

## Calendar No. 422

108TH CONGRESS  
1st Session

SENATE

REPORT  
108-218

### REAUTHORIZATION OF THE PRICE-ANDERSON ACT

DECEMBER 9, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

### REPORT

[to accompany S. 156]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 156) to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommends that the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

This bill amends various sections of the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., to authorize continuation of the Price-Anderson provisions.

The Atomic Energy Act of 1954 assigned to the Atomic Energy Commission responsibility for protecting public health and safety from the hazards of radiation produced through nuclear technology. The Energy Reorganization Act of 1974 abolished the Atomic Energy Commission and created a new agency, the Nuclear Regulatory Commission (NRC or Commission), to take over its regulatory functions.

The Senate Committee on Environment and Public Works has jurisdiction over the nonmilitary environment regulation and control of atomic energy. This includes both legislative and oversight authority pertaining to the operations of the NRC.

Among the responsibilities entrusted to the Nuclear Regulatory Commission are regulation of the nation's commercial nuclear power plants, along with other civilian uses of radioactive materials. The mission of the NRC is to conduct an effective regulatory program that promotes the safe use of nuclear energy and materials, in a manner that protects the public health and safety and the human environment, and promotes the common defense and security.

Congress passed the Price-Anderson Act in 1957 to ensure that adequate funds would be available to compensate victims of a nuclear accident. It also recognized that the risk of extraordinary liability that companies would incur if a nuclear accident were to happen would render insurance costs prohibitively high, and thwart the development of nuclear energy.

The original Price-Anderson Act authorized government indemnification for only 10 years, until August 1, 1967. Congress extended the Act, in 1965 and 1975 for additional 10 year periods, and a third time in 1988, for an additional 15 years.

Under the 1988 extension, the Department of Energy and the Nuclear Regulatory Commission have authority to issue indemnification agreements only until August 1, 2002. However, existing activities licensed by the Nuclear Regulatory Commission will continue to be covered by the indemnification provisions of Price-Anderson, so that only new facilities or activities licensed by the NRC after August 1, 2002, would not be covered.

The original Price-Anderson legislation that was enacted in 1957 provided up to \$500 million indemnification for both Federal weapons contractors and commercial nuclear power plant operators. In addition to the \$500 million government indemnification, commercial nuclear power plant operators were required to obtain as much additional insurance as they could. By pooling their resources, these civilian licensees were able to obtain an additional \$60 million in private insurance. Thus, liability for military weapons contractors was capped at \$500 million, and at \$560 million for civilian commercial licensees.

Over the years, Congress has made substantial changes in the way Price-Anderson operates. As currently constituted, Price-Anderson places a cap on liability for commercial nuclear facilities and activities licensed by the U.S. Nuclear Regulatory Commission, and allows for deferral of a portion of the payments such licensees must make.

The Price-Anderson Act requires owners of commercial reactors to assume all liability for damages to the public resulting from an "extraordinary nuclear occurrence" and to waive most legal defenses they would otherwise have. However, in exchange, their liability will be limited to capped amounts established in the Act.

First, each licensed reactor must carry the maximum amount of insurance commercially available to pay any damages from a severe nuclear accident. That amount is currently \$200 million.

In addition to this \$200 million per-reactor insurance, owners would be required, in the event of an actual nuclear accident, to pay an additional \$83.9 million, payable in annual installments of not more than \$10 million per reactor, per year. Following an accident, these "retrospective premiums" would be collectively available

to cover any damages exceeding the \$200 million per-reactor commercial insurance coverage.

S. 156 extends coverage for commercial reactors until August 1, 2012, and increases the annual premium payments from \$10,000,000 to \$15,000,000 per reactor. .

#### SECTION-BY-SECTION ANALYSIS

##### TITLE I PRICE-ANDERSON AMENDMENTS

###### *Section 101. Short Title*

This section provides that the title may be cited as the 'Price-Anderson Act of 2003'.

###### *Sec. 102. Maximum Assessment*

This section amends Section 170b.(1) of the Atomic Energy Act of 1954, 42 U.S.C 2210(b)(1), by extending the maximum amount of liability to licensees from \$63,000,000 to \$94,000,000, and by increasing the annual premium payments from \$10,000,000 to \$15,000,000.

This section also inserts in subsection (t) "total and annual" after "amount of the maximum", and strikes "the date of enactment of the Price-Anderson Amendments Act of 1988" and inserting "July 1, 2001".

###### *Sec. 103. Extension Of Indemnification Authority*

This section amends Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)).

New subsection 170c amends the subsection heading by striking 'LICENSEES' and inserting 'LICENSEES', and by striking 'August 1, 2002' each place it appears and inserting 'August 1, 2012'.

###### *Sec. 104. Reports*

This section amends section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) by striking 'August 1, 1998' and inserting 'August 1, 2008'.

###### *Sec. 105. Effective Date*

This section states that the amendments made by this Act will take effect on August 1, 2002.

##### TITLE II NUCLEAR INFRASTRUCTURE SECURITY

###### *Sec. 201. Short Title*

This section provides that the title may be cited as the "Nuclear Infrastructure Security Act of 2003".

###### *Sec. 202. Definitions*

This section amends section 11 of the Atomic Energy Act to provide for the definition of "designated nuclear facilities" and "private security force."

*Sec. 203. Designated Nuclear Facility Security*

Section 203 (a) amends Chapter 14 of the Atomic Energy Act by adding a new section 170C, “Protection of Designated Nuclear Facilities.”

New subsection 170C(a) provides definitions for “Certificate Holders,” Federal Security Coordinator,” “Design Basis Threat” and “Licensee.”

New subsection 170C(b) requires the Commission and the Secretary of Homeland Security, in consultation with other agencies and State and local government, as appropriate to conduct a comprehensive security examination. Paragraph (b)(1) sets out in detail the matters to be examined. These are classification of threats as those types of threats falling under the responsibility of either the Federal Government, State or local governments, or those threats which should be the responsibility of the licensee or certificate holder; coordination of security efforts; adequacy of planning, including emergency planning zones, coordination and security plans; the system of threat levels used to categorize threats; hiring and training standards for members of private security forces; coordination of Federal resources to expedite and improve the process of conducting background checks; and the establishment of a program to provide technical assistance and training to the National Guard and law enforcement.

Paragraph (b)(2) requires the Commission and the Secretary of Homeland Security to submit a report (including findings and recommendations) to the Congress and the President (classified and unclassified form) not later than 1 year after completion of the examination.

New subsection 170C(c) requires that not later than 180 days after completion of the examination, the Commission revise the design basis threat as it determines appropriate. This section includes safeguards and procedures to ensure the protection of all safeguarded information and classified national security information.

New subsection 170C(d) requires the Commission to establish a system for the determination of threat levels for classes of designated nuclear facilities, as determined by the Commission, and other materials designated by the Commission not later than 150 days after completion of the report required in (c)(3).

New subsection 170C(e) requires the Commission to ensure that designated nuclear facilities revise their security plans to be consistent with any revised design basis threat and to submit the plan to the Commission for review. The Commission is required to ensure that any necessary changes to the security and security plans are made not later than 18 months after completion of the review.

New subsection 170C(f) requires the Commission and the Secretary of Homeland Security to review facility emergency response plans to ensure that it provides protection for persons in the emergency response planning zone. The aspect of the review include: protection of public health, including the ability to implement protective measures; clear delineation of responsibilities; notification procedures; communication and coordination of emergency response personnel; dissemination of information; adequate emergency facilities and equipment; use of methods, systems and equipment for as-

sessing and monitoring the impacts of an emergency; protective actions; means for controlling radiological/hazardous exposures for emergency response personnel; medical services; plans for recovery/reentry; and radiological response training. The Commission shall ensure that any necessary revisions to emergency response plans are implemented.

New subparagraph 170C(g) requires the President to establish, consistent with the finding of the security examination, a program to provide training and technical assistance for National Guard, State and local law enforcement who have security responsibilities for pre-to threats. The President may provide grants to assist as appropriate. The intention of this section is to ensure that all who have security responsibilities are properly trained and equipped to deal with a threat/act at a nuclear facility.

New subsection 170C(h) requires the Commission to review and update, as appropriate, access and training standards for employees of a designated nuclear facility. The Commission shall also establish procedures to ensure that no individual who presents a threat to national security is employed at a designated nuclear facility.

New subsection 170C(i) requires the Commission to assign a Federal security coordinator to each regional office of the Commission and sets out the responsibilities of the Federal security coordinator.

New subsection 170C(j) is a savings clause to ensure that nothing in the section supercedes any law governing the disclosure of classified or safeguards information.

Section 203(b) amends Section 149 of the Atomic Energy Act. This section expands the classes of persons subject to the fingerprinting requirements of section 149 of the Atomic Energy Act of 1954.

New subsections (a)(1)(A)&(B) provides for fingerprinting to be conducted by (A) any licensee, certificate holder, or applicant for a license or certificate to operate a utilization facility under section 103 or 104(b), and (B) any licensee or applicant for a license to possess or use radioactive material or other property (including intellectual property, such as standard reactor designs subject to certification under 10 C.F.R. Part 52, or property that can be reverse engineered to develop components significant to nuclear activities) subject to Commission regulation that the Commission determines to be of such significance to the public health and safety or common defense and security as to warrant fingerprinting and background checks. As is the case under current law, the person required to conduct the fingerprinting would bear the cost of the identification and records checks.

Persons required to conduct fingerprinting would be required to fingerprint each individual permitted to have unescorted access to the facility or other property (including property such as standard reactor designs subject to certification under 10 C.F.R. Part 52, or property that can be reverse engineered to develop components significant to nuclear activities) subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or common defense and security as to warrant fingerprinting and background checks.

Fingerprints obtained would be submitted to the U.S. Attorney General, through the Commission, for identification and criminal history records checks. The Attorney General may provide the results of any search to the Commission. As is also the case under current law, the Commission would be authorized to provide the results of the identification and criminal history records checks (other than information that a Government agency has determined should not be made available to a licensee, certificate holder, or applicant) to the person who conducted the fingerprinting. A decision would then be made whether to provide unescorted access, or access to safeguards information, to the individual who was the subject of the background check.

New subsection 149(d) would allow the fingerprinting requirements of section 149 to be satisfied by use of other biometric methods used for identification that have been approved by the Attorney General. This will permit use of technologically advanced biometric methods for identification of individuals to satisfy the requirements of section 149.

*Sec. 4. Office of Nuclear Security and Incident Response*

This section amends Title II of the Energy Reorganization Act of 1974 by adding a new section 212, which establishes an Office of Nuclear Security and Incident Response. This new section is intended to codify action taken by the Commission in April, 2002, (creating the office by administrative action) and to provide the equivalent statutory status as other Commission offices. It is the Committee's intent for this office to coordinate closely with the Department of Homeland Security in order to enhance the effectiveness of both the Commission and the Department. It is also the Committee's intent that this office not duplicate efforts of the Department.

New subsections 212(a) and 212(b) provide definitions for the new section and establish the Office of Nuclear Security and Incident Response.

New subsection 212(c) provides for the appointment of a Director to head the office, and specifies the duties of the Director.

New subsection 212(d) requires the Commission to establish a security response evaluation program in order to assess the ability of each designated nuclear facility to defend against threats in accordance to the security plan. This subsection requires the evaluations to include force-on-force exercises that simulate the security threats consistent with the design basis threat applicable to the facility. It is the Committee's expectation that those who carry out the force-on-force exercises will be well qualified with backgrounds that include knowledge of special forces operations and nuclear facilities. The frequency of these evaluations is set at every 3 years, and allows the Commission to suspend these activities in times of heightened threat levels. The Commission is required to establish performance criteria for judging the security response evaluations. This subsection also sets out corrective action measures if a facility does not satisfy the performance criteria and does not correct any defects, but does not limit any current enforcement authority of the Commission.

New subsection 212(e) requires the Commission, in coordination with Department of Homeland Security, and, as appropriate, in consultation with other Federal, State, and local response agencies and stakeholders, to observe and evaluate emergency response exercises. The evaluation will assess the ability of Federal, State and local emergency agencies and emergency response personnel of the facility to respond to a radiological emergency in accordance with the emergency response plans. Specifically, the evaluation will assess capabilities; coordination and communications capabilities; and the ability to take protective actions. The Commission will also ensure that emergency response plans are revised to correct any deficiency identified in an evaluation. The NRC is required to submit a report to the President and the Congress (classified and unclassified) describing the results of exercises and any revisions made the plans.

New subsection 212(f) is a savings clause intended to ensure that nothing in this section limits the authority of the Department of Energy relating to the security and safeguarding of special nuclear materials, high level radioactive waste, and nuclear facilities resulting from all activities under the jurisdiction of DOE.

*Section. 205. Carrying of Weapons by Licensee Employees*

This section amends Chapter 14 of Title I of the Atomic Energy Act. It permits the Commission to authorize guards at certain NRC-licensed or certified facilities, and guards transporting special nuclear materials, to carry and use firearms to prevent sabotage of such facilities or theft of nuclear explosive material. The section also authorizes the Commission to issue regulations shielding guards against State prosecution for discharge of firearms in the performance of official duties..

*Section 206. Sensitive Radioactive Material Security*

This section amends Chapter 14 of the Atomic Energy Act of 1954 to add a new section 170E at the end. New subsection 170E(a) defines the terms 'sensitive radioactive material' and 'security threat.' Subsection 170E(b) requires the Commission to evaluate the security of sensitive radioactive material against security threats and recommend administrative and legislative actions. In doing so, the Commission is required to consult with the Secretary of Homeland Security, Secretary of Energy, Director of the CIA, Director of the FBI, Director of the Customs Service, and the Administrator of the EPA. The committee is aware that there are a broad range of radioactive materials in public use and not all present a significant threat to public health. As such, this subsection requires the Commission to take actions, as appropriate, to identify and categorize those materials that should be classified as sensitive radioactive material. The committee expects that the development of improved security recommendations under this section will be based on this categorization, providing the greatest security to those categories of sensitive radiological material which present the greatest threat.

New subsection 170E(c) requires periodic reports to the President and Congress describing administrative and legislative actions recommended by the task force.

New subsection 170E(d) requires the NRC to take such actions as are appropriate to revise the system for licensing radioactive materials and to ensure that States have entered into appropriate agreements establishing compatible programs.

*Sec. 207. Unauthorized Introduction of Dangerous Weapons*

This section expands section 229a of the Atomic Energy Act to include facilities, installations or real property subject to the licensing or certification authority of the Commission. This would allow Commission to apply the provisions of section 229a to NRC licensed or certified activities, thereby allowing the Commission to prohibit a person who has not obtained prior authorization from carrying, transporting, or otherwise introducing or causing to be introduced any weapon, explosive, or other dangerous instrumentality into any facility, installation or real property regulated or subject to certification by the Commission.

*Sec. 208. Sabotage of Nuclear Facilities or Fuel*

This section amends section 236a of the Atomic Energy Act of 1954 to expand existing Federal criminal sanctions for sabotage or attempted sabotage of production or utilization facilities to include sabotage or attempted sabotage during the construction stage of those facilities, if the damage could affect public health and safety during facility operation. This section also expands the sanctions to include sabotage or attempted sabotage of operating fuel fabrication facilities.

*Sec. 209. Evaluation of Adequacy of Enforcement Provisions*

This section requires the Attorney General and the NRC to submit to Congress a report that assesses the adequacy of the criminal enforcement provisions in Chapter 18 of the Atomic Energy Act

*Sec. 210. Protection of Whistleblowers*

This section amends section 212(a) of the Energy Reorganization Act of 1974 to extend whistleblower protection to Commission contractors and subcontractors.

*Sec. 211. Technical and Conforming Amendments*

This section provides technical and conforming amendments.

*Sec. 212. Authorization of Appropriations*

The Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) provides that the “aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year.” This section adds homeland security (except for the cost of fingerprinting and background checks and the costs of conducting security inspections) as one of the exemptions from inclusion in those charges.

## TITLE III MISCELLANEOUS

*Sec. 301. Treatment of Nuclear Reactor Financial Obligations*

This section provides that funds intended for decontamination and decommissioning are only to be used for those purposes and may not be used to satisfy any creditor's claim. It also states that a licensee may not be discharged of his responsibility of decontamination or decommissioning. Also, private insurance premium funds shall not be used to satisfy the claim of any creditor in any proceeding under this until the indemnification agreement is terminated.

*Sec. 302. Medical Isotope Production*

This section provides that the Commission may issue a license for the export of highly enriched uranium for medical isotope production if specific requirements are met. The requirements include an assurance letter to the U.S. Government from the receiving country, use for medical isotope production only, and irradiation only within a reactor. The recipient country must also meet treaty requirements, export requirements and requirements of physical security.

## LEGISLATIVE HISTORY

The Price-Anderson Act is the primary Federal statute governing the public liability, compensation, indemnity, and insurance coverage for nuclear accidents. The Act (Sec. 170 of the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2210) was first passed in 1957. The "Price-Anderson" Act derives its name from its two primary sponsors Rep. Melvin Price (D-IL) and Sen. Clinton P. Anderson (D-NM). It has been renewed three times by Congress, in 1965 and in 1975, for successive 10-year periods, and in 1988 for a fifteen-year period to end August 1, 2002. Senator Inhofe (R-OK) and Senator Voinovich (R-OH) cosponsored the current Act known as S. 156, the 'Price-Anderson Amendments Act of 2003', on January 14, 2003. It was then referred to the Senate Committee on Environment and Public Works. A full committee business meeting was held on April 9, 2003, and the committee ordered S. 156, the Price-Anderson Amendments Act of 2003 as amended, to be reported to the full senate.

The Reid amendment #2 as amended by Inhofe, Clinton amendment #6, Clinton amendment #7, and Bond amendment #1 were all offered and agreed to by voice vote.

## HEARINGS

There were no hearings held on S. 156 during the 108th Congress. On January 23, 2002, the Subcommittee on Transportation, Infrastructure and Nuclear Safety held a hearing on the reauthorization of Price Anderson. Witnesses included: Mr. William F. Kane—Deputy Executive Director for Reactor Programs, United States Nuclear Regulatory Commission; Mr. John L. Quattrocchi—Senior Vice President, American Nuclear Insurers; Mr. Marvin S. Fertel—Senior Vice President, Nuclear Energy Institute; Mr. Peter Bradford—Visiting Lecturer; Mr. Dan Guttman—Fellow, Center for

Study of American Government, Johns Hopkins University; Ms. Christie Brinkley—STAR Foundation.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 156 on April 9, 2003. The committee voted favorably to report S. 156 by voice vote.

#### REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 156 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 156 would increase the maximum retrospective and annual premiums collected from NRC to cover damages resulting from a nuclear accident. S. 156 would also require States and private-sector entities to pay fees to the Nuclear Regulatory Commission to cover increased costs for security at nuclear facilities. Because several of the mandates depend on future actions of the NRC, the Congressional Budget Office was not able to determine the aggregate cost of all mandates. While CBO could not predict with certainty whether the costs to private-sector entities would exceed the annual threshold for private-sector mandates, as provided by UMRA, they did determine that costs to public entities would be small and would not exceed the intergovernmental threshold.

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 5, 2003.*

Hon. JAMES M. INHOFE, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 156, a bill to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions, to provide for the security of commercial nuclear power plants and facilities designated by the Nuclear Regulatory Commission, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lisa Cash Driskill and Melissa E. Zimmerman, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

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*S. 156, A bill to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions, to provide for the security of commercial nuclear power plants and facilities designated by the Nuclear Regulatory Commission, and for other purposes, as ordered reported by the Senate Committee on Environment and Public Works on April 9, 2003*

*Summary*

S. 156 would establish several new security programs designed to protect the nation's nuclear infrastructure. Those programs would include appointing Federal security coordinators for designated nuclear facilities, enhanced systems to manage the security of sensitive radioactive materials, additional requirements for security and emergency-response plans at designated nuclear facilities, and additional training and grant landing for the National Guard and State and local authorities to improve security efforts at nuclear facilities. The bill also would reauthorize the Price-Anderson Act for Nuclear Regulatory Commission (NRC) licensees through 2012, which would provide a framework for the structure of liability coverage for such licensees in the event of a nuclear accident.

Based on information from the Nuclear Regulatory Commission, CBO estimates that implementing S. 156 would cost about \$175 million over the 2004-2008 period, assuming appropriation of the necessary amounts. Although the NRC currently has the authority to offset a substantial portion of its annual appropriation with fees charged to the licensees it regulates, S. 156 would require that none of the costs from activities included in the bill be offset through annual fees.

In addition, enacting S. 156 would increase revenues by establishing new criminal penalties for the sabotage of nuclear facilities and by allowing certain facilities regulated by the NRC to import weapons subject to a transfer tax. CBO estimates that those penalties and transfer taxes would increase revenues by less than \$500,000 a year. Subsequent direct spending of criminal penalties also would be less than \$500,000 per year.

S. 156 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by decreasing premiums that can be assessed by the NRC in the event of a nuclear accident, requiring new and expanded security procedures at certain nuclear facilities, and requiring new arrest authorization for nuclear facilities. Because several of the mandates depend on future actions of the NRC for which information currently is not available, CBO cannot determine the aggregate cost of all mandates contained in the bill or whether the costs to the private sector would exceed the annual threshold for private-sector mandates (\$120 million in 2004, adjusted annually for inflation). CBO estimates, however, that the costs to public entities

would be small and would not exceed the intergovernmental threshold (\$60 million in 2004, adjusted annually for inflation).

*Estimated Cost to the Federal Government*

The estimated budgetary impact of S. 156 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION<sup>1</sup></b>					
Federal Security Coordinators:					
Estimated Authorization Level .....	0	1	1	1	1
Estimated Outlays .....	0	1	1	1	1
Sensitive Radioactive Material:					
Estimated Authorization Level .....	12	12	12	12	13
Estimated Outlays .....	8	11	12	12	13
Security and Emergency-Response Plans:					
Estimated Authorization Level .....	9	9	13	15	9
Estimated Outlays .....	6	8	12	14	11
National Guard and Law Enforcement Training:					
Estimated Authorization Level .....	11	11	11	11	11
Estimated Outlays .....	8	10	11	11	11
Rulemakings and Evaluations:					
Estimated Authorization Level .....	5	2	5	1	1
Estimated Outlays .....	4	2	4	2	1
Total Changes:					
Estimated Authorization Level .....	37	35	42	40	35
Estimated Outlays .....	26	32	40	40	37

NOTE: Details may not sum to totals because of rounding.

<sup>1</sup>S. 156 also would affect revenues and direct spending but by less than \$500,000 a year.

*Basis of Estimate*

For this estimate, CBO assumes that the bill will be enacted near the end of calendar year 2004, that the necessary amounts will be appropriated for each year, and that outlays will occur at historical rates for similar programs.

S. 156 would reauthorize provisions of the Price-Anderson Act relating to NRC licensees through August 1, 2012. The act provides a framework for the structure of liability coverage in the event of a nuclear accident. CBO estimates that reauthorizing these provisions would have no effect on the Federal budget. If damages resulting from a nuclear accident exceed the liability coverage established by the Price-Anderson Act (roughly \$10 billion under current law), the act requires that the Congress determine how remaining damages would be paid. Options could include additional assessments on the nuclear industry or Federal appropriations.

*Spending Subject to Appropriation*

*Federal Security Coordinators.* S. 156 would require that the NRC hire and train security coordinators to be stationed in each of the NRC's four regions. We estimate that implementing this program would require the NRC to hire and train four coordinators at a cost of about \$500,000 per year and that the program would start in 2005.

*Security of Sensitive Radioactive Material.* S. 156 would require the NRC to improve the security requirements for sensitive radioactive materials. Such improvements would include revising licensing and classification systems, establishing a tracking system, and increasing evaluation and inspection of safeguard measures. Currently, the NRC spends about \$1 million per year to regulate certain radioactive material used for industrial purposes. S. 156 would significantly expand that program to include a wide variety of radioactive materials.

Based on information from the NRC, we estimate that this expanded program would require additional appropriations of \$12 million per year over the next 5 years. Funds would be used for establishing new computer systems, hiring of additional staff, and auditing sites with radioactive materials. Overall, we estimate that implementation of this program would result in outlays of \$56 million over the 2004–2008 period.

*Security-and Emergency-Response Plans.* S. 156 would require the NRC to evaluate the security and emergency-response plans for each of the 66 designated nuclear facilities in the United States. Based on information from the NRC, CBO estimates that those evaluations would cost an average of about \$10 million per year, or \$51 million over the 2004–2008 period for additional staff, equipment, training, and consulting; services.

*Emergency-Response Planning.* S. 156 would require the NRC to review the emergencyresponse plan for each designated nuclear facilities. It also would require the NRC to observe and evaluate emergency-response exercises and report to the Congress. Based on information from the NRC, we expect that the agency would hire additional staff to establish evaluation criteria to observe emergency-response exercises. We estimate that these activities would cost about \$17 million over the 2004–2008; period for additional staff, support, training, and travel.

*Security-Response Evaluations.* S. 156 would require the NRC to establish a securityresponse-evaluation program that would simulate the threats that nuclear facilities must be able to defend against. At least once every 3 years, an evaluation would be required at each designated nuclear facility. We expect that the NRC would use contractors to conduct mock exercises, known as force-on-force. Overall, we estimate that the NRC would spend about \$7 million per year to staff and support a program office and contract for such exercises. CBO estimates that the program would cost about \$3.5 million over the 2004–2008 period.

*National Guard and Law Enforcement Training.* S. 156 would establish a new program to provide technical assistance and training for the National Guard and State and local law enforcement agencies to respond to threats against the nation's nuclear facilities. Under this program, the NRC would provide training at each of the designated 66 facilities four times a year at a cost of about \$125,000 a year—at an estimated total cost of \$8 million per year. In addition, we estimate that the 31 States with designated nuclear facilities would each receive grants of \$100,000 per year for technical assistance and training. Assuming appropriation of the necessary amounts, we estimate that implementing those training and assistance programs would require appropriations of about \$11 mil-

lion a year, which would result in outlays of \$51 million over the 2004–2008 period.

*Rulemakings, Evaluations, and Reports.* The bill would require the NRC to prepare several reports for the Congress on nuclear security issues and conduct reviews of security matters at the nation's nuclear facilities. CBO has estimated the cost of those additional efforts based on information from the NRC. Specifically, the bill would require:

- An examination of the security requirements for the nation's nuclear infrastructure at an estimated cost of \$4 million over the 2004–2005 period;
- An update to rules on design-basis threat or the threat that designated nuclear facilities must be able to defend against at an estimated cost of \$2 million over the 2004–2006 period;
- An evaluation of each designated nuclear facility's plan to defend against the updated design-basis threat at an estimated cost of \$3.5 million in 2006;
- A review and update of employee security standards at the nation's nuclear facilities at an estimated cost of \$4 million over the 2004–2008 period;
- A report on the adequacy of criminal penalties under—the Atomic Energy Act at an estimated cost of \$500,000 in 2004; and
- A system to determine threat levels for the nation's nuclear infrastructure at an estimated cost of \$300,000 over the 2005–2006 period.

Overall, we would expect that such evaluations, rulemakings, and reports to the Congress would cost \$14 million over the 2004–2008 period for additional staff, support, and consulting services.

#### *Direct Spending and Revenues*

Enacting S. 156 would increase revenues by establishing new criminal penalties for the sabotage of a wide range of nuclear facilities and allow certain facilities regulated by the NRC to import weapons subject to a transfer tax. CBO estimates that those penalties and transfer taxes would increase revenues by less than \$500,000 a year. Subsequent direct spending of penalties collected for violation of the criminal code would also be less than \$500,000 per year.

#### *Intergovernmental and Private-Sector Impact*

S. 156 would impose both intergovernmental and private-sector mandates as defined in the UMRA by:

- Increasing both the maximum retrospective and annual, premiums collected from NRC licensees to cover damages resulting from a nuclear incident;
- Effectively increasing fees collected from licensees to pay for fingerprint checks by increasing the number of individuals requiring background checks;
- Requiring NRC licensees and certificate holders to obtain prior authorization from the commission, allowing security personnel to make arrests without warrants in the performance of their duties; and

- Requiring new security standards and procedures at designated nuclear facilities.

Because several of the mandates depend on future actions of the NRC for which information currently is not available, CBO cannot determine the aggregate cost of all mandates contained in the bill or whether the costs to private-sector entities would exceed the annual threshold for private-sector mandates (\$120 million in 2004, adjusted annually for inflation). CBO estimates, however, that the costs to public entities would be small and would not exceed the intergovernmental threshold (\$60 million in 2004, adjusted annually for inflation).

#### *Increase in Premiums*

Under current law, in the event that losses from a nuclear incident exceed the required amount of private insurance, the NRC would levy an assessment on its licensees (both public and private) to cover the shortfall in damage coverage. Section 102 would increase the maximum retrospective premium from \$84 million to \$94 million as well as increase the maximum annual premium from \$10 million to \$15 million. CBO has determined that raising both the maximum total premium and the annual premium would increase the costs of an existing mandate and would thereby impose both intergovernmental and private-sector mandates under U v RA. Because the probability of a nuclear accident resulting in losses exceeding the amount of private insurance coverage is low, CBO estimates that the annual costs of complying with the mandates (in expected-value terms) would not be substantial over the next 5 years.

#### *Additional Fee for Background Checks*

S. 156 would require the NRC to conduct security inspections at licensed facilities. In addition, the bill would require fingerprinting of additional individuals connected with nuclear facilities as part of criminal background checks done through the U.S. Attorney General's Office. Although the NRC would absorb the cost of the security inspections, the cost of the government background checks would be borne directly by licensees. The duty to pay the increased cost would be both a private-sector and intergovernmental mandate under UMRA, but the cost of the mandate would be small.

#### *Authorization for Arrests*

Current law allows employees of NRC licensees and certificate holders and the employees of their contractors and subcontractors to make an arrest without a warrant while carrying out official duties. S. 156 would impose a new intergovernmental and private-sector mandate by requiring licensees and certificate holders to obtain a blanket authorization from the NRC for such arrests. The details for obtaining this authorization have yet to be determined by the commission, but CBO expects the costs of this mandate to be small.

#### *New Security Standards and Procedures*

S. 156 would require the NRC to promulgate new rules for licensees concerning:

- Security requirements for handling sensitive radioactive materials;
  - Threats that certain nuclear facilities must protect against;
  - Security plans, emergency-response plans, and preparedness for the facilities;
  - Involvement of appropriate local governments, employers, and interested groups in the emergency-planning process;
  - Access and training standards for employees of the facilities; and
  - Handling of accelerator-produced and by-product radioactive material.

The new rules would constitute mandates as defined in UMRA, but the extent of those mandates would depend on future actions of the NRC. At this time, the NRC could not indicate the scope of the rules to be issued, and consequently, CBO cannot determine the cost of compliance.

*Previous Estimate*

On August 14, 2003, CBO transmitted a cost estimate for S. 1043, the Nuclear Infrastructure Security Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on May 15, 2003. The two bills have some similar provisions regarding security programs. CBO estimates that implementing the provisions in S. 1043 would cost more to implement than those in S. 156.

S. 1043 also included intergovernmental and private-sector mandates. S. 1043 differed from this bill by allowing the NRC to offset the cost of security inspections by increasing annual fees collected from licensees, an intergovernmental and private-sector mandate. The aggregate cost of the mandates in S. 1043 could not be determined because several of the mandates depend on future actions of the NRC for which information was not available. As a result, CBO could not determine whether the costs would exceed the annual threshold for private-sector mandates (\$120 million in 2004, adjusted annually for inflation) but estimated that the costs to public entities would not exceed the intergovernmental threshold (\$60 million in 2004, adjusted annually for inflation).

*Estimate Prepared By:* Federal Costs: Lisa Cash Driskill and Melissa E. Zimmerman (226-2860); Impact on State, Local, and Tribal Governments: Gregory Waring (225-3220); Impact on the Private Sector: Selena Caldera (226-2940).

*Estimate Approved by:* Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

**ATOMIC ENERGY ACT OF 1954**

An Act for the development and control of atomic energy.

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

## TITLE I—ATOMIC ENERGY

## CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

## Sec. 1. Declaration.

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*Sec. 170B. Uranium supply.*  
*Sec. 170C. Protection of designated nuclear facilities.*  
*Sec. 170D. Carrying of weapons.*  
*Sec. 170E. Sensitive radioactive material security.*

\* \* \* \* \*

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

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

b. The term “agreement for cooperation” means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91c., 103, 104, or 144, and made pursuant to section 123.

c. The term “atomic energy” means all forms of energy released in the course of nuclear fission or nuclear transformation.

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

e. The term “byproduct material” means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

f. The term “Commission” means the Atomic Energy Commission.<sup>1</sup>

g. The term “common defense and security” means the common defense and security of the United States.

h. The term “defense information” means any information in any category determined by any Government agency authorized to

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<sup>1</sup>The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 104 and 201 of the Energy Reorganization Act of 1974, Pub. L. 93-438. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 301(a) and 703 of the Department of Energy Organization Act, Pub. L. 95-91.

For transfer of certain functions from the Nuclear Regulatory Commission to the Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585.

classify information, as being information respecting, relating to, or affecting the national defense.

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

j. The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or the "contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170.

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

*k. authorize—*

*(1) to carry and use a firearm in the performance of official duties such of its members, officers, and employees, such of the employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities, and such of the employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission or in the protection of property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities, as the Commission considers necessary, in view of site-specific conditions, in the interest of the common defense and security; and*

*(2) to carry and use any other weapons, devices, or ammunition in the performance of officials duties, any employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities or property described in paragraph (1), regardless of whether the employees are Federal, State, or local law enforcement officers;*

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

m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

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

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

p. The term "licensed activity" means an activity licensed pursuant to this Act and covered by the provisions of section 170 a.

q. The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used on connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

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

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivi-

sion of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

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

v. The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility,<sup>1</sup> such term as used in chapters 10 and 16 shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

w. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of section 170, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided*, That such property is covered under

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<sup>1</sup> Section 3116(b) of Public Law 104-134 (110 Stat. 1321-349) amended this section by striking out "or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology". It should have struck out "or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology". The word "production" was omitted in the original amendment. This amendment was executed to the probable intent of the Congress.

the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

x. The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

y. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

z. The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

aa. The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially<sup>1</sup> enriched by any of the foregoing, but does not include source material.

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

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

dd. The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term "nuclear waste activities", as used in section 170, means activities subject to an agreement of indemnification under

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<sup>1</sup> So in original. Probably should be "artificially".

subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

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

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

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

hh. The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

**jj. ii. LEGAL COSTS.**—As used in section 170, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

**jj. DESIGNATED NUCLEAR FACILITY.**—The term "designated nuclear facility" means—

(1) an operating commercial nuclear power plant; and  
 (2) any other facility owned or operated by a licensee or certificate holder that the Commission determines should be included within the meaning of the term.

**kk. PRIVATE SECURITY FORCE.**—The term "private security force", with respect to a designated nuclear facility, means personnel hired or contracted by the licensee or certificate holder of the designated nuclear facility to provide security at the designated nuclear facility.

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**SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.**—

**[a. The Commission]** a. **IN GENERAL.**—Except as provided in subsection b., the Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

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

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

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

*b. MEDICAL ISOTOPE PRODUCTION.—*

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

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

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

*(i) uses an alternative nuclear reactor fuel; or*

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

(2) *EXPORTS TO OTHER COUNTRIES.—The Commission may specify, by rulemaking or decision in connection with an export license application, that a country other than a recipient country may receive exports of highly enriched uranium for medical isotope production in accordance with the same criteria established under paragraph (1) for exports to a recipient country if the Commission determines that the other country—*

*(A) is a party to the Treaty on the Nonproliferation of Nuclear Weapons done at Washington, London, and Moscow July 1, 1968 (21 UST 483) and the Convention on the Physical Protection of Nuclear Materials done at Vienna October 26, 1979 (TIAS 11080); and*

*(B) will receive the highly enriched uranium under an agreement with the United States concerning peaceful uses of nuclear energy.*

*(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—*

*(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (1), are applicable to the transportation of highly enriched uranium for medical isotope production.*

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

**[b.]** c. As used in this section—

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

(2) the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; **[and]**

(3) a fuel or target “can be used” in a nuclear research or test reactor if—

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

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

(4) the term “highly enriched uranium for medical isotope production” means highly enriched uranium contained in, or for use in, a target to be irradiated for the sole purpose of producing medical isotopes;

(5) the term “medical isotope” means a radioactive isotope (including Molybdenum 99, Iodine 131, and Xenon 133) that is used—

(A) to produce a radiopharmaceutical for diagnostic or therapeutic procedures on patients; or

(B) in connection with research and development of radiopharmaceuticals;

(6) the term “radiopharmaceutical” means a radioactive isotope that—

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

(B) is designed to accumulate temporarily in a part of the body, for therapeutic purposes or for enabling the production of a useful image of the appropriate body organ or function for use in diagnosis of medical conditions; and

(7) the term “recipient country” means Canada, Belgium, France, Germany, and the Netherlands.

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#### CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, ad-

ministration, research, and and<sup>3</sup> other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

c. make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

d. appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949,<sup>1</sup> as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949,<sup>1</sup> as amended) whose position would be subject to the Classification Act of 1949,<sup>1</sup> as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949,<sup>1</sup> as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall

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<sup>3</sup> So in original.

<sup>1</sup> The Classification Act of 1949 has been codified as chapter 51, and subchapter III of chapter 53, of title 5, United States Code.

make adequate provision for administrative review of any determination to dismiss any employee;

e. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases, and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising<sup>2</sup> and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;

h. consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear

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<sup>2</sup>So in original. The phrase "and without advertising" probably should be deleted.

material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

j. without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection 161 m. shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

[l. Repealed by Pub. L. 87-456, § 303(c), 76 Stat. 78, May 24, 1962.]

m. enter into agreements with persons licensed under Section 103, 104, 53 a. (4), or 63 a. (4) for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.;

o. require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105; and

p. make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

q. The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, an upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and

streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

r. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

s. establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

t. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161 m.;

u. (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land, any depreciable buildings, structures, utilities, machinery, equipment,

and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

v. provide services in support of the United States Enrichment Corporation<sup>1</sup>, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992<sup>2</sup> in performing such services;

w. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., or which operates any facility regulated or certified under section 1701 or 1702, any fee, charge, or price which it may require, in accordance with the provisions of section 483a of title 31 of the United States Code<sup>3</sup> or any other law, of applicants for, or holders of, such licenses or certificates.

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection,<sup>1</sup> the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section<sup>1</sup> or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 11 e. (2), will make available such

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<sup>1</sup>Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

<sup>2</sup>The date of enactment was Oct. 24, 1992.

<sup>3</sup>Prior section 483a of title 31, United States Code, has been codified as section 9701 of such title.

<sup>1</sup>The date of enactment was Nov. 8, 1978.

bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

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**SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.**<sup>1</sup>

**a. REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES.**—

Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in section 2 i. have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission") in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection b. to cover public liability claims. Whenever such financial protection is required it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

**b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.**—(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to

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<sup>1</sup> This section is commonly referred to as the Price-Anderson Act.

such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further*: That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than ~~[\$63,000,000]~~ \$94,000,000 (subject to adjustment for inflation under subsection t.), but not more than ~~[\$10,000,000 in any 1 year]~~ \$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.), for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

- (i) for any facility, if more than one nuclear incident occurs in any one calendar year; or
- (ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of

deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitee to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitee to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

- (i) request the Congress to appropriate sufficient funds to satisfy such payments; or
- (ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (a)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under

such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

c. INDEMNIFICATION OF ~~LICENSEES~~ LICENCEES BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2002, for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to ~~August 1, 2002~~ *August 1, 2012*.

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the “Secretary”) may have, the Secretary shall, until August 1, 2002, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

(B)(i)(I) Beginning 60 days after the date of enactment of the Price-Anderson Amendments Act of 1988,<sup>2</sup> agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85-804 entered into between August 1, 1987, and the date of enactment of the Price-Anderson Amendments Act of 1988.<sup>2</sup>

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

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<sup>2</sup>The date of enactment was Aug. 20, 1988.

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b.

(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1988,<sup>1</sup> to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the energy Reorganization Act of 1974 (42 U.S.C. 5842).

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed \$100,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the con-

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<sup>1</sup>The date of enactment was Aug. 20, 1988.

tractor or of the work to be performed under the contract shall be effective to bar such liability.

e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o. (1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the maximum amount of financial protection required under subsection b. or the amount of indemnity and financial protection that may be required under paragraph (3) of subsection d., whichever amount is more; and

(C) in the case of all licensees of the Commission required to maintain financial protection under this section—

(i) \$500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds \$60,000,000, \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in section 170 i. and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to section b., to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of \$100,000,000, together with the amount of financial protection required of the contractor.

f. COLLECTION OF FEES BY NUCLEAR REGULATORY COMMISSION.—The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed

under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

g. USE OF SERVICES OF PRIVATE INSURERS.—In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5), as amended, upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

h. CONDITIONS OF AGREEMENTS OF INDEMNIFICATION.—The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

i. COMPENSATION PLANS.—(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), the Secretary or the Commission<sup>1</sup>, as appropriate, shall—

(A) make a survey of the causes and extent of damage; and  
 (B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate pub-

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<sup>1</sup> So in original. Probably should be "Commission".

lic liability under subparagraph (A), (B), or (C) of subsection e. (1) the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection e. (1);

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection 170 e. (2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6<sup>1</sup> of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

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

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

(6)(A) This paragraph is enacted—

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner

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<sup>1</sup> So in original. Probably should be "(6)".

and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term "resolution" means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: "That the \_\_\_\_\_ approves the compensation plan numbered \_\_\_\_\_ submitted to the Congress on \_\_\_\_\_, 19\_\_\_\_.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

j. CONTRACTS IN ADVANCE OF APPROPRIATIONS.—In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code.

k. EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and August 1, 2002, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of \$250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

(1)<sup>1</sup> PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.—(1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1988,<sup>2</sup> the President shall establish a commission (in this subsection referred to as the “study commission”) in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compen-

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<sup>1</sup> So in original. Probably should be “l.”.

<sup>2</sup> The date of enactment was Aug. 20, 1988.

sating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

- (i) shall be appointed by the President; and
- (ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988.<sup>1</sup>

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. COORDINATED PROCEDURES FOR PROMPT SETTLEMENT OF CLAIMS AND EMERGENCY ASSISTANCE.—The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. WAIVER OF DEFENSES AND JUDICIAL PROCEDURES.—(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

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<sup>1</sup>The date of enactment was Aug. 20, 1988.

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.<sup>1</sup>

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection e.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such ac-

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<sup>1</sup> So in original. Probably should be a comma.

tion pending in any State court (including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1988)<sup>1</sup> or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988,<sup>1</sup> whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

- (i) a court, acting pursuant to subsection o., determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or
- (ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

- (i) to consolidate related or similar claims for hearing or trial;
- (ii) to establish priorities for the handling of different classes of cases;
- (iii) to assign cases to a particular judge or special master;
- (iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;
- (v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;
- (vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and
- (vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

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<sup>1</sup>The date of enactment was Aug. 20, 1988.

o. PLAN FOR DISTRIBUTION OF FUNDS.—(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection e. (1):

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b. (1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but

in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

(i) that such costs are reasonable and equitable; and

(ii) that such person has—

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by [August 1, 1998] *August 1, 2008*, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

q. LIMITATION ON AWARDING OF PRECAUTIONARY EVACUATION COST.—No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

r. LIMITATION ON LIABILITY OF LESSORS.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

s. LIMITATION ON PUNITIVE DAMAGES.—No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum *total and annual* standard deferred premium under subsection b. (1) not less than once during each 5-year period following the [date of the enactment of the Price-Anderson Amendments Act of 1988], *July 1, 2001* in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term “Consumer Price Index” means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

**SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—**

a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than \$10,000.

b. The Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that—

(1) it is unlikely that a conflict of interest would exist, or

(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interests exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section,<sup>1</sup> but in no event later than 120 days after such date.

[42 U.S.C. 2210a]

**SEC. 170B. URANIUM SUPPLY.—**

a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

<sup>1</sup> The date of enactment was Nov. 6, 1978.

b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

c. The criteria referred to in subsection a. shall also include, but not be limited to—

- (1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;
- (2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;
- (3) present and probable future use of the domestic market by foreign imports;
- (4) whether domestic economic reserves can supply all future needs for a future 10 year period;
- (5) present and projected domestic uranium exploration expenditures and plans;
- (6) present and projected employment and capital investment in the uranium industry;
- (7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and
- (8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

d. The Secretary or<sup>1</sup> Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) an investigation to determine the effects on the

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<sup>1</sup> So in original. Probably should be "of".

national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.

**SEC. 170C. PROTECTION OF DESIGNATED NUCLEAR FACILITIES.**

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

(1) **CERTIFICATE HOLDER.**—*The term “certificate holder” means the holder of a certificate of compliance issued under section 1701.*

(2) **FEDERAL SECURITY COORDINATOR.**—*The term “Federal security coordinator” means the Federal security coordinator assigned to a regional office of the Commission.*

(3) **DESIGN BASIS THREAT.**—*The term “design basis threat” means a design basis threat for a designated nuclear facility, as revised under subsection (c).*

(4) **LICENSEE.**—*The term “licensee” means the holder of a license issued by the Commission.*

(b) **SECURITY EXAMINATION.**—

(1) **IN GENERAL.**—*The Commission, in coordination with the Secretary of Homeland Security and in consultation with other agencies as appropriate, shall examine—*

*(A) classification of threats against designated nuclear facilities as—*

*(i) an act falling under the responsibilities of the Federal Government, including an act by an enemy of the United States, whether a foreign government or any other person; or*

*(ii) an act involving a type of risk that a licensee or certificate holder should be responsible for guarding against;*

*(B) coordination of Federal, State, and local security efforts for protection of land, water, and ground access to designated nuclear facilities in the event of a terrorist attack or attempted terrorist attack;*

*(C) the adequacy of emergency planning zones to protect the public health and safety in the event of a terrorist attack against a designated nuclear facility;*

(D) the adequacy and coordination of Federal, State, and local emergency planning, evacuation, and other measures to protect the public health and safety in the event of a terrorist attack against a designated nuclear facility;

(E) the system of threat levels, consistent with the Homeland Security Advisory System used to categorize the threats against a designated nuclear facility, including—

(i) procedures to ensure coordinated Federal, State, and local responses to changing threat levels for designated nuclear facilities;

(ii) monitoring of threats against designated nuclear facilities; and

(iii) procedures to notify licensees and certificate holders of a designated nuclear facility of changes in threat levels;

(F) the development, implementation, and revision of security plans for designated nuclear facilities;

(G) the hiring and training standards for members of private security forces at designated nuclear facilities;

(H) the coordination of Federal resources to expedite and improve the process of performing background checks on employees with access to designated nuclear facilities; and

(I) the creation by the Secretary of Homeland Security of a program to provide technical assistance and training for the National Guard, State law enforcement agencies, and local law enforcement agencies to respond, as appropriate, to threats against a designated nuclear facility, including recommendations for the establishment of a grant program to assist State and local governments in carrying out any recommended actions under this section.

(2) REPORT.—Not later than 1 year after completion of the security examination under paragraph (1), the Commission and the Secretary of Homeland Security shall submit to the President and Congress, in classified and unclassified form, a report with recommendations and findings.

(c) REVISION OF DESIGN BASIS THREATS.—

(1) IN GENERAL.—Not later than 180 days after completion of the security examination under subsection (b), the Commission shall by regulation revise the design basis threats promulgated before the date of enactment of this section as the Commission determines to be appropriate based on the security examination.

(2) PROTECTION OF SAFEGUARDS INFORMATION.—In promulgating any regulations under this subsection, the Commission shall ensure protection of safeguards information in accordance with section 147.

(d) THREAT LEVELS.—Not later than 150 days after the date of submission of the report under subsection (b)(2), the Commission shall establish a system for the determination of multiple threat levels to describe the threat conditions at designated nuclear facilities.

(e) SECURITY PLANS.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Commission revises the design basis threats under

subsection (c)(1), the Commission shall require each licensee or certificate holder of a designated nuclear facility to—

- (A) revise the security plan to ensure that the designated nuclear facility protects against the appropriate design basis threats; and
- (B) submit the security plan to the Commission for review.

(2) **REVIEW SCHEDULE.**—The Commission shall establish a priority schedule for conducting reviews of security plans based on the proximity of the designated nuclear facility to large population areas.

(3) **UPGRADES TO SECURITY.**—The Commission shall ensure that the licensee or certificate holder of each designated nuclear facility makes any changes to security and the security plan required from the Commission review on a schedule established by the Commission, but not to exceed 18 months after completion of review.

(f) **EMERGENCY RESPONSE PLANS.**—

(1) **IN GENERAL.**—Not later than 21 months after the date of enactment of this section, the Commission shall review, in consultation with the Secretary of Homeland Security, the emergency response plans for each designated nuclear facility to ensure that each emergency response plan provides protection for persons in the emergency response planning zone.

(2) **ASPECTS OF REVIEW.**—The Commission shall ensure that each emergency response plan provides, as appropriate to the type of designated nuclear facility, for—

- (A) the protection of public health and safety, including the ability to implement protective measures;
- (B) clear definition and assignment of responsibilities of emergency response personnel;
- (C) notification procedures;
- (D) communication and coordination among emergency response personnel;
- (E) dissemination of information to the public, both prior to, and in the event of, a radiological emergency;
- (F) adequate emergency facilities and equipment at and around the designated nuclear facility;
- (G) the use of methods, systems, and equipment for assessing and monitoring actual or potential impacts of a radiological emergency;
- (H) a range of protective actions for the public;
- (I) means for controlling radiological exposures for emergency response personnel;
- (J) appropriate medical services for contaminated individuals;
- (K) general plans for recovery and reentry; and
- (L) radiological emergency response training.

(3) **SCHEDULE.**—The Commission shall establish a priority schedule for conducting reviews of emergency response plans for designated nuclear facilities based on the proximity of such facilities to large population areas.

(4) **UPGRADES TO EMERGENCY RESPONSE PLAN.**—The Commission shall ensure that the licensee or certificate holder of

*each designated nuclear facility revises, as necessary, the emergency response plan for review by the Commission on a schedule established by the Commission.*

*(g) TRAINING PROGRAM.—*

*(1) IN GENERAL.—Not later than 1 year after submission of the report under subsection (b)(2), the President shall establish, based on and consistent with the findings and recommendations contained in the report submitted under subsection (b)(2), a program to provide technical assistance and training for the National Guard and State and local law enforcement agencies in responding to threats against a designated nuclear facility.*

*(2) GRANTS.—The President may provide grants to State and local governments to assist in carrying out this section.*

*(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.*

*(h) EMPLOYEE SECURITY.—*

*(1) REVIEW.—Not later than 180 days after the date of enactment of this section, the Commission shall review and update as appropriate the access and training standards for employees of a designated nuclear facility.*

*(2) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Commission shall establish qualifications and procedures, in addition to fingerprinting for criminal history record checks conducted under section 149, to ensure that no individual who presents a threat to national security is employed at a designated nuclear facility.*

*(i) FEDERAL SECURITY COORDINATORS.—*

*(1) REGIONAL OFFICES.—Not later than 180 days after the date of enactment of this section, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.*

*(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—*

*(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against a designated nuclear facility;*

*(B) ensuring that a designated nuclear facility maintains security consistent with the security plan in accordance with the appropriate threat level; and*

*(C) assisting in the coordination of security measures among—*

*(i) the private security force at a designated nuclear facility; and*

*(ii) Federal, State, and local authorities, as appropriate.*

*(j) CLASSIFIED INFORMATION.—Nothing in this section supersedes any law (including a regulation) governing the disclosure of classified information or safeguards information.*

**SEC. 170D. CARRYING OF WEAPONS.**

*(a) AUTHORITY TO MAKE ARREST.—*

*(1) IN GENERAL.—A person authorized under section 161k. to carry and use a firearm, other weapon, device, or ammunition may, while in the performance of, and in connection with,*

official duties, detain or arrest an individual without a warrant for any offense against the United States committed in the presence of the person or for any felony under the laws of the United States if the person has a reasonable ground to believe that the individual has committed or is committing such a felony.

(2) **LIMITATION.**—An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to make an arrest under paragraph (1) may make an arrest only after the Commission, licensee, or certificate holder has applied for and been granted authorization from the Commission—

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

(B) in the enforcement of—

(i) a law regarding the property of the United States in the custody of the Department of Energy, the Commission, or a contractor of the Department of Energy or Commission or a licensee or certificate holder of the Commission;

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

(iii) a law applicable to property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

(iv) any provision of this Act that subjects an offender to a fine, imprisonment, or both.

(3) **OTHER AUTHORITY.**—The arrest authority conferred by this section is in addition to any arrest authority under other law.

(4) **GUIDELINES.**—

(A) **IN GENERAL.**—The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement section 161k. and this subsection.

(B) **EFFECTIVE DATE.**—The authority to carry and use weapons, devices, or ammunition provided to employees described in section 161k.(2) and the authority provided to those employees under this subsection shall not be effective until the date on which guidelines issued under subparagraph (A) become effective.

#### SEC. 170E. SENSITIVE RADIOACTIVE MATERIAL SECURITY.

(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; or

(II) that is any other radioactive material (regardless of whether the material is or has been licensed or otherwise regulated under this Act) pro-

duced 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 should be classified as “sensitive radioactive material” that warrants improved security and protection against loss, theft, or sabotage.

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

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

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

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

(C) any other threat of terrorist or other criminal activity involving sensitive radioactive material that could harm the health or safety of the public due primarily to radiological properties of the sensitive radioactive material, as determined by the Commission.

(b) DUTIES.—

(1) IN GENERAL.—The Commission, in consultation with Secretary of Homeland Security, Secretary of Energy, Director of Central Intelligence, Director of the Federal Bureau of Investigation, Director of the Customs Service, and Administrator of the Environmental Protection Agency, shall—

(A) evaluate the security of sensitive radioactive material against security threats; and

(B) recommend administrative and legislative actions to be taken to provide an acceptable level of security against security threats.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the Commission shall consider actions, as appropriate to—

(A) determine the radioactive materials that should be classified as sensitive radioactive materials;

(B) develop a classification system for sensitive radioactive materials that—

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

(ii) takes into account—

(I) radioactivity levels of sensitive radioactive material;

(II) the dispersibility of sensitive radioactive material;

(III) the chemical and material form of sensitive radioactive material; and

(IV) other appropriate factors;

(C) develop a national system for recovery of sensitive radioactive material that is lost or stolen, taking into account the classification system established under subparagraph (B);

(D) provide for the storage of sensitive radioactive material that is not currently in use in a safe and secure manner;

(E) develop a national tracking system for sensitive radioactive material, taking into account the classification system established under subparagraph (B);

(F) develop methods to ensure the return or proper disposal of sensitive radioactive material;

(G) consider export controls on sensitive radioactive materials so that, to the extent feasible, exports from the United States of sensitive radioactive materials are made to foreign recipients that are willing and able to control the sensitive radioactive materials in a manner similar to the manner in which recipients in the United States control such sensitive radioactive material; and

(H) establish procedures to improve the security of sensitive radioactive material in use, transportation, and storage.

(3) **PROCEDURES TO IMPROVE SECURITY.**—The procedures to improve the security of sensitive radioactive material under paragraph (2)(H) may include—

(A) periodic audits or inspections by the Commission to ensure that sensitive radioactive material is properly secured and can be fully accounted for;

(B) evaluation by the Commission of security measures taken by persons that possess sensitive radioactive material;

(C) imposition of increased fines for violations of regulations relating to security and safety measures applicable to persons that possess sensitive radioactive material;

(D) conduct of background checks on individuals with access to sensitive radioactive material;

(E) measures to ensure the physical security of facilities in which sensitive radioactive material is stored; and

(F) screening of shipments of sensitive radioactive material to facilities that are particularly at risk for sabotage to ensure that the shipments do not contain explosives.

(c) **REPORT.**—Not later than 1 year after the date of enactment of this section, and not less frequently than once every 3 years thereafter, the Commission shall submit to the President and Congress a report in unclassified form (with a classified annex, if necessary) describing the administrative and legislative actions recommended under subsection (b)(1).

(d) **ADMINISTRATIVE ACTION.**—Not later than 60 days after the date of submission of the report under subsection (c), the Commission shall take such actions as are appropriate to—

(1) revise the system for licensing sensitive radioactive materials; and

(2) delegate the authority of the Commission to implement regulator programs and requirements to States that enter into agreements with the Commission to perform inspections and other functions on a cooperative basis as the Commission considers appropriate.

## SEC. 229. TRESPASS UPON COMMISSION INSTALLATIONS.—

a. The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved *or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act.*

b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

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## SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to, or [who intentionally and willfully attempts] *or who attempts or conspires to destroy or cause physical damage to—*

- (1) any production facility or utilization facility licensed under this Act;
- (2) any nuclear waste [storage facility] *storage, treatment, or disposal facility* licensed under this Act;
- (3) any nuclear fuel for [such a utilization facility] *a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility; [or]*
- (4) any uranium enrichment [facility licensed] *uranium conversion or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or*
- (5) *any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;*

shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

b. Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

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[PUBLIC LAW 93-438, AS AMENDED]

## ENERGY REORGANIZATION ACT OF 1974

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## TITLE II—NUCLEAR REGULATORY COMMISSION

Sec. 201. (a) \* \* \*

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## OFFICE OF REACTOR REGULATION

Sec. 203. (a) There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 209, and who shall serve at the pleasure of and be removable by the Commission.

(b) Subject to the provisions of this Act, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:

(1) Principal [licensing and regulation involving] *licensing, regulation, and, except as otherwise provided under section 212, carrying out safety reviews, safeguards, and physical security of all facilities and materials licensed under the Atomic Energy Act of 1954, as amended, associated with the construction and operation of nuclear reactors licensed under the authority of the Atomic Energy Act of 1954, as amended;*

(2) Review the safety [and safeguards] of all such facilities, materials, and activities, and such review functions shall include but not be limited to—

\* \* \* \* \*

## SEC. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE.

(a) *DEFINITIONS.*—In this section:

(1) *CERTIFICATE HOLDER.*—The term ‘certificate holder’ has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

(2) *DESIGNATED NUCLEAR FACILITY.*—The term ‘designated nuclear facility’ has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(3) *DIRECTOR.*—The term ‘Director’ means the Director of Nuclear Security and Incident Response appointed under subsection (c).

(4) *LICENSEE.*—The term ‘licensee’ has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

(5) *OFFICE.*—The term ‘Office’ means the Office of Nuclear Security and Incident Response established by subsection (b).

(b) *ESTABLISHMENT OF OFFICE.*—There is established in the Commission the Office of Nuclear Security and Incident Response.

(c) *DIRECTOR.*—

(1) *APPOINTMENT.*—The Commission may appoint and terminate a Director of Nuclear Security and Incident Response to head the Office.

(2) *DUTIES.*—

(A) *IN GENERAL.*—The Director shall perform such functions as the Commission delegates to the Director.

(B) *FUNCTIONS.*—The functions delegated to the Director may include—

(i) carrying out security, safeguards, and incident responses relating to—

(I) any facility owned or operated by a Commission licensee or certificate holder;

(II) any property owned or in the possession of a licensee or certificate holder that—

(aa) is significant to the common defense and security; or

(bb) is being transported to or from a facility described in clause (i); and

(III) any other activity of a licensee or certificate holder, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), that is significant to the common defense and security;

(ii) for a facility or material licensed under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)—

(I) developing contingency plans for dealing with threats, thefts, and sabotage; and

(II) monitoring, reviewing, and evaluating security and safeguards;

(iii) recommending upgrades to internal accounting systems for special nuclear and other materials licensed or certified under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

(iv) developing and recommending standards and amendments to the standards of the Commission relating to the duties described in clauses (i) through (iii); and

(E) carrying out any other safeguards and physical security functions and incident response that the Commission determines to be appropriate.

(3) *CONSULTATION.*—In carrying out the duties under paragraph (2), the Director shall, to the extent practicable, consult and coordinate with—

(A) other officers of the Commission; and

(B) other Federal agencies.

(d) *SECURITY RESPONSE EVALUATIONS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date of enactment of this section, the Commission shall establish a security response evaluation program to assess the ability of each designated nuclear facility to defend against the threats in accordance with the security plan for the designated nuclear facility.

(2) *FREQUENCY OF EVALUATIONS.*—Not less than once every 3 years, the Commission shall conduct and document security response evaluations at each designated nuclear facility to assess the ability of the private security force of the designated nuclear facility to defend against the appropriate design basis threat.

(3) **SECURITY EXEMPTION.**—*The Commission may suspend activities under this section if the Commission determines that the security response evaluations would compromise security at any designated nuclear facility in accordance with a heightened threat level.*

(4) **ACTIVITIES.**—*The security response evaluation shall include force-on-force exercises that simulate the security threats consistent with the design basis threat appropriate to the facility.*

(5) **PERFORMANCE CRITERIA.**—*The Commission shall establish performance criteria for judging the security response evaluations.*

(6) **CORRECTIVE ACTION.**—

(A) **IN GENERAL.**—*When any of the performance criteria established under paragraph (5) are not satisfied—*

(i) *the licensee or certificate holder shall promptly correct any defects in performance identified by the Commission in the security response evaluation; and*

(ii) *the Commission shall conduct an additional security response evaluation within 9 months to confirm that the licensee or certificate holder satisfies the performance criteria established under paragraph (5).*

(B) **2 CONSECUTIVE FAILURES TO SATISFY PERFORMANCE CRITERIA.**—

(i) **IN GENERAL.**—*If a designated nuclear facility fails to satisfy the performance criteria established under paragraph (5) in 2 consecutive security response evaluations, the Commission shall issue an order specifying the corrective actions that must be taken by the licensee or certificate holder of the designated nuclear facility.*

(ii) **FAILURE TO TAKE CORRECTIVE ACTION.**—*If the licensee or certificate holder of a designated nuclear facility does not take the corrective action specified by the Commission within 30 days after the date of issuance of an order under clause (i), and the Commission determines that the failure could compromise public health and safety, the Commission shall assess a civil penalty under section 234.*

(7) **REPORTS.**—*Not less often than once every year, the Commission shall submit to Congress and the President a report, in classified form and unclassified form, that describes the results of each security response evaluation under this paragraph for the previous year.*

(e) **EMERGENCY RESPONSE EXERCISES.**—

(1) **IN GENERAL.**—*Not less than once every 2 years, the Commission, in coordination with the Secretary of Homeland Security shall observe and evaluate emergency response exercises to assess the ability of Federal, State, and local emergency response personnel and emergency response personnel of a licensee or certificate holder to respond to a radiological emergency at the designated nuclear facility in accordance with the emergency response plans.*

(2) ACTIVITIES.—The emergency response exercises shall evaluate—

(A) the response capabilities, response times, and co-ordination and communication capabilities of the response personnel; and

(B) the effectiveness and adequacy of emergency response and the ability to take protective actions.

(3) PLANS.—The Commission shall ensure that the emergency response plan for a designated nuclear facility is revised to correct for any deficiencies identified by an evaluation under this subsection.

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

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

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

(f) EFFECT.—Nothing in this section limits any authority of the Department of Energy relating to the safe operation of facilities under the jurisdiction of the Department.

## UNITED STATES CODE

### TITLE 11—BANKRUPTCY

\* \* \* \* \*

#### Section 523. Exceptions to Discharge

(a) \* \* \*

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(f) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Notwithstanding any other provision of this title—

(1) any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee, former licensee, or any other person to comply with a regulation or order of the Nuclear Regulatory Commission governing the decontamination and decommissioning of a nuclear power reactor licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, other than a claim resulting from an activity undertaken to satisfy that responsibility, until the decontamination and decommissioning of the nuclear power reactor is completed to the satisfaction of the Nuclear Regulatory Commission;

(2) obligations of licensees, former licensees, or any other person to use funds or other assets to satisfy a responsibility described in paragraph (1) may not be rejected, avoided, or discharged in any proceeding under this title or in any liquidation, reorganization, receivership, or other insolvency proceeding under Federal or State law; and

(3) private insurance premiums and standard deferred premiums held and maintained in accordance with section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) shall not

*be used to satisfy the claim of any creditor in any proceeding under this title, until the indemnification agreement executed in accordance with section 170c. of that Act (42 U.S.C. 2210(c)) is terminated.*

