

Calendar No. 152

109TH CONGRESS
1ST SESSION

S. 864

[Report No. 109–98]

To amend the Atomic Energy Act of 1954 to modify provisions relating to nuclear safety and security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2005

Mr. INHOFE (for himself and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 1, 2005

Reported by Mr. INHOFE, with an amendment

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

A BILL

To amend the Atomic Energy Act of 1954 to modify provisions relating to nuclear safety and security, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 ~~This Act may be cited as the “Nuclear Safety and~~
5 ~~Security Act of 2005”.~~

1 **SEC. 2. DEFINITION OF COMMISSION.**

2 In this Act, the term “Commission” means the Nu-
3 clear Regulatory Commission.

4 **SEC. 3. GENERAL PROVISIONS.**

5 Section 161 of the Atomic Energy Act of 1954 (42
6 U.S.C. 2201) is amended—

7 (1) by striking “SEC. 161” and all that follows
8 through “authorized to—” and inserting the fol-
9 lowing:

10 **“SEC. 161. GENERAL PROVISIONS.”;**

11 (2) in each of subsections a., b., c., d., e., f., h.,
12 i., j., m., n., o., p., s., t., v., and w., by inserting “In
13 carrying out the duties of the Commission, the Com-
14 mission may” after the subsection designation;

15 (3) in subsection u., by striking “(1) enter
16 into” and inserting “In carrying out the duties of
17 the Commission, the Commission may—

18 “(1) enter into”;

19 (4) in subsection x., by striking “Establish”
20 and inserting “In carrying out the duties of the
21 Commission, the Commission may establish”;

22 (5) in each of subsections a., b., c., d., e., f., h.,
23 j., m., n., s., and v., by striking the semicolon at the
24 end and inserting a period;

25 (6) in subsection o., by striking “; and” at the
26 end and inserting a period;

1 (7) in subsection t., by striking the semicolon at
2 the end; and

3 (8) by indenting each subdivision appropriately.

4 **SEC. 4. USE OF FIREARMS BY SECURITY PERSONNEL.**

5 The Atomic Energy Act of 1954 is amended by in-
6 serting after section 161 (42 U.S.C. 2201) the following:

7 **“SEC. 161A. USE OF FIREARMS BY SECURITY PERSONNEL.**

8 “(a) DEFINITIONS.—In this section, the terms ‘hand-
9 gun’, ‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machine-
10 gun’, ‘short-barreled shotgun’, and ‘short-barreled rifle’
11 have the meanings given the terms in section 921(a) of
12 title 18, United States Code.

13 “(b) AUTHORIZATION.—Notwithstanding subsections
14 (a)(4), (a)(5), (b)(2), (b)(4), and (c) of section 922 of title
15 18, United States Code, section 925(d)(3) of title 18,
16 United States Code, section 5844 of the Internal Revenue
17 Code of 1986, and any law (including regulations) of a
18 State or a political subdivision of a State that prohibits
19 the transfer, receipt, possession, transportation, importa-
20 tion, or use of a handgun, a rifle, a shotgun, a short-bar-
21 reled shotgun, a short-barreled rifle, a machinegun, a
22 semiautomatic assault weapon, ammunition for any such
23 gun or weapon, or a large capacity ammunition feeding
24 device, in carrying out the duties of the Commission, the
25 Commission may authorize the security personnel of any

1 licensee or certificate holder of the Commission (including
 2 an employee of a contractor of such a licensee or certifi-
 3 cate holder) to transfer, receive, possess, transport, im-
 4 port, and use ~~1~~ or more such guns, weapons, ammunition,
 5 or devices, if the Commission determines that—

6 “(1) the authorization is necessary to the dis-
 7 charge of the official duties of the security per-
 8 sonnel; and

9 “(2) the security personnel—

10 “(A) are not otherwise prohibited from
 11 possessing or receiving a firearm under Federal
 12 or State laws relating to possession of firearms
 13 by a certain category of persons;

14 “(B) have successfully completed any re-
 15 quirement under this section for training in the
 16 use of firearms and tactical maneuvers;

17 “(C) are engaged in the protection of—

18 “(i) a facility owned or operated by a
 19 licensee or certificate holder of the Com-
 20 mission that is designated by the Commis-
 21 sion; or

22 “(ii) radioactive material or other
 23 property owned or possessed by a licensee
 24 or certificate holder of the Commission, or
 25 that is being transported to or from a fa-

1 cility owned or operated by such a licensee
2 or certificate holder, and that has been de-
3 termined by the Commission to be of sig-
4 nificance to the common defense and secu-
5 rity or public health and safety; and

6 “(D) are discharging the official duties of
7 the security personnel in transferring, receiving,
8 possessing, transporting, or importing the
9 weapons, ammunition, or devices.

10 “(e) BACKGROUND CHECKS.—A person that receives,
11 possesses, transports, imports, or uses a weapon, ammuni-
12 tion, or a device under subsection (b) shall be subject to
13 a background check by the Attorney General, based on
14 fingerprints and including a background check under sec-
15 tion 103(b) of the Brady Handgun Violence Prevention
16 Act (Public Law 103–159; 18 U.S.C. 922 note) to deter-
17 mine whether the person is prohibited from possessing or
18 receiving a firearm under Federal or State law.

19 “(d) EFFECTIVE DATE.—This section takes effect on
20 the date on which regulations are promulgated by the
21 Commission, with the approval of the Attorney General,
22 to carry out this section.”

1 **SEC. 5. FINGERPRINTING AND CRIMINAL HISTORY RECORD**

2 **CHECKS.**

3 Section 149 of the Atomic Energy Act of 1954 (42
4 U.S.C. 2169) is amended—

5 (1) in subsection a.—

6 (A) by striking “a. The Nuclear” and all
7 that follows through “section 147.” and insert-
8 ing the following:

9 “a.(1)(A)(i) The Commission shall require each indi-
10 vidual or entity described in clause (ii) to fingerprint each
11 individual described in subparagraph (B) before the indi-
12 vidual described in subparagraph (B) is permitted access
13 under subparagraph (B).

14 “(ii) The individuals and entities referred to in clause
15 (i) are individuals and entities that, on or before the date
16 on which an individual is permitted access under subpara-
17 graph (B)—

18 “(I) are licensed or certified to engage in an ac-
19 tivity subject to regulation by the Commission;

20 “(II) have filed an application for a license or
21 certificate to engage in an activity subject to regula-
22 tion by the Commission; or

23 “(III) have notified the Commission in writing
24 of an intent to file an application for licensing, cer-
25 tification, permitting, or approval of a product or ac-
26 tivity subject to regulation by the Commission.

1 “(B) The Commission shall require to be
2 fingerprinted any individual who—

3 “(i) is permitted unescorted access to—

4 “(I) a utilization facility; or

5 “(II) radioactive material or other property
6 subject to regulation by the Commission that
7 the Commission determines to be of such sig-
8 nificance to the public health and safety or the
9 common defense and security as to warrant
10 fingerprinting and background checks; or

11 “(ii) is permitted access to safeguards informa-
12 tion under section 147.”;

13 (B) by striking “All fingerprints obtained
14 by a licensee or applicant as required in the
15 preceding sentence” and inserting the following:

16 “(2) All fingerprints obtained by an individual or en-
17 tity as required in paragraph (1)”;

18 (C) by striking “The costs of any identi-
19 fication and records check conducted pursuant
20 to the preceding sentence shall be paid by the
21 licensee or applicant.” and inserting the fol-
22 lowing:

23 “(3) The costs of an identification or records check
24 under paragraph (2) shall be paid by the individual or en-

1 tity required to conduct the fingerprinting under para-
 2 graph (1)(A).”;

3 (D) by striking “Notwithstanding any
 4 other provision of law, the Attorney General
 5 may provide all the results of the search to the
 6 Commission, and, in accordance with regula-
 7 tions prescribed under this section, the Com-
 8 mission may provide such results to licensee or
 9 applicant submitting such fingerprints.” and in-
 10 serting the following:

11 “(4) Notwithstanding any other provision of law—

12 (A) the Attorney General may provide any re-
 13 sult of an identification or records check under para-
 14 graph (2) to the Commission; and

15 (B) the Commission, in accordance with regu-
 16 lations prescribed under this section, may provide
 17 the results to the individual or entity required to
 18 conduct the fingerprinting under paragraph
 19 (1)(A).”;

20 (2) in subsection e.—

21 (A) by striking “, subject to public notice
 22 and comment, regulations—” and inserting “re-
 23 quirements—”; and

24 (B) in paragraph (2)(B), by striking
 25 “unescorted access to the facility of a licensee

1 or applicant” and inserting “unescorted access
 2 to a utilization facility, radioactive material, or
 3 other property described in subsection
 4 a.(1)(B)”;

5 (3) by redesignating subsection d. as subsection
 6 e.; and

7 (4) by inserting after subsection e. the fol-
 8 lowing:

9 “d. The Commission may require a person or indi-
 10 vidual to conduct fingerprinting under subsection a.(1) by
 11 authorizing or requiring the use of any alternative biomet-
 12 ric method for identification that has been approved by—

13 “(1) the Attorney General; and

14 “(2) the Commission, by regulation.”.

15 **SEC. 6. UNAUTHORIZED INTRODUCTION OF DANGEROUS**
 16 **WEAPONS.**

17 Section 229 of the Atomic Energy Act of 1954 (42
 18 U.S.C. 2278a) is amended—

19 (1) by striking “SEC. 229, TRESPASS UPON
 20 COMMISSION INSTALLATIONS.—” and inserting the
 21 following:

22 **“SEC. 229. TRESPASS ON COMMISSION INSTALLATIONS.”;**

23 (2) by adjusting the indentations of subsections
 24 a., b., and e. so as to reflect proper subsection in-
 25 dentations; and

1 ~~(3)~~ in subsection a.—

2 (A) in the first sentence, by striking “a.
3 The” and inserting the following:

4 “a.(1) The”;

5 (B) in the second sentence, by striking
6 “Every” and inserting the following:

7 “~~(2)~~ Every”; and

8 (C) in paragraph (1) (as designated by
9 subparagraph (A))—

10 (i) by striking “or in the custody” and
11 inserting “in the custody”; and

12 (ii) by inserting “, or subject to the li-
13 censing authority of the Commission or
14 certification by the Commission under this
15 Act or any other Act” before the period.

16 **SEC. 7. SABOTAGE OF NUCLEAR FACILITIES, FUEL, OR DES-**
17 **IGNATED MATERIAL.**

18 (a) IN GENERAL.—Section 236a. of the Atomic En-
19 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—

20 (1) in paragraph (2), by striking “storage facil-
21 ity” and inserting “treatment, storage, or disposal
22 facility”;

23 (2) in paragraph ~~(3)~~—

1 (A) by striking “such a utilization facility”
2 and inserting “a utilization facility licensed
3 under this Act”; and

4 (B) by striking “or” at the end;

5 (3) in paragraph (4)—

6 (A) by striking “facility licensed” and in-
7 serting “, uranium conversion, or nuclear fuel
8 fabrication facility licensed or certified”; and

9 (B) by striking the comma at the end and
10 inserting a semicolon; and

11 (4) by inserting after paragraph (4) the fol-
12 lowing:

13 “(5) any production, utilization, waste storage,
14 waste treatment, waste disposal, uranium enrich-
15 ment, uranium conversion, or nuclear fuel fabrica-
16 tion facility subject to licensing or certification
17 under this Act during construction of the facility, if
18 the destruction or damage caused or attempted to be
19 caused could adversely affect public health and safe-
20 ty during the operation of the facility;

21 “(6) any primary facility or backup facility
22 from which a radiological emergency preparedness
23 alert and warning system is activated; or

24 “(7) any radioactive material or other property
25 subject to regulation by the Commission that, before

1 the date of the offense, the Commission determines,
 2 by order or regulation published in the Federal Reg-
 3 ister, is of significance to the public health and safe-
 4 ty or to common defense and security;”.

5 (b) CONFORMING AMENDMENT.—Section 236 of the
 6 Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended
 7 by striking “intentionally and willfully” each place it ap-
 8 pears and inserting “knowingly”.

9 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

10 (a) *SHORT TITLE.*—This Act may be cited as the “Nu-
 11 clear Security Act of 2005”.

12 (b) *TABLE OF CONTENTS.*—The table of contents of this
 13 Act is as follows:

14

Sec. 1. Short title; table of contents.

Sec. 2. Definition of Commission.

TITLE I—NUCLEAR SAFETY AND SECURITY

Sec. 101. General provisions.

Sec. 102. Use of firearms by security personnel.

Sec. 103. Fingerprinting and criminal history record checks.

Sec. 104. Security evaluations; design basis threat rulemaking.

Sec. 105. Unauthorized introduction of dangerous weapons.

Sec. 106. Sabotage of nuclear facilities, fuel, or designated material.

Sec. 107. Whistleblower protection.

Sec. 108. Office of Nuclear Security and Incident Response.

Sec. 109. Spent fuel rods and segments.

TITLE II—DIRTY BOMB PREVENTION

Sec. 201. Radiation source protection.

Sec. 202. Treatment of accelerator-produced and other radioactive material as by-product material.

15 **SEC. 2. DEFINITION OF COMMISSION.**

16 *In this Act, the term “Commission” means the Nuclear*
 17 *Regulatory Commission.*

1 **TITLE I—NUCLEAR SAFETY AND**
 2 **SECURITY**

3 **SEC. 101. GENERAL PROVISIONS.**

4 *Section 161 of the Atomic Energy Act of 1954 (42*
 5 *U.S.C. 2201) is amended—*

6 *(1) by striking “SEC. 161” and all that follows*
 7 *through “authorized to—” and inserting the fol-*
 8 *lowing:*

9 **“SEC. 161. GENERAL PROVISIONS.”;**

10 *(2) in each of subsections a., b., c., d., e., f., h.,*
 11 *i., j., m., n., o., p., s., t., v., and w., by inserting “In*
 12 *carrying out the duties of the Commission, the Com-*
 13 *mission may” after the subsection designation;*

14 *(3) in subsection u., by striking “(1) enter into”*
 15 *and inserting “In carrying out the duties of the Com-*
 16 *mission, the Commission may—*

17 *“(1) enter into”;*

18 *(4) in subsection x., by striking “Establish” and*
 19 *inserting “In carrying out the duties of the Commis-*
 20 *sion, the Commission may establish”;*

21 *(5) in each of subsections a., b., c., d., e., f., h.,*
 22 *j., m., n., s., and v., by striking the semicolon at the*
 23 *end and inserting a period;*

24 *(6) in subsection o., by striking “; and” at the*
 25 *end and inserting a period;*

1 (7) *in subsection t., by striking the semicolon at*
 2 *the end; and*

3 (8) *by indenting each subdivision appropriately.*

4 **SEC. 102. USE OF FIREARMS BY SECURITY PERSONNEL.**

5 *The Atomic Energy Act of 1954 is amended by insert-*
 6 *ing after section 161 (42 U.S.C. 2201) the following:*

7 **“SEC. 161A. USE OF FIREARMS BY SECURITY PERSONNEL.**

8 *“a. DEFINITIONS.—In this section, the terms ‘hand-*
 9 *gun’, ‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machine-*
 10 *gun’, ‘short-barreled shotgun’, and ‘short-barreled rifle’ have*
 11 *the meanings given the terms in section 921(a) of title 18,*
 12 *United States Code.*

13 *“b. AUTHORIZATION.—Notwithstanding subsections*
 14 *(a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title*
 15 *18, United States Code, section 925(d)(3) of title 18, United*
 16 *States Code, section 5844 of the Internal Revenue Code of*
 17 *1986, and any law (including regulations) of a State or*
 18 *a political subdivision of a State that prohibits the transfer,*
 19 *receipt, possession, transportation, importation, or use of*
 20 *a handgun, a rifle, a shotgun, a short-barreled shotgun, a*
 21 *short-barreled rifle, a machinegun, a semiautomatic assault*
 22 *weapon, ammunition for any such gun or weapon, or a*
 23 *large capacity ammunition feeding device, in carrying out*
 24 *the duties of the Commission, the Commission may author-*
 25 *ize the security personnel of any licensee or certificate hold-*

1 *er of the Commission (including an employee of a con-*
2 *tractor of such a licensee or certificate holder) to transfer,*
3 *receive, possess, transport, import, and use 1 or more such*
4 *guns, weapons, ammunition, or devices, if the Commission*
5 *determines that—*

6 “(1) *the authorization is necessary to the dis-*
7 *charge of the official duties of the security personnel;*
8 *and*

9 “(2) *the security personnel—*

10 “(A) *are not otherwise prohibited from pos-*
11 *sessing or receiving a firearm under Federal or*
12 *State laws relating to possession of firearms by*
13 *a certain category of persons;*

14 “(B) *have successfully completed any re-*
15 *quirement under this section for training in the*
16 *use of firearms and tactical maneuvers;*

17 “(C) *are engaged in the protection of—*

18 “(i) *a facility owned or operated by a*
19 *licensee or certificate holder of the Commis-*
20 *sion that is designated by the Commission;*
21 *or*

22 “(ii) *radioactive material or other*
23 *property owned or possessed by a licensee or*
24 *certificate holder of the Commission, or that*
25 *is being transported to or from a facility*

1 *owned or operated by such a licensee or cer-*
2 *tificate holder, and that has been deter-*
3 *mined by the Commission to be of signifi-*
4 *cance to the common defense and security or*
5 *public health and safety; and*

6 *“(D) are discharging the official duties of*
7 *the security personnel in transferring, receiving,*
8 *possessing, transporting, or importing the weap-*
9 *ons, ammunition, or devices.*

10 *“c. BACKGROUND CHECKS.—A person that receives,*
11 *possesses, transports, imports, or uses a weapon, ammuni-*
12 *tion, or a device under subsection (b) shall be subject to*
13 *a background check by the Attorney General, based on fin-*
14 *gerprints and including a background check under section*
15 *103(b) of the Brady Handgun Violence Prevention Act*
16 *(Public Law 103–159; 18 U.S.C. 922 note) to determine*
17 *whether the person is prohibited from possessing or receiv-*
18 *ing a firearm under Federal or State law.*

19 *“d. EFFECTIVE DATE.—This section takes effect on the*
20 *date on which guidelines are issued by the Commission,*
21 *with the approval of the Attorney General, to carry out this*
22 *section.”*

1 **SEC. 103. FINGERPRINTING AND CRIMINAL HISTORY**
2 **RECORD CHECKS.**

3 *Section 149 of the Atomic Energy Act of 1954 (42*
4 *U.S.C. 2169) is amended—*

5 *(1) in subsection a.—*

6 *(A) by striking “a. The Nuclear” and all*
7 *that follows through “section 147.” and inserting*
8 *the following:*

9 *“a.(1)(A)(i) The Commission shall require each indi-*
10 *vidual or entity described in clause (ii) to fingerprint each*
11 *individual described in subparagraph (B) before the indi-*
12 *vidual described in subparagraph (B) is permitted access*
13 *under subparagraph (B).*

14 *“(ii) The individuals and entities referred to in clause*
15 *(i) are individuals and entities that, on or before the date*
16 *on which an individual is permitted access under subpara-*
17 *graph (B)—*

18 *“(I) are licensed or certified to engage in an ac-*
19 *tivity subject to regulation by the Commission;*

20 *“(II) have filed an application for a license or*
21 *certificate to engage in an activity subject to regula-*
22 *tion by the Commission; or*

23 *“(III) have notified the Commission in writing*
24 *of an intent to file an application for licensing, cer-*
25 *tification, permitting, or approval of a product or ac-*
26 *tivity subject to regulation by the Commission.*

1 “(B) *The Commission shall require to be fingerprinted*
2 *any individual who—*

3 “(i) *is permitted unescorted access to—*

4 “(I) *a utilization facility; or*

5 “(II) *radioactive material or other property*
6 *subject to regulation by the Commission that the*
7 *Commission determines to be of such significance*
8 *to the public health and safety or the common*
9 *defense and security as to warrant*
10 *fingerprinting and background checks; or*

11 “(ii) *is permitted access to safeguards informa-*
12 *tion under section 147.”;*

13 (B) *by striking “All fingerprints obtained*
14 *by a licensee or applicant as required in the pre-*
15 *ceding sentence” and inserting the following:*

16 “(2) *All fingerprints obtained by an individual or en-*
17 *tity as required in paragraph (1)”;*

18 (C) *by striking “The costs of any identifica-*
19 *tion and records check conducted pursuant to the*
20 *preceding sentence shall be paid by the licensee*
21 *or applicant.” and inserting the following:*

22 “(3) *The costs of an identification or records check*
23 *under paragraph (2) shall be paid by the individual or en-*
24 *tity required to conduct the fingerprinting under paragraph*
25 *(1)(A).”; and*

1 (D) by striking “Notwithstanding any other
2 provision of law, the Attorney General may pro-
3 vide all the results of the search to the Commis-
4 sion, and, in accordance with regulations pre-
5 scribed under this section, the Commission may
6 provide such results to licensee or applicant sub-
7 mitting such fingerprints.” and inserting the fol-
8 lowing:

9 “(4) Notwithstanding any other provision of law—

10 “(A) the Attorney General may provide any re-
11 sult of an identification or records check under para-
12 graph (2) to the Commission; and

13 “(B) the Commission, in accordance with regula-
14 tions prescribed under this section, may provide the
15 results to the individual or entity required to conduct
16 the fingerprinting under paragraph (1)(A).”;

17 (2) in subsection c.—

18 (A) by striking “, subject to public notice
19 and comment, regulations—” and inserting “re-
20 quirements—”; and

21 (B) in paragraph (2)(B), by striking
22 “unescorted access to the facility of a licensee or
23 applicant” and inserting “unescorted access to a
24 utilization facility, radioactive material, or other
25 property described in subsection a.(1)(B)”;

1 (3) by redesignating subsection d. as subsection
2 *e.*; and

3 (4) by inserting after subsection c. the following:

4 *“d. The Commission may require a person or indi-*
5 *vidual to conduct fingerprinting under subsection a.(1) by*
6 *authorizing or requiring the use of any alternative biomet-*
7 *ric method for identification that has been approved by—*

8 *“(1) the Attorney General; and*

9 *“(2) the Commission, by regulation.”.*

10 **SEC. 104. SECURITY EVALUATIONS; DESIGN BASIS THREAT**

11 **RULEMAKING.**

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

15 **“SEC. 170C. SECURITY EVALUATIONS.**

16 *“a. SECURITY RESPONSE EVALUATIONS.—Not less*
17 *often than once every 3 years, the Commission shall conduct*
18 *security evaluations at each licensed facility that is part*
19 *of a class of licensed facilities, as the Commission considers*
20 *to be appropriate to assess the ability of a private security*
21 *force of a licensed facility to defend against any applicable*
22 *design basis threat.*

23 *“b. FORCE-ON-FORCE EXERCISES.—(1) The security*
24 *evaluations shall include force-on-force exercises.*

1 “(2) *The force-on-force exercises shall, to the maximum*
2 *extent practicable, simulate security threats in accordance*
3 *with any design basis threat applicable to a facility.*

4 “(3) *In conducting a security evaluation, the Commis-*
5 *sion shall mitigate any potential conflict of interest that*
6 *could influence the results of a force-on-force exercise, as the*
7 *Commission determines to be necessary and appropriate.*

8 “c. *ACTION BY LICENSEES.—The Commission shall en-*
9 *sure that an affected licensee corrects any defect in perform-*
10 *ance identified by the Commission in a security response*
11 *evaluation.*

12 “d. *FACILITIES UNDER HEIGHTENED THREAT LEV-*
13 *ELS.—The Commission may suspend a security evaluation*
14 *under this section if the Commission determines that the*
15 *evaluation would compromise security at a nuclear facility*
16 *under a heightened threat level.*

17 “e. *REPORT.—Not less often than once each year, the*
18 *Commission shall submit to the Committee on Environment*
19 *and Public Works of the Senate and the Committee on En-*
20 *ergy and Commerce of the House of Representatives a re-*
21 *port, in classified form and unclassified form, that describes*
22 *the results of each security response evaluation conducted*
23 *and any relevant corrective action taken by a licensee dur-*
24 *ing the previous year.*

1 **“SEC. 170D. DESIGN BASIS THREAT RULEMAKING.**

2 *“The Commission shall—*

3 *“(1) not later than 90 days after the date of en-*
 4 *actment of this section, initiate a rulemaking pro-*
 5 *ceeding, to be completed not later than 18 months*
 6 *after that date, to revise the design basis threats of the*
 7 *Commission; or*

8 *“(2) not later than 18 months after the date of*
 9 *enactment of this section, complete any ongoing rule-*
 10 *making to revise the design basis threats.”.*

11 *(b) CONFORMING AMENDMENT.—The table of sections*
 12 *of the Atomic Energy Act of 1954 is amended by adding*
 13 *at the end of the items relating to chapter 14 the following:*

“Sec. 170B. Uranium supply.

“Sec. 170C. Security evaluations.

“Sec. 170D. Design basis threat rulemaking.”.

14 **SEC. 105. UNAUTHORIZED INTRODUCTION OF DANGEROUS**
 15 **WEAPONS.**

16 *Section 229 of the Atomic Energy Act of 1954 (42*
 17 *U.S.C. 2278a) is amended—*

18 *(1) by striking “SEC. 229, TRESPASS UPON*
 19 *COMMISSION INSTALLATIONS.—” and inserting the*
 20 *following:*

21 **“SEC. 229. TRESPASS ON COMMISSION INSTALLATIONS.”;**

22 *(2) by adjusting the indentations of subsections*
 23 *a., b., and c. so as to reflect proper subsection inden-*
 24 *tations; and*

1 (3) *in subsection a.—*

2 (A) *in the first sentence, by striking “a.*

3 *The” and inserting the following:*

4 “*a.(1) The*”;

5 (B) *in the second sentence, by striking*

6 “*Every*” *and inserting the following:*

7 “*(2) Every*”; *and*

8 (C) *in paragraph (1) (as designated by sub-*
9 *paragraph (A))—*

10 (i) *by striking “or in the custody” and*
11 *inserting “in the custody”; and*

12 (ii) *by inserting “, or subject to the li-*
13 *censing authority of the Commission or cer-*
14 *tification by the Commission under this Act*
15 *or any other Act” before the period.*

16 **SEC. 106. SABOTAGE OF NUCLEAR FACILITIES, FUEL, OR**
17 **DESIGNATED MATERIAL.**

18 (a) *IN GENERAL.—Section 236a. of the Atomic Energy*
19 *Act of 1954 (42 U.S.C. 2284(a)) is amended—*

20 (1) *in paragraph (2), by striking “storage facil-*
21 *ity” and inserting “treatment, storage, or disposal fa-*
22 *cility”;*

23 (2) *in paragraph (3)—*

1 (A) by striking “such a utilization facility”
2 and inserting “a utilization facility licensed
3 under this Act”; and

4 (B) by striking “or” at the end;

5 (3) in paragraph (4)—

6 (A) by striking “facility licensed” and in-
7 serting “, uranium conversion, or nuclear fuel
8 fabrication facility licensed or certified”; and

9 (B) by striking the comma at the end and
10 inserting a semicolon; and

11 (4) by inserting after paragraph (4) the fol-
12 lowing:

13 “(5) any production, utilization, waste storage,
14 waste treatment, waste disposal, uranium enrichment,
15 uranium conversion, or nuclear fuel fabrication facil-
16 ity subject to licensing or certification under this Act
17 during construction of the facility, if the destruction
18 or damage caused or attempted to be caused could ad-
19 versely affect public health and safety during the op-
20 eration of the facility;

21 “(6) any primary facility or backup facility
22 from which a radiological emergency preparedness
23 alert and warning system is activated; or

24 “(7) any radioactive material or other property
25 subject to regulation by the Commission that, before

1 *the date of the offense, the Commission determines, by*
 2 *order or regulation published in the Federal Register,*
 3 *is of significance to the public health and safety or to*
 4 *common defense and security;”.*

5 *(b) CONFORMING AMENDMENT.—Section 236 of the*
 6 *Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended*
 7 *by striking “intentionally and willfully” each place it ap-*
 8 *pears and inserting “knowingly”.*

9 **SEC. 107. WHISTLEBLOWER PROTECTION.**

10 *(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of*
 11 *the Energy Reorganization Act of 1974 (42 U.S.C..*
 12 *5851(a)(2)) is amended—*

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

15 *(2) in subparagraph (D), by striking “that is in-*
 16 *demnified” and all that follows through “12344.” and*
 17 *inserting “or the Commission; and”; and*

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

19 *“(E) the Commission.”.*

20 *(b) DE NOVO JUDICIAL DETERMINATION.—Section*
 21 *211(b) of the Energy Reorganization Act of 1974 (42*
 22 *U.S.C.. 5851(b)) is amended by adding at the end the fol-*
 23 *lowing:*

24 *“(4) DE NOVO JUDICIAL DETERMINATION.—A*
 25 *claimant may bring a civil action in any United*

1 *States district court for a de novo determination of*
 2 *a claim under paragraph (1) if the Secretary does*
 3 *not—*

4 “(A) *issue a final decision relating to the*
 5 *claim within 1 year after the date on which a*
 6 *complaint is filed; and*

7 “(B) *establish that a delay described in sub-*
 8 *paragraph (A) is caused by bad faith of the*
 9 *claimant.”.*

10 **SEC. 108. OFFICE OF NUCLEAR SECURITY AND INCIDENT**
 11 **RESPONSE.**

12 “(a) *ESTABLISHMENT.—Title II of the Energy Reorga-*
 13 *nization Act of 1974 (42 U.S.C. 5841 et seq.) is amended*
 14 *by adding at the end the following:*

15 **“SEC. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT**
 16 **RESPONSE.**

17 “(a) *ESTABLISHMENT.—There is established in the*
 18 *Commission an Office of Nuclear Security and Incident Re-*
 19 *sponse (referred to in this section as the ‘Office’).*

20 “(b) *DIRECTOR.—*

21 “(1) *IN GENERAL.—The Office shall be headed by*
 22 *a Director of Nuclear Security and Incident Response*
 23 *(referred to in this section as the ‘Director’).*

24 “(2) *APPOINTMENT.—The Director shall be ap-*
 25 *pointed by the Commission.*

1 “(3) *DUTIES.*—*The Director shall—*

2 “(A) *report to the Commission in accord-*
3 *ance with section 209; and*

4 “(B) *perform such actions as the Commis-*
5 *sion may delegate to the Director.*

6 “(4) *TERMS OF SERVICE.*—*The Director shall*
7 *serve at the pleasure of, and be removable by, the*
8 *Commission.”.*

9 (b) *REORGANIZATION PLAN.*—*Section 1(b)(2) of Reor-*
10 *ganization Plan No. 1 of 1980 (adopted pursuant to the*
11 *Reorganization Act Amendments of 1984 (5 U.S.C. 901 et*
12 *seq.)) is amended—*

13 (1) *by redesignating clauses (iv) and (v) as (v)*
14 *and (vi), respectively; and*

15 (2) *by inserting after clause (iii) the following:*

16 “(iv) *Director of Nuclear Security and*
17 *Incident Response;”.*

18 **SEC. 109. SPENT FUEL RODS AND SEGMENTS.**

19 (a) *GUIDELINES.*—*Not later than 1 year after the date*
20 *of enactment of this Act, the Commission shall establish—*

21 (1) *specific and uniform guidelines for tracking,*
22 *controlling, and accounting for individual spent fuel*
23 *rods or segments at nuclear power plants, including*
24 *procedures for conducting physical inventories; and*

1 (2) *uniform inspection procedures to verify any*
 2 *action taken by a nuclear power plant to implement*
 3 *those guidelines.*

4 (b) *REPORT.—Not later than 180 days after the date*
 5 *of enactment of this Act, the Commission shall submit to*
 6 *Congress a report describing the progress of the Commission*
 7 *in establishing the guidelines under subsection (a).*

8 **TITLE II—DIRTY BOMB**
 9 **PREVENTION**

10 **SEC. 201. RADIATION SOURCE PROTECTION.**

11 (a) *AMENDMENT.—Chapter 14 of the Atomic Energy*
 12 *Act of 1954 (42 U.S.C. 2201 et seq.) (as amended by section*
 13 *104(a)) is amended by adding at the end the following:*

14 **“SEC. 170E. RADIATION SOURCE PROTECTION.**

15 *“a. DEFINITIONS.—In this section:*

16 *“(1) CODE OF CONDUCT.—The term ‘Code of*
 17 *Conduct’ means the code entitled the ‘Code of Conduct*
 18 *on the Safety and Security of Radioactive Sources’,*
 19 *approved by the Board of Governors of the Inter-*
 20 *national Atomic Energy Agency and dated September*
 21 *8, 2003.*

22 *“(2) RADIATION SOURCE.—The term ‘radiation*
 23 *source’ means—*

24 *“(A) a Category 1 Source or a Category 2*
 25 *Source, as defined in the Code of Conduct; and*

1 “(B) any other material that poses a threat
2 such that the material is subject to this section,
3 as determined by the Commission, by regulation.

4 “b. COMMISSION APPROVAL.—Not later than 180 days
5 after the date of enactment of this section, the Commission
6 shall issue regulations prohibiting a person from—

7 “(1) exporting a radiation source, unless the
8 Commission has specifically determined under section
9 57 or 82, consistent with the Code of Conduct, with
10 respect to the exportation, that—

11 “(A) the recipient of the radiation source
12 may receive and possess the radiation source
13 under the laws and regulations of the country of
14 the recipient;

15 “(B) the recipient country has the appro-
16 priate technical and administrative capability,
17 resources, and regulatory structure to ensure that
18 the radiation source will be managed in a safe
19 and secure manner; and

20 “(C) before the date on which the radiation
21 source is shipped—

22 “(i) a notification has been provided to
23 the recipient country; and

1 “(ii) a notification has been received
2 from the recipient country, as the Commis-
3 sion determines to be appropriate;

4 “(2) importing a radiation source, unless the
5 Commission has determined, with respect to the im-
6 portation, that—

7 “(A) the proposed recipient is authorized by
8 law to receive the radiation source; and

9 “(B) the shipment will be made in accord-
10 ance with any applicable Federal or State law
11 or regulation; and

12 “(3) selling or otherwise transferring ownership
13 of a radiation source, unless the Commission—

14 “(A) has determined that the licensee has
15 verified that the proposed recipient is authorized
16 under law to receive the radiation source; and

17 “(B) has required that the transfer shall be
18 made in accordance with any applicable Federal
19 or State law or regulation.

20 “c. TRACKING SYSTEM.—(1)(A) Not later than 1 year
21 after the date of enactment of this section, the Commission
22 shall issue regulations establishing a mandatory tracking
23 system for radiation sources in the United States.

24 “(B) In establishing the tracking system under sub-
25 paragraph (A), the Commission shall coordinate with the

1 *Secretary of Transportation to ensure compatibility, to the*
2 *maximum extent practicable, between the tracking system*
3 *and any system established by the Secretary of Transpor-*
4 *tation to track the shipment of radiation sources.*

5 “(2) *The tracking system under paragraph (1) shall—*

6 “(A) *enable the identification of each radi-*
7 *ation source by serial number or other unique*
8 *identifier;*

9 “(B) *require reporting within 7 days of any*
10 *change of ownership or geographic location of a*
11 *radiation source;*

12 “(C) *require reporting within 24 hours of*
13 *any loss of control of, or accountability for, a ra-*
14 *diation source; and*

15 “(D) *provide for reporting under subpara-*
16 *graphs (B) and (C) through a secure Internet*
17 *connection.*

18 “d. *PENALTY.—A violation of a regulation issued*
19 *under subsection a. or b. shall be punishable by a civil pen-*
20 *alty not to exceed \$1,000,000.*

21 “e. *NATIONAL ACADEMY OF SCIENCES STUDY.—(1)*
22 *Not later than 60 days after the date of enactment of this*
23 *section, the Commission shall enter into an arrangement*
24 *with the National Academy of Sciences under which the Na-*

1 *tional Academy of Sciences shall conduct a study of indus-*
 2 *trial, research, and commercial uses for radiation sources.*

3 “(2) *The study under paragraph (1) shall include a*
 4 *review of uses of radiation sources in existence on the date*
 5 *on which the study is conducted, including an identification*
 6 *of any industrial or other process that—*

7 “(A) *uses a radiation source that could be re-*
 8 *placed with an economically and technically equiva-*
 9 *lent (or improved) process that does not require the*
 10 *use of a radiation source; or*

11 “(B) *may be used with a radiation source that*
 12 *would pose a lower risk to public health and safety*
 13 *in the event of an accident or attack involving the ra-*
 14 *diation source.*

15 “(3) *Not later than 2 years after the date of enactment*
 16 *of this section, the Commission shall submit to Congress the*
 17 *results of the study under paragraph (1).*

18 “*f. TASK FORCE ON RADIATION SOURCE PROTECTION*
 19 *AND SECURITY.—(1) There is established a task force on*
 20 *radiation source protection and security (referred to in this*
 21 *section as the ‘task force’).*

22 “(2)(A) *The chairperson of the task force shall be the*
 23 *Chairperson of the Commission (or a designee).*

24 “(B) *The membership of the task force shall consist of*
 25 *the following:*

1 “(i) *The Secretary of Homeland Security (or a*
2 *designee).*

3 “(ii) *The Secretary of Defense (or a designee).*

4 “(iii) *The Secretary of Energy (or a designee).*

5 “(iv) *The Secretary of Transportation (or a des-*
6 *ignee).*

7 “(v) *The Attorney General (or a designee).*

8 “(vi) *The Secretary of State (or a designee).*

9 “(vii) *The Director of National Intelligence (or a*
10 *designee).*

11 “(viii) *The Director of the Central Intelligence*
12 *Agency (or a designee).*

13 “(ix) *The Director of the Federal Emergency*
14 *Management Agency (or a designee).*

15 “(x) *The Director of the Federal Bureau of In-*
16 *vestigation (or a designee).*

17 “(3)(A) *The task force, in consultation with Federal,*
18 *State, and local agencies, the Conference of Radiation Con-*
19 *trol Program Directors, and the Organization of Agreement*
20 *States, and after public notice and an opportunity for com-*
21 *ment, shall evaluate, and provide recommendations relating*
22 *to, the security of radiation sources in the United States*
23 *from potential terrorist threats, including acts of sabotage,*
24 *theft, or use of a radiation source in a radiological dispersal*
25 *device.*

1 “(B) Not later than 1 year after the date of enactment
2 of this section, and not less than once every 4 years there-
3 after, the task force shall submit to Congress and the Presi-
4 dent a report, in unclassified form with a classified annex
5 if necessary, providing recommendations, including rec-
6 ommendations for appropriate regulatory and legislative
7 changes, for—

8 “(i) a list of additional radiation sources that
9 should be required to be secured under this Act, based
10 on the potential attractiveness of the sources to terror-
11 ists and the extent of the threat to public health and
12 safety of the sources, taking into consideration—

13 “(I) radiation source radioactivity levels;

14 “(II) radioactive half-life of a radiation
15 source;

16 “(III) dispersability;

17 “(IV) chemical and material form;

18 “(V) for radioactive materials with a med-
19 ical use, the availability of the sources to physi-
20 cians and patients for medical treatment; and

21 “(VI) any other factor that the Chairperson
22 of the Commission determines to be appropriate;

23 “(ii) the establishment of, or modifications to, a
24 national system for recovery of lost or stolen radi-
25 ation sources;

1 “(iii) the storage of radiation sources that are
2 not used in a safe and secure manner as of the date
3 on which the report is submitted;

4 “(iv) modifications to the national tracking sys-
5 tem for radiation sources;

6 “(v) the establishment of, or modifications to, a
7 national system (including user fees and other meth-
8 ods) to provide for the proper disposal of radiation
9 sources secured under this Act;

10 “(vi) modifications to export controls on radi-
11 ation sources to ensure that foreign recipients of radi-
12 ation sources are able and willing to adequately con-
13 trol radiation sources from the United States;

14 “(vii)(I) any alternative technologies available
15 as of the date on which the report is submitted that
16 may perform some or all of the functions performed
17 by devices or processes that employ radiation sources;
18 and

19 “(II) the establishment of appropriate regula-
20 tions and incentives for the replacement of the devices
21 and processes described in subclause (I)—

22 “(aa) with alternative technologies in order
23 to reduce the number of radiation sources in the
24 United States; or

1 “(bb) with radiation sources that would
2 pose a lower risk to public health and safety in
3 the event of an accident or attack involving the
4 radiation source; and

5 “(viii) the creation of, or modifications to, proce-
6 dures for improving the security of use, transpor-
7 tation, and storage of radiation sources, including—

8 “(I) periodic audits or inspections by the
9 Commission to ensure that radiation sources are
10 properly secured and can be fully accounted for;

11 “(II) evaluation of the security measures by
12 the Commission;

13 “(III) increased fines for violations of Com-
14 mission regulations relating to security and safe-
15 ty measures applicable to licensees that possess
16 radiation sources;

17 “(IV) criminal and security background
18 checks for certain individuals with access to ra-
19 diation sources (including individuals involved
20 with transporting radiation sources);

21 “(V) requirements for effective and timely
22 exchanges of information relating to the results
23 of criminal and security background checks be-
24 tween the Commission and any State with which

1 *the Commission has entered into an agreement*
2 *under section 274 b.;*

3 “(VI) *assurances of the physical security of*
4 *facilities that contain radiation sources (includ-*
5 *ing facilities used to temporarily store radiation*
6 *sources being transported); and*

7 “(VII) *the screening of shipments to facili-*
8 *ties that the Commission determines to be par-*
9 *ticularly at risk for sabotage of radiation sources*
10 *to ensure that the shipments do not contain ex-*
11 *plosives.*

12 “*g. ACTION BY COMMISSION.—Not later than 60 days*
13 *after the date of receipt by Congress and the President of*
14 *a report under subsection f.(3)(B), the Commission, in ac-*
15 *cordance with the recommendations of the task force,*
16 *shall—*

17 “(1) *take any action the Commission determines*
18 *to be appropriate, including revising the system of the*
19 *Commission for licensing radiation sources; and*

20 “(2) *ensure that States that have entered into*
21 *agreements with the Commission under section 274 b.*
22 *take similar action in a timely manner.”.*

23 “(b) *TABLE OF SECTIONS AMENDMENT.—The table of*
24 *sections of the Atomic Energy Act of 1954 (as amended by*

1 *section 104(b)) is amended by adding at the end of the items*
 2 *relating to chapter 14 the following:*

“Sec. 170E. Radiation source protection.”.

3 **SEC. 202. TREATMENT OF ACCELERATOR-PRODUCED AND**
 4 **OTHER RADIOACTIVE MATERIAL AS BYPROD-**
 5 **UCT MATERIAL.**

6 *(a) DEFINITION OF BYPRODUCT MATERIAL.—Section*
 7 *11 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e))*
 8 *is amended—*

9 *(1) by striking “means (1) any radioactive” and*
 10 *inserting the following: “means—*

11 *“(1) any radioactive”;*

12 *(2) by striking “material, and (2) the tailings”*
 13 *and inserting the following: “material;*

14 *“(2) the tailings”;* and

15 *(3) by striking “content.” and inserting the fol-*
 16 *lowing: “content;*

17 *“(3)(A) any discrete source of radium-226 that*
 18 *is produced, extracted, or converted after extraction,*
 19 *before, on, or after the date of enactment of this para-*
 20 *graph for use for a commercial, medical, or research*
 21 *activity; or*

22 *“(B) any material that—*

23 *“(i) has been made radioactive by use of a*
 24 *particle accelerator; and*

1 “(i) is produced, extracted, or converted
2 after extraction, before, on, or after the date of
3 enactment of this paragraph for use for a com-
4 mercial, medical, or research activity; and

5 “(4) any discrete source of naturally occurring
6 radioactive material, other than source material,
7 that—

8 “(A) the Commission, in consultation with
9 the Administrator of the Environmental Protec-
10 tion Agency, the Secretary of Energy, the Sec-
11 retary of Homeland Security, and the head of
12 any other appropriate Federal agency, deter-
13 mines would pose a threat similar to the threat
14 posed by a discrete source of radium-226 to the
15 public health and safety or the common defense
16 and security; and

17 “(B) before, on, or after the date of enact-
18 ment of this paragraph is extracted or converted
19 after extraction for use in a commercial, med-
20 ical, or research activity.”.

21 (b) *AGREEMENTS WITH GOVERNORS.*—Section 274 b.
22 of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) is
23 amended by striking “State—” and all that follows through
24 paragraph (4) and inserting the following: “State:

1 “(1) *Byproduct materials (as defined in section*
2 *11 e.)*.”

3 “(2) *Source materials*.”

4 “(3) *Special nuclear materials in quantities not*
5 *sufficient to form a critical mass.*”.

6 (c) *WASTE DISPOSAL.—*

7 (1) *DOMESTIC DISTRIBUTION.—Section 81 of the*
8 *Atomic Energy Act of 1954 (42 U.S.C. 2111) is*
9 *amended—*

10 (A) *by striking “No person may” and in-*
11 *serting the following:*

12 “a. *IN GENERAL.—No person may*”; and

13 (B) *by adding at the end the following:*

14 “b. *REQUIREMENTS.—*

15 “(1) *IN GENERAL.—Except as provided in para-*
16 *graph (2), byproduct material, as defined in para-*
17 *graphs (3) and (4) of section 11 e., may only be*
18 *transferred to and disposed of in a disposal facility*
19 *that—*

20 “(A) *is adequate to protect public health*
21 *and safety; and*

22 “(B)(i) *is licensed by the Commission; or*

23 “(ii) *is licensed by a State that has entered*
24 *into an agreement with the Commission under*
25 *section 274 b., if the licensing requirements of*

1 *the State are compatible with the licensing re-*
 2 *quirements of the Commission.*

3 “(2) *EFFECT OF SUBSECTION.*—*Nothing in this*
 4 *subsection affects the authority of any entity to dis-*
 5 *pose of byproduct material, as defined in paragraphs*
 6 *(3) and (4) of section 11 e., at a disposal facility in*
 7 *accordance with any Federal or State solid or haz-*
 8 *ardous waste law, including the Solid Waste Disposal*
 9 *Act (42 U.S.C. 6901 et seq.).*

10 “c. *TREATMENT AS LOW-LEVEL RADIOACTIVE*
 11 *WASTE.*—*Byproduct material, as defined in paragraphs (3)*
 12 *and (4) of section 11 e., disposed of under this section shall*
 13 *not be considered to be low-level radioactive waste for the*
 14 *purposes of—*

15 “(1) *section 2 of the Low-Level Radioactive*
 16 *Waste Policy Act (42 U.S.C. 2021b); or*

17 “(2) *carrying out a compact that is—*

18 “(A) *entered into in accordance with that*
 19 *Act (42 U.S.C. 2021b et seq.); and*

20 “(B) *approved by Congress.*”.

21 (2) *DEFINITION OF LOW-LEVEL RADIOACTIVE*
 22 *WASTE.*—*Section 2(9) of the Low-Level Radioactive*
 23 *Waste Policy Act (42 U.S.C. 2021b(9)) is amended—*

1 (A) by redesignating subparagraphs (A)
2 and (B) as clauses (i) and (ii), respectively, and
3 indenting the clauses appropriately;

4 (B) in the matter preceding clause (i) (as
5 redesignated by subparagraph (A)) by striking
6 “The term” and inserting the following:

7 “(A) *IN GENERAL.*—The term”; and

8 (C) by adding at the end the following:

9 “(B) *EXCLUSION.*—The term ‘low-level ra-
10 dioactive waste’ does not include byproduct ma-
11 terial (as defined in paragraphs (3) and (4) of
12 section 11 e. of the Atomic Energy Act of 1954
13 (42 U.S.C. 2014(e)).”.

14 (d) *FINAL REGULATIONS.*—

15 (1) *REGULATIONS.*—

16 (A) *IN GENERAL.*—Not later than 18
17 months after the date of enactment of this Act,
18 the Commission, after consultation with States
19 and other stakeholders, shall issue final regula-
20 tions establishing such requirements as the Com-
21 mission determines to be necessary to carry out
22 this Act and the amendments made by this Act.

23 (B) *INCLUSIONS.*—The regulations shall in-
24 clude a definition of the term “discrete source”
25 for purposes of paragraphs (3) and (4) of section

1 *11 e. of the Atomic Energy Act of 1954 (42*
2 *U.S.C. 2014(e)) (as amended by subsection (a)).*

3 *(2) COOPERATION.—In promulgating regulations*
4 *under paragraph (1), the Commission shall, to the*
5 *maximum extent practicable—*

6 *(A) cooperate with States; and*

7 *(B) use model State standards in existence*
8 *on the date of enactment of this Act.*

9 *(3) TRANSITION PLAN.—*

10 *(A) DEFINITION OF BYPRODUCT MATE-*
11 *RIAL.—In this paragraph, the term “byproduct*
12 *material” has the meaning given the term in*
13 *paragraphs (3) and (4) of section 11 e. of the*
14 *Atomic Energy Act of 1954 (42 U.S.C. 2014(e))*
15 *(as amended by subsection (a)).*

16 *(B) PREPARATION AND PUBLICATION.—To*
17 *facilitate an orderly transition of regulatory au-*
18 *thority with respect to byproduct material, the*
19 *Commission, in issuing regulations under para-*
20 *graph (1), shall prepare and publish a transition*
21 *plan for—*

22 *(i) States that have not, before the date*
23 *on which the plan is published, entered into*
24 *an agreement with the Commission under*

1 *section 274 b. of the Atomic Energy Act of*
2 *1954 (42 U.S.C. 2021(b)); and*

3 *(ii) States that have entered into an*
4 *agreement with the Commission under that*
5 *section before the date on which the plan is*
6 *published.*

7 *(C) INCLUSIONS.—The transition plan*
8 *under subparagraph (B) shall include—*

9 *(i) a description of the conditions*
10 *under which a State may exercise authority*
11 *over byproduct material; and*

12 *(ii) a statement of the Commission*
13 *that any agreement covering byproduct ma-*
14 *terial, as defined in paragraph (1) or (2) of*
15 *section 11e. of the Atomic Energy Act of*
16 *1954 (42 U.S.C. 2014(e)), entered into be-*
17 *tween the Commission and a State under*
18 *section 274 b. of that Act (42 U.S.C.*
19 *2021(b)) before the date of publication of the*
20 *transition plan shall be considered to in-*
21 *clude byproduct material, as defined in*
22 *paragraph (3) or (4) of section 11e. of that*
23 *Act (42 U.S.C. 2014(e)) (as amended by*
24 *subsection (a)), if the Governor of the State*

1 certifies to the Commission on the date of
2 publication of the transition plan that—

3 (I) the State has a program for li-
4 censing byproduct material, as defined
5 in paragraph (3) or (4) of section 11e.
6 of the Atomic Energy Act of 1954, that
7 is adequate to protect the public health
8 and safety, as determined by the Com-
9 mission; and

10 (II) the State intends to continue
11 to implement the regulatory responsi-
12 bility of the State with respect to the
13 byproduct material.

14 (4) AVAILABILITY OF RADIOPHARMA-
15 CEUTICALS.—In promulgating regulations under
16 paragraph (1), the Commission shall consider the im-
17 pact on the availability of radiopharmaceuticals to—

18 (A) physicians; and

19 (B) patients the medical treatment of which
20 relies on radiopharmaceuticals.

21 (e) WAIVERS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the Commission may grant a waiver to
24 any entity of any requirement under this section or
25 an amendment made by this section with respect to

1 *a matter relating to byproduct material (as defined*
2 *in paragraphs (3) and (4) of section 11 e. of the*
3 *Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) (as*
4 *amended by subsection (a))) if the Commission deter-*
5 *mines that the waiver is in accordance with the pro-*
6 *tection of the public health and safety and the pro-*
7 *motion of the common defense and security.*

8 (2) *EXCEPTIONS.—*

9 (A) *IN GENERAL.—The Commission may*
10 *not grant a waiver under paragraph (1) with re-*
11 *spect to—*

12 (i) *any requirement under the amend-*
13 *ments made by subsection (c)(1);*

14 (ii) *a matter relating to an importa-*
15 *tion into, or exportation from, the United*
16 *States for a period ending after the date*
17 *that is 1 year after the date of enactment of*
18 *this Act; or*

19 (iii) *any other matter for a period end-*
20 *ing after the date that is 4 years after the*
21 *date of enactment of this Act.*

22 (B) *WAIVERS TO STATES.—The Commission*
23 *shall terminate any waiver granted to a State*
24 *under paragraph (1) if the Commission deter-*
25 *mines that—*

1 (i) the State has entered into an agree-
2 ment with the Commission under section
3 274 b. of the Atomic Energy Act of 1954 (42
4 U.S.C. 2021(b));

5 (ii) the agreement described in clause
6 (i) covers byproduct material (as described
7 in paragraph (3) or (4) of section 11 e. of
8 the Atomic Energy Act of 1954 (42 U.S.C.
9 2014(e)) (as amended by subsection (a)));
10 and

11 (iii) the program of the State for li-
12 censing such byproduct material is adequate
13 to protect the public health and safety.

14 (3) PUBLICATION.—The Commission shall pub-
15 lish in the Federal Register a notice of any waiver
16 granted under this subsection.

Calendar No. 152

109TH CONGRESS
1ST Session

S. 864

[Report No. 109-98]

A BILL

To amend the Atomic Energy Act of 1954 to modify provisions relating to nuclear safety and security, and for other purposes.

JULY 1, 2005

Reported with an amendment