zech led the Nuclear Regulatory Commission through vitally important transitions and initiatives whose results, even two decades later, remain basic pillars of the agency.

Only months into Admiral Zech’s chairmanship, recognizing the need to shift the agency’s organizational focus from evaluation of new nuclear plant applications to the regulation of day-to-day safety in a mature industry, Admiral Zech instituted the most sweeping reorganization of the agency since its founding. Meanwhile, the Commission under his leadership was also reshaping the agency’s regulations to prepare for any future industry developments. Most notably, two years after the Commission’s 1987 reaffirmation of support for standard nuclear plant designs, the Commission issued a final rule on April 7, 1989, establishing a process for obtaining early site permits, standard plant design certifications, and combined licenses for new nuclear plants. Twenty-two years later, with a host of new reactor applications now pending before the Commission, this 1989 rule remains the backbone of the agency’s regulatory regime for new reactors.

Admiral Zech also played an important role in the NRC's response to what were, prior to the recent tragic events at the Fukushima Daiichi nuclear facility in Japan, the two most significant accidents in the history of nuclear power generation: the 1979 Three Mile Island accident in Pennsylvania, and the 1986 Chernobyl disaster in the former Soviet Union. A month into Admiral Zech's chairmanship, in response to the Three Mile Island accident, the Commission issued its "Policy Statement on the Safety Goals for the Operation of Nuclear Power Plants." The Commission's statement laid out a policy of establishing qualitative and quantitative goals for acceptable risks for nuclear power plants. In addition, shortly before Admiral Zech took over the chairmanship in 1986, the Chernobyl disaster occurred. Subsequently, as Chairman, Admiral Zech signed an extension of a protocol with the People's Republic of China for sharing nuclear safety information, the Nuclear Regulatory Commission completed reports addressing the Chernobyl disaster, including lessons learned that could improve nuclear safety in the United States, and the Commission helped to negotiate an international convention regulating provision of aid in the event of a major nuclear accident.

Last, and perhaps most pertinent to the proposed legislation, it was during Admiral Zech's chairmanship that the Nuclear Regulatory Commission moved into the One White Flint North building in Rockville, Maryland. This move began the consolidation of agency offices at one central facility—an important agency goal ever since the Commission's founding in 1975. Indeed, the need to consolidate had gained particular urgency after the Three Mile Island accident: following that accident, it was found that the geographical separation of major Commission offices was hindering agency operations. Today, with a third building at the Commission's White Flint headquarters location progressing to completion, the Commission believes it is an appropriate moment to honor the many lasting contributions made by the late Admiral Zech, to both the Nuclear Regulatory Commission and the nation it serves, by naming the original White Flint headquarters building in his honor.