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107TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 107-335

NUCLEAR SECURITY ACT OF 2002

NOVEMBER 12, 2002.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[to accompany S. 1746]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1746) to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

This bill amends current law¹ to enhance safety and security at our nation's commercial nuclear facilities, and to protect against terrorist use of radiological materials.

The events of September 11, 2001, have required our nation to reevaluate the adequacy of our existing security measures. The attacks in New York City and Washington, DC. invalidate many of our past assumptions about the likelihood and method of terrorist attack. It is clear that we must take new measures to protect against those who would target American citizens and domestic infrastructure. We have a particular responsibility to ensure that our

¹This legislation amends various sections of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). It also amends Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

commercial nuclear resources, including our nuclear reactors and radioactive materials used for research, medical and industrial purposes, are not used as weapons of destruction against us.

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 environmental 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 most 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.

As stated in the Atomic Energy Act:

. . . the development, use and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security . . .²

As of December 2000, there were 104 commercial nuclear power reactors licensed to operate by the NRC in 31 States. Additionally, NRC has regulatory responsibility over seven fuel fabrication and production facilities; two gaseous diffusion uranium enrichment facilities; and 14 other facilities that possess significant quantities of special nuclear material (other than reactors) or process source material (other than uranium enrichment facilities). The NRC also administers approximately 5,000 licenses for medical, academic and industrial uses of nuclear materials; and has agreements under which States will administer approximately 16,000 additional such licenses.

While prevention of accidents necessarily remains a key component of nuclear safety, the events of September 11th bring a new urgency to the need to deter and protect against attacks at our nation's nuclear facilities, and against attempted theft of radioactive materials.

Following the events of September 11th, the NRC took immediate action to respond to heightened threat levels and concerns. It undertook intensive consultation with other Federal entities, including the FBI, the Office of Homeland Security, the Department of Defense, the Federal Aviation Administration and others to evaluate general and specific threats to NRC licensed facilities, and to coordinate planning and responsive actions. The NRC has consulted with Governors regarding the deployment of State assets, including the National Guard. It has issued a series of Orders to licensees to enhance security at nuclear facilities. The NRC is also in the process of conducting what it describes as a comprehensive

²Atomic Energy Act of 1954, section 1a, 42 U.S.C. 2011a.

review of NRC policies and regulations relating to safeguards and security.

Since September 11th, the committee has worked closely with the NRC to monitor changing circumstances and to oversee activities of the NRC and its licensees. The committee will continue to work with the agency to ensure that all actions necessary to protect the public are taken in a timely and thorough manner.

OBJECTIVES OF THE LEGISLATION

The Nuclear Security Act of 2002 is an important step in ensuring protection of the public against potential terrorist activities against commercial nuclear facilities or potential theft of nuclear materials. While the NRC has voluntarily undertaken a number of actions, these have been ad hoc responses to emergency events. The purpose of this legislation is to codify those actions necessary to protect against attack on our nation's nuclear reactors and against theft or terrorist use of radioactive materials, such as for so-called "dirty bombs."

The legislation directs the NRC, in consultation with other Federal agencies having experience in matters related to national security, emergency preparedness, and radioactive response, to undertake a series of actions to upgrade security at nuclear power plants and to prevent the theft or terrorist use of sensitive radioactive materials. It also requires the NRC to update hiring and training standards for plant employees; conduct and document security response evaluations at each nuclear facility; and to ensure adequate emergency planning, evacuation, and other public safety measures in the event of a radiological release from a sensitive nuclear facility. It also directs the President to ensure coordinated Federal action to prevent a terrorist attack.

The legislation gives clear and permanent direction to the NRC and its licensees, and will provide greater assurance that NRC will receive the funding it needs to fully implement essential security measures. The Nuclear Security Act of 2002 will assure the American public that these nuclear facilities are as safe as they can reasonably be, and will clearly signal to would-be terrorists that our nuclear facilities are heavily protected, hardened structures that will make neither easy, nor desirable, targets.

The committee has worked closely with the NRC since September 11th to develop this legislation. The committee has taken extensive testimony on the issues involved and has worked with industry, public interest groups, private security guards employed at nuclear facilities, and members of the public. This legislation represents a carefully considered, bipartisan response to the threat of U.S. nuclear resources being employed as weapons of destruction.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the Act may be cited as the "Nuclear Security Act of 2002."

Sec. 2. Definitions

This section amends section 11 of the Atomic Energy Act of 1954 to provide definitions for “Homeland Security Officer,” “Private Security Force,” and “ Sensitive Nuclear Facility.”

Sec. 3. Nuclear Facility Security

This section amends Chapter 14 of the Atomic Energy Act by adding a new section 170C, “Protection of Sensitive Nuclear Facilities.”

New subsection 170C(a) provides definitions for “Antiterrorism Team,” “Federal Security Coordinator,” “Task Force,” “Threat,” and “Threat Level.”

New subsection 170C(b) establishes a task force, chaired by the Chairman of the NRC, to examine and provide recommendations and findings regarding a broad spectrum of security issues surrounding nuclear facilities licensed by the NRC, and the use of nuclear materials licensed by the NRC.

Paragraph (b)(2) specifies the membership of the task force. The agencies included in the task force are intended by the committee to include those which have expertise in intelligence; defense of air space and waterways; road and transportation access; radiological response; and emergency preparedness. The committee recognizes that not every one of these agencies will have expertise in all of the issues addressed in this subsection. The committee assumes that the Chairman of the NRC, as chairperson, will structure the task force so as to best utilize the expertise of each agency in relation to those issues within their respective jurisdiction. However, the committee also expects that the task force’s report to Congress and the President will reflect and incorporate the views of all agencies on the task force, as appropriate, and if necessary should provide for minority or dissenting views.

The committee is aware that, since September 11th, the NRC has been in close consultation with most, if not all of these agencies. The committee intends that the work of the task force established in this subsection shall build upon, rather than duplicate or interfere with, the process of consultation and coordination that the NRC has already begun with these and other agencies.

Paragraph (b)(3) addresses the duties of the task force. The overall duty of the task force is to examine issues surrounding the protection of sensitive nuclear facilities against potential terrorist threats, and to report to the President and Congress with its findings and recommendations. This paragraph directs the task force to consult with other Federal, State and local agencies, stakeholders and members of the public, as appropriate, in making its examination.

This paragraph sets out in detail the matters which the task force is to examine. These are: how threats to sensitive nuclear facilities should be classified; how Federal, State and local security efforts for protection of land, water, and ground access to sensitive nuclear facilities should be coordinated; the adequacy of existing emergency planning zones; the adequacy of Federal, State and local emergency planning and evacuation zones, and other measures to protect the public health and safety in the event of a terrorist attack against a sensitive nuclear facility; the specific threats against which security forces at sensitive nuclear facilities shall be re-

quired to protect; creation of a system of threat levels appropriate to sensitive nuclear facilities; the development, implementation and revision of security plans for sensitive nuclear facilities; the establishment of an antiterrorism team; the hiring and training standards that should be applied to private security forces at sensitive nuclear facilities; how Federal resources should best be coordinated to expedite and improve the process of performing employee background checks; and the creation of a program to provide technical assistance and training for the National Guard, State law enforcement agencies, and local law enforcement agencies, to respond to threats against a sensitive nuclear facility.

Subparagraph (b)(3)(B)(i)(III) requires the task force to examine the adequacy of all existing emergency planning zones in the event of a terrorist attack against a sensitive nuclear facility. The committee intends for this to be a full examination in light of experiences derived from September 11th, including whether any planning zones should be facility-specific to take into account population densities or special obstacles to successful emergency evacuation. The committee recognizes that concerns have been raised that existing emergency planning and evacuation zones may not be adequate and could require expansion, perhaps up to 50 miles. In light of the increased potential for a terrorist attack, it is expected that the task force will examine whether such a change is warranted.

Subparagraph (b)(3)(i)(IV) requires the task force to evaluate 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 sensitive nuclear facility. The issues of specific interest to the committee include whether actual capabilities are adequate for: warning the public; facilitating movement of populations; transporting populations that are trapped without ground escape routes; providing shelter and medical care to those who have been relocated; providing radiation monitoring to both individuals and the environment; assuring the availability of properly trained medical providers and emergency responders; and adequately quarantining contaminated food and water supplies in the ingestion zone where radiation has been deposited.

Subparagraph (b)(3)(B)(i)(V) requires the task force to examine the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and theft of special nuclear material. The committee intends that this constitute a thorough and comprehensive review of the types of threats that are appropriate for sensitive nuclear facilities to protect against in light of September 11th. The committee expects that this would include aerial, ground or water-based attacks. The committee also intends that the task force consider, as part of its examination, appropriate changes to sensitive nuclear facilities in order to protect against acts of radiological sabotage, including means to reduce the vulnerability of spent fuel storage and the consequences of a spent fuel fire.

New subsection 170C(c) requires the NRC, based on and consistent with the findings and recommendations of the task force, to promulgate regulations identifying the threats that sensitive nuclear facilities must protect against to prevent acts of radiological

sabotage and the theft of special nuclear material. The committee is aware that the design basis threats are currently the NRC's primary regulatory framework for protecting against acts of sabotage at sensitive nuclear facilities. The committee therefore assumes that this section will result in a revision to the NRC regulations covering the design basis threats. However, it is the intent of this section that regulations promulgated by the NRC pursuant to this section will also address any other regulatory or programmatic changes as are necessary.

Paragraph (c)(2) addresses the recognition by the committee that post-September 11th, the need may arise to reduce the amount of specific information contained in regulations open to public dissemination, which address the design basis threat or other security matters. For example, the NRC is considering revising current regulations to remove certain details that may now be considered safeguards information under section 147 of the Atomic Energy Act, and include such details, as revised, instead in Orders to licensees. This paragraph is intended to clarify that the requirements of section 147 continue to apply in full, including the need as appropriate under existing law to protect safeguards and other sensitive information.

New subsection 170C(d) requires the NRC to promulgate regulations establishing a system for the determination of multiple threat levels to describe the threat conditions at sensitive nuclear facilities. It is the intent of the committee that in meeting this requirement the NRC will utilize the Homeland Security Advisory System; or such other information or guidance provided by the Office of Homeland Security, other Federal agencies or other entities; as appropriate.

New subsection 170C(e) requires the NRC to review the security plans for each sensitive nuclear facility. It specifies the aspects of the review, requires the NRC to establish a priority schedule for conducting reviews, requires the NRC to report to the President and Congress, and requires the NRC to ensure that licensees upgrade security plans as necessary.

New subsection 170C(f) requires the NRC to review the emergency response plans for each sensitive nuclear facility. It specifies the aspect of the review, requires the NRC to establish a priority schedule for conducting the reviews, requires the NRC to report to the President and Congress, and requires the NRC to ensure that licensees revise emergency response plans as necessary.

Paragraph (f)(3) requires the NRC to establish a priority schedule for conducting reviews of emergency response plans based on the relative degrees of vulnerability of sensitive nuclear facilities and the proximity of sensitive nuclear facilities to large population areas. Consequently, the committee anticipates that facilities near major metropolitan areas such as New York City will be at the top of this priority schedule.

New subsection 170C(g) requires the NRC to promulgate regulations establishing the circumstances under which the NRC shall request the President to deploy the Coast Guard or the antiterrorism team created under subsection 170C(h) to a sensitive nuclear facility, or provide for the protection of air space in the vicinity of a sensitive nuclear facility.

New subsection 170C(h) requires the President to establish a Nuclear Infrastructure Antiterrorism Team, the purpose of which shall be to provide protection for the perimeter of sensitive nuclear facilities against the threats identified under subsection (c), in coordination with other Federal, State, local, and private entities, as appropriate, and consistent with the security plan for each sensitive nuclear facility.

The nature, structure and specific duties of this Federal team are left to the discretion of the President, with the caveat that they shall be based on and consistent with the findings and recommendations of the task force created under subsection 170C(b). This includes whether such “team” shall be regional or national in nature or shall be specific to each sensitive nuclear facility. The committee however intends that the team will consist of existing agency structures and personnel, operating under existing Federal authorities. The committee does not intend for the Nuclear Infrastructure Antiterrorism Team to be an NRC entity or under the control of the NRC.

New subsection 170C(i) requires the President to establish 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 sensitive nuclear facility. Such program may include grants to State and local governments.

New subsection 170C(j) requires the NRC to review and upgrade hiring and training standards for employees at sensitive nuclear facilities, and to establish qualifications and procedures to ensure that no individual that presents a threat to national security is employed at a sensitive nuclear facility.

New subsection 170C(k) requires the NRC to promulgate regulations for the hiring and training of Federal security coordinators, and to assign a Federal security coordinator at each sensitive nuclear facility. The subsection sets forth the duties of the Federal security coordinator.

New subsection 170C(l) provides that nothing in the section shall be construed to supersede any existing law governing the disclosure of classified or safeguards information.

Sec. 4. Fingerprinting and Background Checks

This section was developed by the Nuclear Regulatory Commission and added at the NRC’s request. It amends Chapter 12 of the Atomic Energy Act by adding specific requirements for the performance of fingerprinting, and criminal history and other background checks for persons having access to sensitive nuclear facilities.

Sec. 5. 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 office is intended to codify the office created by the NRC following the events of September 11th.

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) establishes a Security Response Unit within the Office of Nuclear Security and Incident Response, to be headed by an Assistant Director for Security Response. The section details the functions of this unit, which shall include establishment of a mock terrorist team, and a program for security response evaluations to assess the ability of each sensitive nuclear facility to defend against threats in accordance with the facility security plan. It details elements of the security response evaluation program, including requiring the NRC to establish performance criteria for judging the security response evaluations. It is the assumption of the committee that the Assistant Director for Security Response would have primary responsibility for carrying out this program. This would include making recommendations as required under this paragraph on the timing, conduct and evaluation of the security response exercises, including the establishment of performance criteria for judging the evaluations.

New subsection 212(e) requires the NRC, in coordination with the Director of the Federal Emergency Management Agency, to conduct emergency response exercises to evaluate the ability of Federal, State and local emergency response personnel to respond to a radiological emergency at the sensitive nuclear facility. It sets forth the factors which the emergency response exercises shall evaluate, requires revisions to emergency response plans as necessary, and requires periodic reports to the President and Congress on the results of the exercises and each revision to an emergency response plan.

The committee notes that in section 3 of the Nuclear Security Act of 2002, under new subsection 170C(b)(3)(i)(III) of the Atomic Energy Act, above, the task force is required to examine the adequacy of all existing emergency planning zones. Section 3 of the Nuclear Security Act of 2002, under new subsection 170C(f)(1), also requires the Commission, based on and consistent with the findings and recommendations of the task force, to review the emergency response plans for each sensitive nuclear facility. New subsection 170C(f)(5) of the Act, above, requires the Commission to ensure that the licensee of each sensitive nuclear facility revises, as necessary, the emergency response plan for the sensitive nuclear facility. Therefore, the committee intends that the emergency response exercises conducted by the Commission in coordination with FEMA under this new subsection 212(e) will reflect the determinations made by the task force under new subsection 170C(b)(3)(i)(III).

New subsection 212(f) provides that nothing in the section shall limit any authority of the Department of Energy relating to the safe operation of facilities under the jurisdiction of the Department.

Sec. 6. Carrying of Weapons by Licensee Employees

This section amends Chapter 14 of Title I of the Atomic Energy Act.

It permits the NRC 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 NRC to issue regulations shielding guards against State prosecution for discharge of firearms in the performance of official duties. These changes would enhance national security by pro-

viding NRC facilities and transport with authority equivalent to the authority currently possessed by the Department of Energy for the protection of its nuclear facilities and transport.

This provision was included at the request of the NRC, and is similar to language that passed this committee and the Senate in the 106th Congress in S. 1627

Sec. 7. 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) contains definitions. Paragraph 170E(a)(1) defines “sensitive radioactive material.” This language is broadly written to comprise material which could be used by a terrorist in a radiological dispersal device, or material that in any other way could threaten the health or safety of the public due to its radiological properties. It is the committee’s intent primarily to improve protections on those radioactive materials that are in common industrial, medical, or research applications. The committee specifically urges the task force to carefully examine protections on source material, byproduct material or special nuclear material which is stored in a sealed container to prevent leakage (otherwise known as “sealed sources”) and any other types of radioactive material that NRC license holders have reported lost or stolen. The committee also specifically encourages the task force to consider radioactive materials that are not currently regulated by the United States for their radioactive properties, such as naturally occurring or accelerator produced radioactive materials (NORM).

New subsection 170E(b) expands the duties of the task force established under new section 170C(b), above, to include evaluation of sensitive radiological material. It delineates the additional matters the task force should consider. 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 task force 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. In developing recommendations for methods to ensure the return and proper disposal of sensitive radiological materials required in paragraph 170E(b)(F), the task force may consider financial incentives for achieving this goal.

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. 8. 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 NRC.

This would allow NRC to apply the provisions of section 229a to NRC licensed or certified activities, thereby allowing the NRC 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 NRC. This provision was included at the request of the NRC, and is similar to language that passed this committee and the Senate in the 106th Congress in S. 1627.

Sec. 9. 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. This provision was included at the request of the NRC, and is similar to language that was reported from the committee and passed the Senate in the 106th Congress in S. 1627.

Sec. 10. 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. 11. Protection of Whistleblowers

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

Sec. 12. Technical and Conforming Amendment

This section provides technical and conforming amendments.

Sec. 13. Authorization of Appropriations

This section provides that there are authorized to be appropriated such sums as are necessary to carry out this Act.

LEGISLATIVE HISTORY

On November 1, 2001, the committee held an oversight hearing on nuclear security. On November 29, 2001, Senators Reid, Clinton, Lieberman, Jeffords and Torricelli introduced S. 1746. It was referred to the Committee on Environment and Public Works. The committee held a hearing on June 5, 2002. The committee held a classified hearing on June 20, 2002. On July 25, 2002, the committee met to consider S. 1746. The committee voted to report the bill to the Senate with amendments. Sections 6, 8 and 9 of the bill as agreed to are similar to provisions reported by the committee and passed the Senate in S. 1626 in the 106th Congress.

HEARINGS

On November 1, 2001, the Committee on Environment and Public Works received testimony concerning infrastructure security,

receiving testimony from Michael Brown, Deputy Director, Federal Emergency Management Agency; Joe Moravec, Commissioner, Public Building Service, General Services Administration; Dr. David Sampson, Assistant Secretary for Economic Development, Economic Development Administration, U.S. Department of Commerce; Dr. Richard Meserve, Chairman, Nuclear Regulatory Commission; Herbert Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration; and Marianne L. Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency.

On June 5, 2002, the Committee on Environment and Public Works held a hearing to receive testimony on S. 1586, a bill to amend the Atomic Energy Act of 1954 to authorize the carrying of firearms by employees of licensees, and for other purposes, and S. 1746, a bill to amend the Atomic Energy Act of 1954 to strengthen security at sensitive nuclear facilities. For this hearing the witnesses were Hon. Edward J. Markey, U.S. Representative from Massachusetts; Hon. Richard A. Meserve, Chairman, Chairman, Nuclear Regulatory Commission; David Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Washington, DC; Jack Skolds, Chief Nuclear Officer, Excelon Corp., Washington, DC; Danielle Brian, Executive Director, Project on Government Oversight, Washington, DC; Donna J. Hastie, Emergency Planning Consultant, Marietta, GA; and Irwin Redlener, M.D., F.A.A.P., President, Children's Health Fund, New York, NY.

On June 20, 2002, the Committee on Environment and Public Works held a classified hearing, receiving testimony from Federal Government witnesses.

ROLLCALL VOTES

On July 25, 2002, the committee met to consider S. 1746. The bipartisan amendment in the nature of a substitute offered by Senators Reid, Smith, Jeffords, Inhofe, Clinton, and Lieberman was adopted for purpose of further amendment. An amendment offered by Senator Smith, two amendments offered by Senator Clinton, and an amendment offered by Senator Reid were agreed to by voice vote. The committee voted by voice vote to report the bill, as amended, to the Senate.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1746 does not create any significant 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 (P.L. 104-4), the committee finds that the bill may require additional costs to the NRC, part of which may be passed along to ratepayers under existing law. The committee believes that such costs have been kept to the minimum necessary to ensure adequate security at sensitive nuclear facilities and adequate protection of sensitive nuclear materials. There will not be significant additional costs to State and local governments.

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, October 25, 2002.

Hon. JAMES M. JEFFORDS, *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. 1746, the Nuclear Security Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

*Nuclear Security Act of 2002, as ordered reported by the Senate
Committee on Environment and Public Works on July 25, 2002*

Summary

S. 1746 would establish several new security programs for the nation's nuclear infrastructure. Programs would include Federal security coordinators for designated nuclear facilities, antiterrorism teams to protect nuclear facilities, mock terrorism drills, new rules on security compliance at nuclear facilities, and a program to classify, track, and monitor radioactive sources throughout the country.

Based on information from the Nuclear Regulatory Commission (NRC), CBO estimates that implementing S. 1746 would have a gross cost of \$486 million over the 2003-2007 period. However, the NRC has the authority to offset a substantial portion of its annual appropriation with fees charged to the facilities it regulates. Accounting for such collections, CBO estimates that implementing S. 1746 would result in a net cost of \$126 million over the 2003-2007 period, assuming appropriation of the necessary amounts.

The bill also would require all employees at nuclear facilities to undergo background checks. Because the Department of Justice (DOJ) would charge the applicant a fee to offset the cost of background checks required by the bill, we estimate that this provision would have a negligible impact on direct spending.

In addition, S. 1746 would establish new criminal penalties for the sabotage of nuclear production, utilization, or waste storage facilities and for noncompliance with certain employee background checks that would be established by the bill. CBO estimates that these penalties would increase revenues and subsequent direct spending of those collections by less than \$500,000 a year.

S. 1746 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by:

- Effectively increasing the annual fees collected from NRC licensees;
- Requiring new security standards and procedures at sensitive nuclear facilities; and
- Expanding the system for licensing sensitive radioactive materials.

Because several of the mandates are dependent upon future actions of the NRC, for which information currently is not available, CBO cannot precisely determine the aggregate cost of all mandates contained in the bill. However, CBO estimates that the costs to the private sector would likely exceed the annual threshold for private-sector mandates (\$115 million in 2002, adjusted annually for inflation) in fiscal year 2004, primarily because of the increase in annual fees imposed on NRC licensees. CBO expects that the aggregate costs to public entities of all mandates would not exceed the intergovernmental threshold (\$58 million in 2002, adjusted annually for inflation).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 1746 is shown in the following table. The costs of this legislation fall within budget function 270 (energy) and 750 (administration of justice).

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2002, that the necessary amounts will be appropriated for each year, and that outlays will occur at historical rates for similar programs.

Spending Subject to Appropriation

S. 1746 would establish several new security programs to be implemented at the nation’s sensitive nuclear facilities, including creating antiterrorism teams, running mock terrorism drills, and establishing Federal security coordinators at each site. For this estimate, we assume that 84 commercial nuclear sites in 35 States would meet the bill’s definition of a “sensitive nuclear facility” and thus would be subject to its requirements. In addition, the bill would require the registration and tracking of radioactive material, several new Federal rules concerning nuclear security, and it would establish a training and grant program for the National Guard and State and local law enforcement personnel.

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Federal Security Programs at Nuclear Facilities:					
Estimated Authorization Level	73	88	64	64	64
Estimated Outlays	58	85	69	64	64
National Guard and Law Enforcement Training:					
Estimated Authorization Level	11	17	14	14	14
Estimated Outlays	9	16	15	14	14
Sensitive Radioactive Materials:					
Estimated Authorization Level	9	17	10	8	8
Estimated Outlays	7	15	11	8	8

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
Security and Emergency Response Plan Review:					
Estimated Authorization Level	8	9	1	1	1
Estimated Outlays	6	9	3	1	1
Security Rulemakings:					
Estimated Authorization Level	3	3	1	1	1
Estimated Outlays	2	3	1	1	1
Estimated Gross Authorizations for the NRC under S. 1746:					
Estimated Authorization Level	104	134	90	88	88
Estimated Outlays	83	128	99	88	88
Offsetting Collections ² :					
Estimated Authorization Level	-98	-124	-81	-29	-29
Estimated Outlays	-98	-124	-81	-29	-29
Net New NRC Spending Under S. 1746:					
Estimated Authorization Level ¹	6	11	9	59	59
Estimated Outlays	-15	5	18	59	59

Note: Components may not sum to totals because of rounding.

¹A full-year appropriation has not yet been enacted for the NRC; in 2002, the agency received a gross appropriation of \$553 million, and offsetting collections totaled \$474 million.

²Collections are authorized at declining percentages of the NRC's budget: 94 percent in 2003, 92 percent in 2004, 90 percent in 2005, and 33 percent after 2005.

Based on information from the NRC and other Federal agencies, CBO estimates that implementing S. 1746 would have a gross cost of \$486 million over the 2003–2007 period, assuming appropriation of the necessary amounts. However, the NRC has the authority to offset a substantial portion of its annual appropriation with fees charged to facilities it regulates. After accounting for such collections, we estimate that the net cost of implementing S. 1746 would be \$126 million over the 2003–2007 period.

Federal Security Programs at Nuclear Facilities. S. 1746 would authorize funding for Federal antiterrorism teams, mock terrorism teams, and security coordinators for the nuclear facilities covered by the bill. We estimate that implementing these three programs would have a gross cost of \$340 million over the 2003–2007 period for additional staff, equipment, training, and consulting.

Antiterrorism Teams. Although the bill does not specify the scope of the antiterrorism teams, for this estimate, we assume the NRC would establish 16 antiterrorism teams of 10 people each (four teams for each of NRC's four regions). Those teams would be trained in local topography, geography, nuclear infrastructure, and security tactics and would be available to respond to security incidents 24 hours a day. Based on information from the NRC, we estimate that it could cost as much as \$500,000 per person, initially, to provide such specialized training, equipment, and staff support. We expect that annual costs would be reduced by half that amount once the program is established. CBO estimates that implementing this provision would have a gross cost of \$232 million over the 2003–2007 period.

Federal Security Coordinators. S. 1746 also would require that the NRC hire and train security coordinators to be stationed at each of the 84 sensitive nuclear facilities that would be covered by the bill. They would coordinate all security programs at the nuclear facility. We expect that it would take NRC 1 year to issue rules and establish this new program. We assume that the agency would need 110 additional people to staff and manage the Federal secu-

rity coordinator program at a cost of \$11 million a year beginning in 2004 and that NRC would spend an additional \$3 million a year on training and equipment. CBO estimates that implementing this provision would cost \$54 million over the 2003–2007 period.

Mock Terrorism Teams. Under S. 1746, mock terrorism teams would be deployed to perform security drills at each nuclear facility every 3 years. We estimate that the NRC would establish a team of 30 people to conduct such drills at a cost of about \$3 million a year. In addition, we estimate the NRC would need \$10 million for support personnel, equipment, and travel over the 2003–2004 period, and that the initial cost for training and equipment would drop by about half after the teams are established. We also would expect the NRC to contract with private security firms or the Department of Defense for staff support and assistance in designing the drills at a cost of about \$5 million per year. We estimate that this program would cost \$54 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

National Guard and Law Enforcement Training. S. 1746 would require the President to establish a program to provide technical assistance and training to the National Guard and State and local law enforcement agencies to respond to threats against the nation's nuclear facilities. Under this program, we expect that the NRC would provide training at each of the covered 84 nuclear facilities four times a year at a cost of about \$120,000 a year (or a total cost of about \$10 million per year). In addition, we expect that the 35 States with sensitive nuclear facilities would receive grants of \$100,000 per year for technical assistance and training. Assuming appropriation of the necessary amounts, we estimate that implementing these training and assistance programs would cost on average \$14 million a year.

Sensitive Radioactive Material. S. 1746 would require the NRC to establish a program to register, track, and control sensitive radioactive material. Currently, the NRC spends about \$1 million per year to regulate certain radioactive material used for industrial purposes. S. 1746 would significantly expand that program to include a wide variety of sources and uses of radioactive material.

Based on information from the NRC we estimate this program would cost an average of \$10 million per year for evaluating, classifying, and tracking of such materials. Funds would be used for establishing new computer programs, hiring of additional staff, and auditing sites with radioactive materials. Overall, we estimate that implementation of this program would cost about \$50 million over the 2003–2007 period.

Security and Emergency Response Plan Review. S. 1746 would require the NRC to review the emergency response plans for each of the 84 sensitive nuclear facilities in the United States within 9 months of enactment and their security plans within 21 months of enactment. In addition, the bill would require the NRC to conduct emergency response exercises every 2 years at each facility. After each review and exercise, the NRC would submit a report to the Congress and work with the facilities on any necessary improvements to plans and procedures. Based on information from the NRC, we estimate those reviews would require 60 additional staff at a cost of about \$6 million in 2003, and that costs would drop significantly in the following years as the reviews and follow-up in-

spections are completed. We estimate that the agency would need about \$3 million in 2003 and 2004 for travel and contract services to accomplish the reviews in the timeframe established in the bill. We estimate emergency response exercises would cost about \$1 million a year. In total, we estimate that implementing the security and emergency response plan reviews required by the bill would cost \$20 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

Security Rulemakings. S. 1746 would require the NRC to establish several new rules to enhance security at the nation's nuclear facilities. The rulemakings would cover threat levels and threats that facilities would be required to defend, the coordination of Federal agencies during a nuclear threat or attack, background checks for employees at nuclear facilities, and weapons policies for security personnel at nuclear facilities. We estimate that the NRC would need an additional 25 people at a cost of about \$2.5 million a year to complete these rulemakings over the 2003–2004 period. We expect that staff needs would diminish as the rulemakings are completed, thus reducing the cost to about \$1 million per year. CBO estimates all of these rulemakings would cost \$8 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

Direct Spending and Revenues

CBO estimates that enacting S. 1746 would increase both offsetting receipts and direct spending of those receipts by \$2.3 million in 2003 for background checks on nuclear security personnel required by the bill; thus, the net budgetary impact of this requirement would be negligible. In addition, it would establish criminal penalties for noncompliance with such background checks and penalties for the sabotage of nuclear facilities. We estimate that any increase in penalties would be less than \$500,000 per year.

Fingerprinting and Background Checks. S. 1746 would require that all employees of covered nuclear facilities undergo fingerprinting and background checks within 60 days of passage of the bill. Such checks would be performed by the Department of Justice. Based on information from DOJ, we expect most checks would cost about \$22 per person. On average, about 1,250 people work at each of the 84 covered facilities. Because DOJ would charge a fee of \$22 for each person that applies for a background check, we estimate that the agency would collect about \$2.3 million in 2003. DOJ is authorized to spend such fees without further appropriation, and we expect that most of the money would be spent in the year in which it is collected. Thus, the net impact on DOJ spending would be negligible.

Penalties. S. 1746 would strengthen the criminal penalties for the sabotage of nuclear production, utilization, or waste storage facilities and for noncompliance with the background checks established by the bill. CBO estimates that enacting these new penalties would increase governmental receipts by less than \$500,000 a year. Any criminal fines collected would be deposited in the Crime Victims Fund and spent in subsequent years. Any resulting change in direct spending from the fund also would amount to less than \$500,000 annually.

Intergovernmental and Private-Sector Impact

S. 1746 would impose both intergovernmental and private-sector mandates as defined in UMRA by:

- Effectively increasing the annual fees collected from NRC licensees;
- Requiring new security standards and procedures at sensitive nuclear facilities; and
- Expanding the system for licensing sensitive radioactive materials.

Because several of the mandates are dependent upon future actions of the NRC, for which information currently is not available, CBO cannot precisely determine the aggregate cost of all mandates contained in the bill. However, CBO estimates that the costs to public entities would not exceed the intergovernmental threshold (\$58 million in 2002, adjusted annually for inflation), while the cost to the private sector would likely exceed the annual threshold for private-sector mandates (\$115 million in 2002, adjusted annually for inflation) in fiscal year 2004.

Increasing Annual Fees for NRC Licensees

Under current law, the NRC collects annual fees from its licensees, both public and private, to offset a major portion of its general fund appropriation. Because S. 1746 would require the NRC to engage in a variety of initiatives to augment security at licensed facilities, CBO expects that additional fees would be collected from the licensees to cover the cost of such initiatives. The duty to pay those fee increases would be considered both a private-sector and an intergovernmental mandate under UMRA, as it results in an increase in the cost of an existing mandate. Assuming an appropriation level of amounts necessary to cover the costs of the NRC's security initiatives starting in 2003, CBO estimates that the increment in fees would total approximately \$98 million in fiscal year 2003, \$124 million in fiscal year 2004, \$81 million in 2005, and drop to around \$29 million in subsequent fiscal years. Because less than 5 percent of nuclear facilities are publicly owned, CBO estimates that the increase borne by public nuclear facilities would not be significant.

Security Procedures at Sensitive Nuclear Facilities

S. 1746 would establish new security procedures for nuclear facilities in order to prevent acts of radiological sabotage and the theft of special nuclear material. Accordingly, the bill would require the NRC to promulgate rules revising:

- The threats sensitive nuclear facilities must protect against;
- The threat levels at which each facility must operate; and
- The hiring and training standards for employees of the facilities.

Compliance with each of the rules would constitute a mandate as defined by UMRA. The extent of those mandates would be based upon future actions of the NRC, which would track the recommendations of an interagency task force on nuclear infrastructure security. At this time, the NRC could not give any indication as to the scope of the rules to be issued and accordingly, CBO cannot determine the cost of compliance.

In response to the events of September 11, 2001, the NRC issued interim security measures for sensitive nuclear facilities, while further analysis regarding future regulatory action was undertaken. The interim measures, which included determinations as to the types of threats nuclear facilities must protect against, became binding prior to, or in August of this year for the vast majority of sensitive nuclear facilities. In addition, the NRC issued voluntary guidelines on the threat levels at which facilities could operate, which parallel the threat levels established by the Office of Homeland Security. The NRC indicates that most, if not all, NRC licensees adopted those guidelines. According to representatives of the nuclear industry, sensitive nuclear facilities have already spent about \$90 million to upgrade security to comply with the NRC's interim security measures. To the extent that future security and threat level regulations mirror those that are currently in place, sensitive nuclear facilities would not bear substantial additional costs associated with the mandate.

In addition, S. 1746 would require that employees of sensitive nuclear facilities undergo more extensive background investigations that would include checks of fingerprint records located in the National Crime Information Center data sets, the United States National Central Bureau of Interpol, the National Instant Criminal Background Check system, and the Immigration and Naturalization Service data sets. Employees are currently fingerprinted for an FBI criminal history check. According to the Department of Justice, the incremental cost of the expanded check would be approximately \$22, and based upon the number of individuals employed by the industry, CBO estimates that the cost that would be borne directly by licensees would be roughly \$2.3 million in 2003.

Licensing System for Sensitive Nuclear Materials

The bill would require the NRC to revise and expand the system for licensing certain radioactive materials, such as those used in industrial, medical, and research applications, based on the recommendations of an interagency task force. Information from the NRC suggests that some regulatory changes for sensitive radioactive material are already underway and that the agency does not intend to impose a heavy burden on the entities affected. Consequently, CBO expects that the costs relating to this mandate would not be significant.

Estimate Prepared By: Federal Costs: Lisa Cash Driskill; Impact on State, Local, and Tribal Governments: Angela Sietz; Impact on the Private Sector: Lauren Marks.

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

ADDITIONAL VIEWS OF SENATORS SMITH, INHOFE, VOINOVICH, AND
CHAFEE

We appreciate the leadership of the chairman to report out a bipartisan bill aimed at ensuring our nations nuclear power facilities remain among the most secured commercial facilities in the world. We believe that this bill takes important steps in achieving that goal. We are pleased with the inclusion of S. 1586, sponsored by Senators Inhofe and Smith, in the bill reported by the committee. S. 1586, provides enhanced security authority that the Nuclear Regulatory Commission has specifically requested for many years. We note that in the 106th Congress a nearly identical bill to S. 1586 was reported out of this Committee and passed the Senate by Unanimous Consent.

In the days following the committee ordering S. 1746 to be reported, the committee received detailed comments from the Nuclear Regulatory Commission on the amended version of S. 1746. These constructive comments identified specific areas where the bill should be improved in order to maximize security without delaying or impeding current security efforts already undertaken by the NRC and its licensees. We believe these comments warrant our attention and consideration prior to S. 1746 being voted on by the full Senate. It is our hope to continue to work with the chairman and members of the Committee to improve S. 1746 in order to ensure that the goals we all support will be achieved in an effective and timely manner. We thank the chairmen of the full committee and subcommittee for their leadership and for the bipartisan manner in which they have undertaken this very important security matter. We look forward to continuing to work in a bipartisan manner to adequately address issues that have been raised.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

ATOMIC ENERGY ACT OF 1954¹

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. 149A. Access to nuclear facilities.

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Sec. 170B. Uranium supply.

Sec. 170C. Protection of sensitive nuclear facilities.

Sec. 170D. Carrying of weapons.

Sec. 170E. Sensitive Radioactive Material Security.

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CHAPTER 2. DEFINITIONS

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.

* * * * *

[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) HOMELAND SECURITY OFFICER.—*The term “Homeland Security Officer” means a Federal official with responsibility for coordi-*

¹This Act consists of the Act of August 1, 1946, ch. 724, as amended by the Act of Aug. 30, 1954, ch. 1073 (68 stat. 921) and by subsequent amendments. The Act appears generally in the United States Code at 42 U.S.C. 2011 et seq. Bracketed notes are used at the end of each section for the convenience of the reader to indicate the United States Code citation.

nating efforts to maintain homeland security against acts of terrorism, and designated by the President to perform the duties of the Homeland Security Officer under this Act.

(kk) *PRIVATE SECURITY FORCE.*—The term “private security force”, with respect to a sensitive nuclear facility, means personnel hired or contracted by the licensee of the sensitive nuclear facility to provide security at the sensitive nuclear facility.

(ll) *SENSITIVE NUCLEAR FACILITY.*—

(1) *IN GENERAL.*—The term “sensitive nuclear facility” means a facility licensed by the Commission (or the portion of a facility used in the conduct of an activity licensed by the Commission).

(2) *INCLUSIONS.*—The term “sensitive nuclear facility” includes—

(A) an operating commercial nuclear power plant;

(B) an independent spent fuel storage facility;

(C) a commercial nuclear power plant that is being decommissioned or a portion of a commercial nuclear power plant that contains material licensed by the Commission;

(D) a category I fuel cycle facility; and

(E) a gaseous diffusion plant.

* * * * *

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

[a. The Nuclear Regulatory Commission (in this section referred to as the “Commission”) shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search of the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.

[b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.]

a. *FINGERPRINTING AND BACKGROUND CHECKS*

(1) *IN GENERAL.*—The Nuclear Regulatory Commission (referred to in this section as the ‘Commission’) shall require the fingerprinting of each individual that is permitted—

(A) unescorted access to a facility, activity, radioactive material, or property; or

(B) access to safeguards information under section 147.

(2) *PERFORMANCE OF FINGERPRINTING.*—The Commission shall require fingerprinting under paragraph (1) to be performed by—

(A) a person that is licensed or certified by the Commission;

(B) a person that is an applicant for a license or certificate; and

(C) a person that is otherwise permitted—

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

(ii) to possess, use or transport—

(I) radioactive material; or

(II) other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security.

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

(4) *SUBMISSION OF FINGERPRINTS*—

(A) *IN GENERAL.*—A licensee, certificate holder, or applicant shall submit to the Attorney General, through the Commission, all fingerprints obtained under paragraph (2)—

(i) for identification and comparison against all categories of individuals whose fingerprints appear in—

(I) the National Crime Information Center data sets;

(II) the United States National Central Bureau of Interpol;

(III) the National Instant Criminal Background Check system; and

(IV) the Immigration and Naturalization Service data sets (including the Student and Exchange Visitor Information System); and

(ii) for use to conduct a criminal history background check to determine past criminal history and any outstanding arrest warrants on record with the Federal Bureau of Investigation.

(B) *COST.*—The cost of a background check conducted under this paragraph shall be paid by the licensee, certificate holder, or applicant.

(C) *PROVISION OF RESULTS.*—

(i) *ATTORNEY GENERAL.*—Notwithstanding any other provision of law, the Attorney General shall provide the pertinent results of the search to the Commission.

(ii) *THE COMMISSION.*—In accordance with regulations promulgated under this section, the Commission may provide a licensee, certificate holder, or applicant submitting the fingerprints the results of an identification and record check under this paragraph.

b. *RELIEF FROM OBLIGATIONS.*—

(1) *IN GENERAL.*—*The Commission may, by regulation, relieve any person from the obligations imposed by this section, under terms and conditions and for periods of time specified by the Commission, if the Commission determines that the provision of relief is consistent with the responsibilities of the Commission—*

- (A) *to promote the common defense and security; and*
- (B) *to protect the health and safety of the public.*

(2) *REQUIREMENTS OF ANOTHER AGENCY.*—*A person that is subject to the fingerprinting requirements of another agency of the United States shall not be subject to the obligations imposed by this section, if the Commission determines that those fingerprinting requirements afford security protection similar to that resulting from the application of this section.*

c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations—

- (1) to implement procedures for the taking of fingerprints;
- (2) to establish the conditions for use of information received from the Attorney General, in order—

- (A) to limit the redissemination of such information;

- 【(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147;】

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

- (C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

- (i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

- (ii) an arrest that resulted in dismissal of the charge or an acquittal; and

- (D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

- (3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

- (A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

- (B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodi-

cally to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

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CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—* * *

* * * * *

[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;]

k. authorize—

(1) to carry 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 prop-

erty 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 official 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;

* * * * *

SEC. 170C. PROTECTION OF SENSITIVE NUCLEAR FACILITIES.

(a) **DEFINITIONS.**—In this section:

(1) **ANTITERRORISM TEAM.**—The term ‘antiterrorism team’ means the Nuclear Infrastructure Antiterrorism Team established under subsection (h).

(2) **FEDERAL SECURITY COORDINATOR.**—The term ‘Federal security coordinator’ means the Federal security coordinator assigned to a sensitive nuclear facility under subsection (k).

(3) **TASK FORCE.**—The term ‘task force’ means the task force on nuclear infrastructure security established by subsection (b).

(4) **THREAT.**—The term ‘threat’ means a threat identified under subsection (c).

(5) **THREAT LEVEL.**—The term ‘threat level’ means a threat level determined under subsection (d).

(b) **TASK FORCE ON NUCLEAR INFRASTRUCTURE SECURITY.**—

(1) **ESTABLISHMENT.**—There is established a task force on nuclear infrastructure security.

(2) **MEMBERSHIP.**—The task force shall be comprised of—

(A) the chairman of the Commission, who shall serve as chairperson of the task force;

(B) the Secretary of Defense;

(C) the Secretary of Transportation;

(D) the Administrator of the Environmental Protection Agency;

(E) the Attorney General;

(F) the Secretary of State;

(G) the Director of the Central Intelligence Agency;

(H) the Secretary of Health and Human Services;

(I) the Director of the Federal Emergency Management Agency; and

(J) the Homeland Security Officer.

(3) **DUTIES.**—

(A) **IN GENERAL.**—The task force, in consultation with other Federal, State, and local agencies, stakeholders, and members of the public, as appropriate, shall examine the protection of sensitive nuclear facilities from potential terrorist threats.

(B) **SECURITY REVIEW.**—

(i) **IN GENERAL.**—The task force shall examine—

- (I) *the classification of threats as—*
- (aa) *an act—*
 - (AA) *by an enemy of the United States (whether a foreign government or other person); or*
 - (BB) *otherwise falling under the responsibilities of the Federal Government;*
 - or
 - (bb) *an act involving a type of risk that the licensees of the Commission should be responsible for guarding against;*
- (II) *coordination of Federal, State, and local security efforts for protection of land, water, and ground access to sensitive nuclear facilities in the event of a terrorist attack or attempted terrorist attack;*
- (III) *the adequacy of existing emergency planning zones to protect the public health and safety in the event of a terrorist attack against a sensitive nuclear facility;*
- (IV) *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 sensitive nuclear facility;*
- (V) *the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and theft of special nuclear material;*
- (VI) *the system of threat levels, consistent with the Homeland Security Advisory System, used to categorize the threats against a sensitive nuclear facility, including—*
- (aa) *procedures to ensure coordinated Federal, State, and local responses to changing threat levels for sensitive nuclear facilities;*
 - (bb) *monitoring of threats against sensitive nuclear facilities; and*
 - (cc) *procedures to notify licensees of a sensitive nuclear facility of changes in threat levels;*
- (VII) *the development, implementation, and revision of security plans for sensitive nuclear facilities;*
- (VIII) *the establishment of the antiterrorism team under subsection (h);*
- (IX) *the hiring and training standards for members of private security forces at sensitive nuclear facilities, in accordance with subsection (i);*
- (X) *the coordination of Federal resources to expedite and improve the process of performing background checks on employees with access to sensitive nuclear facilities; and*
- (XI) *the creation 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 sensitive nuclear facility, including recommendations for the establishment of a grant program for State and local governments to carry out any recommended requirements under this section.

(ii) *THREATS.*—The threats to be examined include—

(I) threats comparable to the events of September 11, 2001;

(II) cyber or biochemical threats;

(III) attacks on a sensitive nuclear facility by multiple coordinated teams of a large number of individuals;

(IV) attacks from several persons employed at the sensitive nuclear facility, some of whom may have sophisticated knowledge of the operations of the sensitive nuclear facility;

(V) attacks from individuals willing to commit suicide to carry out the attacks;

(VI) water-based and air-based attacks;

(VII) attacks using explosive devices of considerable size and modern weaponry;

(VIII) fire, especially fire of long duration; and

(IX) any combination of those threats.

(4) *REPORT.*—

(A) *IN GENERAL.*—Not later than 120 days after the date of enactment of this section, the task force shall submit to the President and Congress, in classified form and unclassified form, a report with recommendations and findings.

(B) *REVISION.*—The task force shall revise the recommendations periodically, but not less than once every 3 years.

(c) *THREATS TO SENSITIVE NUCLEAR FACILITIES.*—

(1) *IN GENERAL.*—Not later than 150 days after the task force submits the report under subsection (b)(4), the Commission shall promulgate regulations, based on and consistent with the findings and recommendations of the task force, identifying the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and the theft of special nuclear material at sensitive nuclear facilities.

(2) *PROTECTION OF SAFEGUARDS INFORMATION.*—In promulgating 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 task force submits the report under subsection (b)(4), the Commission shall promulgate regulations, based on and consistent with the findings and recommendations of the task force, establishing a system for the determination of multiple threat levels to describe the threat conditions at sensitive nuclear facilities.

(e) *SECURITY PLANS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date on which the Commission establishes the threats under subsection (c), the Commission shall review, based on and consistent with the findings and recommendations of the task force, the security plan for each sensitive nuclear facility to ensure that each sensitive nuclear facility protects against those threats.

(2) *ASPECTS OF REVIEW.*—The Commission shall ensure that the security plan provides for—

(A) the deployment and capabilities of the private security force at the sensitive nuclear facility for each threat level;

(B) coordination between the private security force and the antiterrorism team for the sensitive nuclear facility, as appropriate for each threat level;

(C) secure operation of vital equipment, such as control room equipment and backup warning systems;

(D) access restrictions;

(E) security cameras, fire protection barriers, and other physical security measures;

(F) protection of spent fuel, including options such as placement of spent fuel in dry cask storage;

(G) background security checks for employees and prospective employees; and

(H) coordination among licensees of sensitive nuclear facilities and appropriate Federal, state, and local emergency response personnel.

(3) *SCHEDULE.*—The Commission shall establish a priority schedule for conducting reviews of security plans based on the vulnerability of each sensitive nuclear facility and the proximity of the sensitive nuclear facility to large population areas.

(4) *FINDINGS.*—

(A) *IN GENERAL.*—Not later than 30 days after the review of each security plan, the Commission shall submit to Congress and the licensee of each sensitive nuclear facility recommendations, findings, and a schedule for implementation of changes to security that shall be made not later than 18 months after completion of the review of the security plan.

(B) *FORM.*—The report submitted to Congress under subparagraph (A) shall be submitted in classified and unclassified form.

(5) *UPGRADES TO SECURITY PLAN.*—Not later than 30 days after the review of each security plan, the Commission shall ensure that the licensee of each sensitive nuclear facility revises, as necessary, its security plan consistent with the findings under paragraph (4).

(6) *UPGRADES TO SECURITY.*—The Commission shall ensure that the licensee of each sensitive nuclear facility makes any changes to security required by the security plan according to the Commission schedule.

(f) *EMERGENCY RESPONSE PLANS.*—

(1) *IN GENERAL.*—Not later than 150 days after the task force submits the report under subsection (b)(4), the Commission shall review, based on and consistent with the findings

and recommendations of the task force, the emergency response plans for each sensitive nuclear facility to ensure that each emergency response plan provides protection for persons living in the emergency response planning zones.

(2) *ASPECTS OF REVIEW.*—The Commission shall ensure that each emergency response plan provides 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, including both pre-emergency education and in the event of a radiological emergency;

(F) adequate emergency facilities and equipment at and around the sensitive nuclear facility;

(G) the use of methods, systems, and equipment for assessing and monitoring actual or potential impacts of a radiological emergency;

(H) appropriate evacuation and sheltering and the prophylactic use of potassium iodide;

(I) means for controlling radiological exposures;

(J) appropriate medical services;

(K) 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 sensitive nuclear facilities based on the relative degrees of vulnerability of sensitive nuclear facilities and the proximity of sensitive nuclear facilities to large population areas.

(4) *FINDINGS.*—

(A) *IN GENERAL.*—Not later than 30 days after the review of each emergency response plan, the Commission shall submit to Congress and the licensee of each sensitive nuclear facility recommendations and findings.

(B) *FORM.*—The report submitted to Congress under subparagraph (A) shall be submitted in classified and unclassified form.

(5) *UPGRADES TO EMERGENCY RESPONSE PLAN.*—Not later than 30 days after completion of the review of each emergency response plan, the Commission shall ensure that the licensee of each sensitive nuclear facility revises, as necessary, the emergency response plan for the sensitive nuclear facility consistent with the findings under paragraph (4).

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

(1) deploy the Coast Guard to a sensitive nuclear facility;

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

(3) deploy the antiterrorism team.

(h) **NUCLEAR INFRASTRUCTURE ANTITERRORISM TEAM.**—

(1) **ESTABLISHMENT.**—Not later than 1 year after the task force submits the report under subsection (b)(4), the President shall establish, based on and consistent with the findings and recommendations of the task force, the Nuclear Infrastructure Antiterrorism Team.

(2) **PURPOSE.**—The purpose of the antiterrorism team shall be to provide protection for the perimeter of sensitive nuclear facilities against the threats identified under subsection (c), in coordination with other Federal, State, local, and private entities, as appropriate, consistent with the security plan for each sensitive nuclear facility.

(i) **TRAINING PROGRAM.**—

(1) **IN GENERAL.**—Not later than 180 days after the task force submits the report under subsection (b)(4)(B), the President shall establish, based on and consistent with findings and recommendations of the task force, 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 sensitive nuclear facility.

(2) **GRANTS.**—The President may provide grants, consistent with the findings and recommendations of the task force, 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.

(j) **EMPLOYEE SECURITY.**—

(1) **REVIEW.**—Not later than 90 days after the task force submits the report under subsection (b)(4), the Commission, taking into consideration recommendations of the task force, shall review and update the hiring and training standards for employees of a sensitive nuclear facility.

(2) **DISQUALIFICATION OF INDIVIDUALS THAT PRESENT NATIONAL SECURITY RISKS.**—The Commission, based on and consistent with the findings and recommendations of the task force, shall establish qualifications and procedures, in addition to any background check conducted under section 149, to ensure that no individual that presents a threat to national security is employed at a sensitive nuclear facility.

(k) **FEDERAL SECURITY COORDINATORS.**—

(1) **IN GENERAL.**—Not later than 120 days after the task force submits the report under subsection (b)(4), the Commission, based on and consistent with findings and recommendations of the task force, shall promulgate regulations for the hiring and training of Federal security coordinators.

(2) **ASSIGNMENT OF FEDERAL SECURITY COORDINATORS.**—Not later than 60 days after the Commission promulgates regulations under paragraph (1), the Commission shall assign a Federal security coordinator, under the employment of the Commission, at each sensitive nuclear facility.

(3) *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 the sensitive nuclear facility;*

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

(C) *ensuring full and active coordination of security measures among—*

(i) *the private security force at the sensitive nuclear facility;*

(ii) *the antiterrorism team; and*

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

(l) *CLASSIFIED INFORMATION.*—*Nothing in this section shall be construed to supersede any existing 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 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 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, byproduct material, or special nuclear material; and

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

(ii) that is in such a form or quantity or concentration that the Commission determines, based on and consistent with the recommendations of the task force, 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 based on and consistent with the recommendations of the task force.

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

(b) *DUTIES.*—

(1) *IN GENERAL.*—The task force shall—

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

(B) recommend administrative and legislative actions to be taken to provide the maximum practicable degree of security against security threats.

(2) *CONSIDERATIONS.*—*In carrying out paragraph (1), the task force shall make recommendations 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) *modify current export controls on sensitive radioactive materials so that, to the extent feasible, exports from the United States of sensitive radioactive materials are made only to foreign recipients that are willing and able to control the sensitive radioactive materials in the same manner as recipients in the United States; 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 licensees 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 90 days after the date of enactment of this section, and not less frequently than once every 3 years thereafter, the task force 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 (b), the Commission shall, based on and consistent with the recommendations of the task force, take such actions as are appropriate to—

(1) revise the system for licensing sensitive radioactive materials based on and consistent with the recommendations of the task force; and

(2) ensure that States that have entered into an agreement under section 274b. establish compatible programs in a timely manner.

* * * * *

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.

* * * * *

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, or any spent nuclear fuel from such a facility; [or]

(4) any uranium enrichment [facility licensed] a utilization facility licensed under this Act 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.

* * * * *

ENERGY REORGANIZATION ACT OF 1974

[Public Law 93-438]

* * * * *

SEC 203. OFFICE OF NUCLEAR SAFETY AND SAFEGUARDS

(a) **ESTABLISHMENT; APPOINTMENT OF DIRECTOR.**—There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) **FUNCTIONS OF DIRECTOR.**—Subject to the provisions of this chapter, the Director of Nuclear Material Safety and Safeguards 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 (42 U.S.C. 2011 et seq.), associated with the processing, transport, and handling of nuclear materials, [including] not including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, [and materials] and materials, to the extent that the safeguards and security functions are delegated to the Office of Nuclear Security and Incident Response under section 212.*

(2) Review safety **[and safeguards]** of all such facilities and materials licensed under the Atomic Energy Act of 1954, **[as amended, and such review shall include, but not be limited to—**

[(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

[(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facili-

ties resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

[(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this chapter and promptly transmitted to the Congress by the Commission] (42 U.S.C. 2011 *et seq.*).

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

* * * * *

SEC. 211. EMPLOYEE PROTECTION

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) -

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term "employer" includes

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant; **[and]**

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344**[.]** ; and

(E) a contractor or subcontractor of the Commission.

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

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

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

(2) **ASSISTANT DIRECTOR.**—*The term ‘Assistant Director’ means the Assistant Director for Security Response.*

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

(4) **MOCK TERRORIST TEAM.**—*The term ‘mock terrorist team’ means the mock terrorist team described in subsection (d)(3).*

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

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

(7) **THREAT.**—*The term ‘threat’ has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.*

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

(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.**—*The Director shall perform any duties delegated by the Commission to the Director, including—*

(A) *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 Commission licensee or certificate holder that—*

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

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

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

(B) for a facility or material licensed or certified 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;

(C) 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.);

(D) developing and recommending standards and amendments to the standards of the Commission relating to the duties described in subparagraphs (A) through (C); and

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

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

(A) other officers of the Commission; and

(B) other Federal agencies.

(d) SECURITY RESPONSE UNIT.—

(1) ESTABLISHMENT.—There is established in the Office the Security Response Unit.

(2) HEAD OF UNIT.—The Unit shall be headed by an Assistant Director for Security Response.

(3) MOCK TERRORIST TEAM.—The personnel of the Unit shall include a mock terrorist team comprised of—

(A) a number of individuals, consistent with the threat, who have advanced knowledge of special weapons and tactics comparable to special operations forces of the Armed Forces;

(B) nuclear engineers, as appropriate;

(C) individuals with knowledge of the operations of the sensitive nuclear facility who are capable of actively disrupting the normal operations of the sensitive nuclear facility; and

(D) any other individual that the Commission determines should be a member of the mock terrorist team.

(4) SECURITY RESPONSE EVALUATIONS.—

(A) 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 sensitive nuclear facility to defend against the threats in accordance with the security plan for the sensitive nuclear facility.

(B) FREQUENCY OF EVALUATIONS.—Not less than once every 3 years, the Commission shall conduct and document security response evaluations at each sensitive nuclear facility to assess the ability of the private security force, in co-

operation with the antiterrorism team, at the sensitive nuclear facility to defend against the threat.

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

(D) *ACTIVITIES.*—The security response evaluation shall include force-on-force exercises by the mock terrorist team against the sensitive nuclear facility that simulate air, water, and land assaults, as appropriate.

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

(F) *CORRECTIVE ACTION.*—

(i) *IN GENERAL.*—When any of the performance criteria established under subparagraph (E) are not satisfied—

(I) the licensee 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 6 months to confirm that the licensee satisfies the performance criteria established under subparagraph (E).

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

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

(II) *FAILURE TO TAKE CORRECTIVE ACTION.*—If the licensee of a sensitive nuclear facility does not take the corrective action specified by the Commission within 30 days after the date of issuance of an order under subclause (I), the Commission shall assess a civil penalty under section 234.

(G) *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 Director of the Federal Emergency Management Agency, shall conduct emergency response exercises to evaluate the ability of Federal, State, and local emergency response personnel to respond to a radiological emergency at the sensitive nuclear facility in accordance with the emergency response plans.

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

(A) the response capabilities, response times, and coordination and communication capabilities of the response personnel;

(B) the effectiveness and adequacy of emergency response and evacuation plans; and

(C) the availability of potassium iodide or other prophylactic medicines.

(3) *REVISION OF EMERGENCY RESPONSE PLANS.*—The Commission shall ensure that the emergency response plan for a sensitive 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.

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Calendar No. 747

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 107-335

NUCLEAR SECURITY ACT OF 2002

NOVEMBER 12, 2002.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[to accompany S. 1746]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1746) to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

This bill amends current law¹ to enhance safety and security at our nation's commercial nuclear facilities, and to protect against terrorist use of radiological materials.

The events of September 11, 2001, have required our nation to reevaluate the adequacy of our existing security measures. The attacks in New York City and Washington, DC. invalidate many of our past assumptions about the likelihood and method of terrorist attack. It is clear that we must take new measures to protect against those who would target American citizens and domestic infrastructure. We have a particular responsibility to ensure that our

¹This legislation amends various sections of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). It also amends Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

commercial nuclear resources, including our nuclear reactors and radioactive materials used for research, medical and industrial purposes, are not used as weapons of destruction against us.

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 environmental 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 most 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.

As stated in the Atomic Energy Act:

... the development, use and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security . . .²

As of December 2000, there were 104 commercial nuclear power reactors licensed to operate by the NRC in 31 States. Additionally, NRC has regulatory responsibility over seven fuel fabrication and production facilities; two gaseous diffusion uranium enrichment facilities; and 14 other facilities that possess significant quantities of special nuclear material (other than reactors) or process source material (other than uranium enrichment facilities). The NRC also administers approximately 5,000 licenses for medical, academic and industrial uses of nuclear materials; and has agreements under which States will administer approximately 16,000 additional such licenses.

While prevention of accidents necessarily remains a key component of nuclear safety, the events of September 11th bring a new urgency to the need to deter and protect against attacks at our nation's nuclear facilities, and against attempted theft of radioactive materials.

Following the events of September 11th, the NRC took immediate action to respond to heightened threat levels and concerns. It undertook intensive consultation with other Federal entities, including the FBI, the Office of Homeland Security, the Department of Defense, the Federal Aviation Administration and others to evaluate general and specific threats to NRC licensed facilities, and to coordinate planning and responsive actions. The NRC has consulted with Governors regarding the deployment of State assets, including the National Guard. It has issued a series of Orders to licensees to enhance security at nuclear facilities. The NRC is also in the process of conducting what it describes as a comprehensive

²Atomic Energy Act of 1954, section 1a, 42 U.S.C. 2011a.

review of NRC policies and regulations relating to safeguards and security.

Since September 11th, the committee has worked closely with the NRC to monitor changing circumstances and to oversee activities of the NRC and its licensees. The committee will continue to work with the agency to ensure that all actions necessary to protect the public are taken in a timely and thorough manner.

OBJECTIVES OF THE LEGISLATION

The Nuclear Security Act of 2002 is an important step in ensuring protection of the public against potential terrorist activities against commercial nuclear facilities or potential theft of nuclear materials. While the NRC has voluntarily undertaken a number of actions, these have been ad hoc responses to emergency events. The purpose of this legislation is to codify those actions necessary to protect against attack on our nation's nuclear reactors and against theft or terrorist use of radioactive materials, such as for so-called "dirty bombs."

The legislation directs the NRC, in consultation with other Federal agencies having experience in matters related to national security, emergency preparedness, and radioactive response, to undertake a series of actions to upgrade security at nuclear power plants and to prevent the theft or terrorist use of sensitive radioactive materials. It also requires the NRC to update hiring and training standards for plant employees; conduct and document security response evaluations at each nuclear facility; and to ensure adequate emergency planning, evacuation, and other public safety measures in the event of a radiological release from a sensitive nuclear facility. It also directs the President to ensure coordinated Federal action to prevent a terrorist attack.

The legislation gives clear and permanent direction to the NRC and its licensees, and will provide greater assurance that NRC will receive the funding it needs to fully implement essential security measures. The Nuclear Security Act of 2002 will assure the American public that these nuclear facilities are as safe as they can reasonably be, and will clearly signal to would-be terrorists that our nuclear facilities are heavily protected, hardened structures that will make neither easy, nor desirable, targets.

The committee has worked closely with the NRC since September 11th to develop this legislation. The committee has taken extensive testimony on the issues involved and has worked with industry, public interest groups, private security guards employed at nuclear facilities, and members of the public. This legislation represents a carefully considered, bipartisan response to the threat of U.S. nuclear resources being employed as weapons of destruction.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the Act may be cited as the "Nuclear Security Act of 2002."

Sec. 2. Definitions

This section amends section 11 of the Atomic Energy Act of 1954 to provide definitions for “Homeland Security Officer,” “Private Security Force,” and “ Sensitive Nuclear Facility.”

Sec. 3. Nuclear Facility Security

This section amends Chapter 14 of the Atomic Energy Act by adding a new section 170C, “Protection of Sensitive Nuclear Facilities.”

New subsection 170C(a) provides definitions for “Antiterrorism Team,” “Federal Security Coordinator,” “Task Force,” “Threat,” and “Threat Level.”

New subsection 170C(b) establishes a task force, chaired by the Chairman of the NRC, to examine and provide recommendations and findings regarding a broad spectrum of security issues surrounding nuclear facilities licensed by the NRC, and the use of nuclear materials licensed by the NRC.

Paragraph (b)(2) specifies the membership of the task force. The agencies included in the task force are intended by the committee to include those which have expertise in intelligence; defense of air space and waterways; road and transportation access; radiological response; and emergency preparedness. The committee recognizes that not every one of these agencies will have expertise in all of the issues addressed in this subsection. The committee assumes that the Chairman of the NRC, as chairperson, will structure the task force so as to best utilize the expertise of each agency in relation to those issues within their respective jurisdiction. However, the committee also expects that the task force’s report to Congress and the President will reflect and incorporate the views of all agencies on the task force, as appropriate, and if necessary should provide for minority or dissenting views.

The committee is aware that, since September 11th, the NRC has been in close consultation with most, if not all of these agencies. The committee intends that the work of the task force established in this subsection shall build upon, rather than duplicate or interfere with, the process of consultation and coordination that the NRC has already begun with these and other agencies.

Paragraph (b)(3) addresses the duties of the task force. The overall duty of the task force is to examine issues surrounding the protection of sensitive nuclear facilities against potential terrorist threats, and to report to the President and Congress with its findings and recommendations. This paragraph directs the task force to consult with other Federal, State and local agencies, stakeholders and members of the public, as appropriate, in making its examination.

This paragraph sets out in detail the matters which the task force is to examine. These are: how threats to sensitive nuclear facilities should be classified; how Federal, State and local security efforts for protection of land, water, and ground access to sensitive nuclear facilities should be coordinated; the adequacy of existing emergency planning zones; the adequacy of Federal, State and local emergency planning and evacuation zones, and other measures to protect the public health and safety in the event of a terrorist attack against a sensitive nuclear facility; the specific threats against which security forces at sensitive nuclear facilities shall be re-

quired to protect; creation of a system of threat levels appropriate to sensitive nuclear facilities; the development, implementation and revision of security plans for sensitive nuclear facilities; the establishment of an antiterrorism team; the hiring and training standards that should be applied to private security forces at sensitive nuclear facilities; how Federal resources should best be coordinated to expedite and improve the process of performing employee background checks; and the creation of a program to provide technical assistance and training for the National Guard, State law enforcement agencies, and local law enforcement agencies, to respond to threats against a sensitive nuclear facility.

Subparagraph (b)(3)(B)(i)(III) requires the task force to examine the adequacy of all existing emergency planning zones in the event of a terrorist attack against a sensitive nuclear facility. The committee intends for this to be a full examination in light of experiences derived from September 11th, including whether any planning zones should be facility-specific to take into account population densities or special obstacles to successful emergency evacuation. The committee recognizes that concerns have been raised that existing emergency planning and evacuation zones may not be adequate and could require expansion, perhaps up to 50 miles. In light of the increased potential for a terrorist attack, it is expected that the task force will examine whether such a change is warranted.

Subparagraph (b)(3)(i)(IV) requires the task force to evaluate 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 sensitive nuclear facility. The issues of specific interest to the committee include whether actual capabilities are adequate for: warning the public; facilitating movement of populations; transporting populations that are trapped without ground escape routes; providing shelter and medical care to those who have been relocated; providing radiation monitoring to both individuals and the environment; assuring the availability of properly trained medical providers and emergency responders; and adequately quarantining contaminated food and water supplies in the ingestion zone where radiation has been deposited.

Subparagraph (b)(3)(B)(i)(V) requires the task force to examine the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and theft of special nuclear material. The committee intends that this constitute a thorough and comprehensive review of the types of threats that are appropriate for sensitive nuclear facilities to protect against in light of September 11th. The committee expects that this would include aerial, ground or water-based attacks. The committee also intends that the task force consider, as part of its examination, appropriate changes to sensitive nuclear facilities in order to protect against acts of radiological sabotage, including means to reduce the vulnerability of spent fuel storage and the consequences of a spent fuel fire.

New subsection 170C(c) requires the NRC, based on and consistent with the findings and recommendations of the task force, to promulgate regulations identifying the threats that sensitive nuclear facilities must protect against to prevent acts of radiological

sabotage and the theft of special nuclear material. The committee is aware that the design basis threats are currently the NRC's primary regulatory framework for protecting against acts of sabotage at sensitive nuclear facilities. The committee therefore assumes that this section will result in a revision to the NRC regulations covering the design basis threats. However, it is the intent of this section that regulations promulgated by the NRC pursuant to this section will also address any other regulatory or programmatic changes as are necessary.

Paragraph (c)(2) addresses the recognition by the committee that post-September 11th, the need may arise to reduce the amount of specific information contained in regulations open to public dissemination, which address the design basis threat or other security matters. For example, the NRC is considering revising current regulations to remove certain details that may now be considered safeguards information under section 147 of the Atomic Energy Act, and include such details, as revised, instead in Orders to licensees. This paragraph is intended to clarify that the requirements of section 147 continue to apply in full, including the need as appropriate under existing law to protect safeguards and other sensitive information.

New subsection 170C(d) requires the NRC to promulgate regulations establishing a system for the determination of multiple threat levels to describe the threat conditions at sensitive nuclear facilities. It is the intent of the committee that in meeting this requirement the NRC will utilize the Homeland Security Advisory System; or such other information or guidance provided by the Office of Homeland Security, other Federal agencies or other entities; as appropriate.

New subsection 170C(e) requires the NRC to review the security plans for each sensitive nuclear facility. It specifies the aspects of the review, requires the NRC to establish a priority schedule for conducting reviews, requires the NRC to report to the President and Congress, and requires the NRC to ensure that licensees upgrade security plans as necessary.

New subsection 170C(f) requires the NRC to review the emergency response plans for each sensitive nuclear facility. It specifies the aspect of the review, requires the NRC to establish a priority schedule for conducting the reviews, requires the NRC to report to the President and Congress, and requires the NRC to ensure that licensees revise emergency response plans as necessary.

Paragraph (f)(3) requires the NRC to establish a priority schedule for conducting reviews of emergency response plans based on the relative degrees of vulnerability of sensitive nuclear facilities and the proximity of sensitive nuclear facilities to large population areas. Consequently, the committee anticipates that facilities near major metropolitan areas such as New York City will be at the top of this priority schedule.

New subsection 170C(g) requires the NRC to promulgate regulations establishing the circumstances under which the NRC shall request the President to deploy the Coast Guard or the antiterrorism team created under subsection 170C(h) to a sensitive nuclear facility, or provide for the protection of air space in the vicinity of a sensitive nuclear facility.

New subsection 170C(h) requires the President to establish a Nuclear Infrastructure Antiterrorism Team, the purpose of which shall be to provide protection for the perimeter of sensitive nuclear facilities against the threats identified under subsection (c), in coordination with other Federal, State, local, and private entities, as appropriate, and consistent with the security plan for each sensitive nuclear facility.

The nature, structure and specific duties of this Federal team are left to the discretion of the President, with the caveat that they shall be based on and consistent with the findings and recommendations of the task force created under subsection 170C(b). This includes whether such “team” shall be regional or national in nature or shall be specific to each sensitive nuclear facility. The committee however intends that the team will consist of existing agency structures and personnel, operating under existing Federal authorities. The committee does not intend for the Nuclear Infrastructure Antiterrorism Team to be an NRC entity or under the control of the NRC.

New subsection 170C(i) requires the President to establish 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 sensitive nuclear facility. Such program may include grants to State and local governments.

New subsection 170C(j) requires the NRC to review and upgrade hiring and training standards for employees at sensitive nuclear facilities, and to establish qualifications and procedures to ensure that no individual that presents a threat to national security is employed at a sensitive nuclear facility.

New subsection 170C(k) requires the NRC to promulgate regulations for the hiring and training of Federal security coordinators, and to assign a Federal security coordinator at each sensitive nuclear facility. The subsection sets forth the duties of the Federal security coordinator.

New subsection 170C(l) provides that nothing in the section shall be construed to supersede any existing law governing the disclosure of classified or safeguards information.

Sec. 4. Fingerprinting and Background Checks

This section was developed by the Nuclear Regulatory Commission and added at the NRC’s request. It amends Chapter 12 of the Atomic Energy Act by adding specific requirements for the performance of fingerprinting, and criminal history and other background checks for persons having access to sensitive nuclear facilities.

Sec. 5. 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 office is intended to codify the office created by the NRC following the events of September 11th.

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) establishes a Security Response Unit within the Office of Nuclear Security and Incident Response, to be headed by an Assistant Director for Security Response. The section details the functions of this unit, which shall include establishment of a mock terrorist team, and a program for security response evaluations to assess the ability of each sensitive nuclear facility to defend against threats in accordance with the facility security plan. It details elements of the security response evaluation program, including requiring the NRC to establish performance criteria for judging the security response evaluations. It is the assumption of the committee that the Assistant Director for Security Response would have primary responsibility for carrying out this program. This would include making recommendations as required under this paragraph on the timing, conduct and evaluation of the security response exercises, including the establishment of performance criteria for judging the evaluations.

New subsection 212(e) requires the NRC, in coordination with the Director of the Federal Emergency Management Agency, to conduct emergency response exercises to evaluate the ability of Federal, State and local emergency response personnel to respond to a radiological emergency at the sensitive nuclear facility. It sets forth the factors which the emergency response exercises shall evaluate, requires revisions to emergency response plans as necessary, and requires periodic reports to the President and Congress on the results of the exercises and each revision to an emergency response plan.

The committee notes that in section 3 of the Nuclear Security Act of 2002, under new subsection 170C(b)(3)(i)(III) of the Atomic Energy Act, above, the task force is required to examine the adequacy of all existing emergency planning zones. Section 3 of the Nuclear Security Act of 2002, under new subsection 170C(f)(1), also requires the Commission, based on and consistent with the findings and recommendations of the task force, to review the emergency response plans for each sensitive nuclear facility. New subsection 170C(f)(5) of the Act, above, requires the Commission to ensure that the licensee of each sensitive nuclear facility revises, as necessary, the emergency response plan for the sensitive nuclear facility. Therefore, the committee intends that the emergency response exercises conducted by the Commission in coordination with FEMA under this new subsection 212(e) will reflect the determinations made by the task force under new subsection 170C(b)(3)(i)(III).

New subsection 212(f) provides that nothing in the section shall limit any authority of the Department of Energy relating to the safe operation of facilities under the jurisdiction of the Department.

Sec. 6. Carrying of Weapons by Licensee Employees

This section amends Chapter 14 of Title I of the Atomic Energy Act.

It permits the NRC 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 NRC to issue regulations shielding guards against State prosecution for discharge of firearms in the performance of official duties. These changes would enhance national security by pro-

viding NRC facilities and transport with authority equivalent to the authority currently possessed by the Department of Energy for the protection of its nuclear facilities and transport.

This provision was included at the request of the NRC, and is similar to language that passed this committee and the Senate in the 106th Congress in S. 1627

Sec. 7. 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) contains definitions. Paragraph 170E(a)(1) defines “sensitive radioactive material.” This language is broadly written to comprise material which could be used by a terrorist in a radiological dispersal device, or material that in any other way could threaten the health or safety of the public due to its radiological properties. It is the committee’s intent primarily to improve protections on those radioactive materials that are in common industrial, medical, or research applications. The committee specifically urges the task force to carefully examine protections on source material, byproduct material or special nuclear material which is stored in a sealed container to prevent leakage (otherwise known as “sealed sources”) and any other types of radioactive material that NRC license holders have reported lost or stolen. The committee also specifically encourages the task force to consider radioactive materials that are not currently regulated by the United States for their radioactive properties, such as naturally occurring or accelerator produced radioactive materials (NORM).

New subsection 170E(b) expands the duties of the task force established under new section 170C(b), above, to include evaluation of sensitive radiological material. It delineates the additional matters the task force should consider. 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 task force 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. In developing recommendations for methods to ensure the return and proper disposal of sensitive radiological materials required in paragraph 170E(b)(F), the task force may consider financial incentives for achieving this goal.

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. 8. 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 NRC.

This would allow NRC to apply the provisions of section 229a to NRC licensed or certified activities, thereby allowing the NRC 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 NRC. This provision was included at the request of the NRC, and is similar to language that passed this committee and the Senate in the 106th Congress in S. 1627.

Sec. 9. 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. This provision was included at the request of the NRC, and is similar to language that was reported from the committee and passed the Senate in the 106th Congress in S. 1627.

Sec. 10. 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. 11. Protection of Whistleblowers

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

Sec. 12. Technical and Conforming Amendment

This section provides technical and conforming amendments.

Sec. 13. Authorization of Appropriations

This section provides that there are authorized to be appropriated such sums as are necessary to carry out this Act.

LEGISLATIVE HISTORY

On November 1, 2001, the committee held an oversight hearing on nuclear security. On November 29, 2001, Senators Reid, Clinton, Lieberman, Jeffords and Torricelli introduced S. 1746. It was referred to the Committee on Environment and Public Works. The committee held a hearing on June 5, 2002. The committee held a classified hearing on June 20, 2002. On July 25, 2002, the committee met to consider S. 1746. The committee voted to report the bill to the Senate with amendments. Sections 6, 8 and 9 of the bill as agreed to are similar to provisions reported by the committee and passed the Senate in S. 1626 in the 106th Congress.

HEARINGS

On November 1, 2001, the Committee on Environment and Public Works received testimony concerning infrastructure security,

receiving testimony from Michael Brown, Deputy Director, Federal Emergency Management Agency; Joe Moravec, Commissioner, Public Building Service, General Services Administration; Dr. David Sampson, Assistant Secretary for Economic Development, Economic Development Administration, U.S. Department of Commerce; Dr. Richard Meserve, Chairman, Nuclear Regulatory Commission; Herbert Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration; and Marianne L. Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency.

On June 5, 2002, the Committee on Environment and Public Works held a hearing to receive testimony on S. 1586, a bill to amend the Atomic Energy Act of 1954 to authorize the carrying of firearms by employees of licensees, and for other purposes, and S. 1746, a bill to amend the Atomic Energy Act of 1954 to strengthen security at sensitive nuclear facilities. For this hearing the witnesses were Hon. Edward J. Markey, U.S. Representative from Massachusetts; Hon. Richard A. Meserve, Chairman, Chairman, Nuclear Regulatory Commission; David Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Washington, DC; Jack Skolds, Chief Nuclear Officer, Excelon Corp., Washington, DC; Danielle Brian, Executive Director, Project on Government Oversight, Washington, DC; Donna J. Hastie, Emergency Planning Consultant, Marietta, GA; and Irwin Redlener, M.D., F.A.A.P., President, Children's Health Fund, New York, NY.

On June 20, 2002, the Committee on Environment and Public Works held a classified hearing, receiving testimony from Federal Government witnesses.

ROLLCALL VOTES

On July 25, 2002, the committee met to consider S. 1746. The bipartisan amendment in the nature of a substitute offered by Senators Reid, Smith, Jeffords, Inhofe, Clinton, and Lieberman was adopted for purpose of further amendment. An amendment offered by Senator Smith, two amendments offered by Senator Clinton, and an amendment offered by Senator Reid were agreed to by voice vote. The committee voted by voice vote to report the bill, as amended, to the Senate.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1746 does not create any significant 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 (P.L. 104-4), the committee finds that the bill may require additional costs to the NRC, part of which may be passed along to ratepayers under existing law. The committee believes that such costs have been kept to the minimum necessary to ensure adequate security at sensitive nuclear facilities and adequate protection of sensitive nuclear materials. There will not be significant additional costs to State and local governments.

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, October 25, 2002.

Hon. JAMES M. JEFFORDS, *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. 1746, the Nuclear Security Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

*Nuclear Security Act of 2002, as ordered reported by the Senate
Committee on Environment and Public Works on July 25, 2002*

Summary

S. 1746 would establish several new security programs for the nation's nuclear infrastructure. Programs would include Federal security coordinators for designated nuclear facilities, antiterrorism teams to protect nuclear facilities, mock terrorism drills, new rules on security compliance at nuclear facilities, and a program to classify, track, and monitor radioactive sources throughout the country.

Based on information from the Nuclear Regulatory Commission (NRC), CBO estimates that implementing S. 1746 would have a gross cost of \$486 million over the 2003-2007 period. However, the NRC has the authority to offset a substantial portion of its annual appropriation with fees charged to the facilities it regulates. Accounting for such collections, CBO estimates that implementing S. 1746 would result in a net cost of \$126 million over the 2003-2007 period, assuming appropriation of the necessary amounts.

The bill also would require all employees at nuclear facilities to undergo background checks. Because the Department of Justice (DOJ) would charge the applicant a fee to offset the cost of background checks required by the bill, we estimate that this provision would have a negligible impact on direct spending.

In addition, S. 1746 would establish new criminal penalties for the sabotage of nuclear production, utilization, or waste storage facilities and for noncompliance with certain employee background checks that would be established by the bill. CBO estimates that these penalties would increase revenues and subsequent direct spending of those collections by less than \$500,000 a year.

S. 1746 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by:

- Effectively increasing the annual fees collected from NRC licensees;
- Requiring new security standards and procedures at sensitive nuclear facilities; and
- Expanding the system for licensing sensitive radioactive materials.

Because several of the mandates are dependent upon future actions of the NRC, for which information currently is not available, CBO cannot precisely determine the aggregate cost of all mandates contained in the bill. However, CBO estimates that the costs to the private sector would likely exceed the annual threshold for private-sector mandates (\$115 million in 2002, adjusted annually for inflation) in fiscal year 2004, primarily because of the increase in annual fees imposed on NRC licensees. CBO expects that the aggregate costs to public entities of all mandates would not exceed the intergovernmental threshold (\$58 million in 2002, adjusted annually for inflation).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 1746 is shown in the following table. The costs of this legislation fall within budget function 270 (energy) and 750 (administration of justice).

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2002, that the necessary amounts will be appropriated for each year, and that outlays will occur at historical rates for similar programs.

Spending Subject to Appropriation

S. 1746 would establish several new security programs to be implemented at the nation's sensitive nuclear facilities, including creating antiterrorism teams, running mock terrorism drills, and establishing Federal security coordinators at each site. For this estimate, we assume that 84 commercial nuclear sites in 35 States would meet the bill's definition of a "sensitive nuclear facility" and thus would be subject to its requirements. In addition, the bill would require the registration and tracking of radioactive material, several new Federal rules concerning nuclear security, and it would establish a training and grant program for the National Guard and State and local law enforcement personnel.

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Federal Security Programs at Nuclear Facilities:					
Estimated Authorization Level	73	88	64	64	64
Estimated Outlays	58	85	69	64	64
National Guard and Law Enforcement Training:					
Estimated Authorization Level	11	17	14	14	14
Estimated Outlays	9	16	15	14	14
Sensitive Radioactive Materials:					
Estimated Authorization Level	9	17	10	8	8
Estimated Outlays	7	15	11	8	8

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
Security and Emergency Response Plan Review:					
Estimated Authorization Level	8	9	1	1	1
Estimated Outlays	6	9	3	1	1
Security Rulemakings:					
Estimated Authorization Level	3	3	1	1	1
Estimated Outlays	2	3	1	1	1
Estimated Gross Authorizations for the NRC under S. 1746:					
Estimated Authorization Level	104	134	90	88	88
Estimated Outlays	83	128	99	88	88
Offsetting Collections ² :					
Estimated Authorization Level	-98	-124	-81	-29	-29
Estimated Outlays	-98	-124	-81	-29	-29
Net New NRC Spending Under S. 1746:					
Estimated Authorization Level ¹	6	11	9	59	59
Estimated Outlays	-15	5	18	59	59

Note: Components may not sum to totals because of rounding.

¹A full-year appropriation has not yet been enacted for the NRC; in 2002, the agency received a gross appropriation of \$553 million, and offsetting collections totaled \$474 million.

²Collections are authorized at declining percentages of the NRC's budget: 94 percent in 2003, 92 percent in 2004, 90 percent in 2005, and 33 percent after 2005.

Based on information from the NRC and other Federal agencies, CBO estimates that implementing S. 1746 would have a gross cost of \$486 million over the 2003–2007 period, assuming appropriation of the necessary amounts. However, the NRC has the authority to offset a substantial portion of its annual appropriation with fees charged to facilities it regulates. After accounting for such collections, we estimate that the net cost of implementing S. 1746 would be \$126 million over the 2003–2007 period.

Federal Security Programs at Nuclear Facilities. S. 1746 would authorize funding for Federal antiterrorism teams, mock terrorism teams, and security coordinators for the nuclear facilities covered by the bill. We estimate that implementing these three programs would have a gross cost of \$340 million over the 2003–2007 period for additional staff, equipment, training, and consulting.

Antiterrorism Teams. Although the bill does not specify the scope of the antiterrorism teams, for this estimate, we assume the NRC would establish 16 antiterrorism teams of 10 people each (four teams for each of NRC's four regions). Those teams would be trained in local topography, geography, nuclear infrastructure, and security tactics and would be available to respond to security incidents 24 hours a day. Based on information from the NRC, we estimate that it could cost as much as \$500,000 per person, initially, to provide such specialized training, equipment, and staff support. We expect that annual costs would be reduced by half that amount once the program is established. CBO estimates that implementing this provision would have a gross cost of \$232 million over the 2003–2007 period.

Federal Security Coordinators. S. 1746 also would require that the NRC hire and train security coordinators to be stationed at each of the 84 sensitive nuclear facilities that would be covered by the bill. They would coordinate all security programs at the nuclear facility. We expect that it would take NRC 1 year to issue rules and establish this new program. We assume that the agency would need 110 additional people to staff and manage the Federal secu-

rity coordinator program at a cost of \$11 million a year beginning in 2004 and that NRC would spend an additional \$3 million a year on training and equipment. CBO estimates that implementing this provision would cost \$54 million over the 2003–2007 period.

Mock Terrorism Teams. Under S. 1746, mock terrorism teams would be deployed to perform security drills at each nuclear facility every 3 years. We estimate that the NRC would establish a team of 30 people to conduct such drills at a cost of about \$3 million a year. In addition, we estimate the NRC would need \$10 million for support personnel, equipment, and travel over the 2003–2004 period, and that the initial cost for training and equipment would drop by about half after the teams are established. We also would expect the NRC to contract with private security firms or the Department of Defense for staff support and assistance in designing the drills at a cost of about \$5 million per year. We estimate that this program would cost \$54 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

National Guard and Law Enforcement Training. S. 1746 would require the President to establish a program to provide technical assistance and training to the National Guard and State and local law enforcement agencies to respond to threats against the nation's nuclear facilities. Under this program, we expect that the NRC would provide training at each of the covered 84 nuclear facilities four times a year at a cost of about \$120,000 a year (or a total cost of about \$10 million per year). In addition, we expect that the 35 States with sensitive nuclear facilities would receive grants of \$100,000 per year for technical assistance and training. Assuming appropriation of the necessary amounts, we estimate that implementing these training and assistance programs would cost on average \$14 million a year.

Sensitive Radioactive Material. S. 1746 would require the NRC to establish a program to register, track, and control sensitive radioactive material. Currently, the NRC spends about \$1 million per year to regulate certain radioactive material used for industrial purposes. S. 1746 would significantly expand that program to include a wide variety of sources and uses of radioactive material.

Based on information from the NRC we estimate this program would cost an average of \$10 million per year for evaluating, classifying, and tracking of such materials. Funds would be used for establishing new computer programs, hiring of additional staff, and auditing sites with radioactive materials. Overall, we estimate that implementation of this program would cost about \$50 million over the 2003–2007 period.

Security and Emergency Response Plan Review. S. 1746 would require the NRC to review the emergency response plans for each of the 84 sensitive nuclear facilities in the United States within 9 months of enactment and their security plans within 21 months of enactment. In addition, the bill would require the NRC to conduct emergency response exercises every 2 years at each facility. After each review and exercise, the NRC would submit a report to the Congress and work with the facilities on any necessary improvements to plans and procedures. Based on information from the NRC, we estimate those reviews would require 60 additional staff at a cost of about \$6 million in 2003, and that costs would drop significantly in the following years as the reviews and follow-up in-

spections are completed. We estimate that the agency would need about \$3 million in 2003 and 2004 for travel and contract services to accomplish the reviews in the timeframe established in the bill. We estimate emergency response exercises would cost about \$1 million a year. In total, we estimate that implementing the security and emergency response plan reviews required by the bill would cost \$20 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

Security Rulemakings. S. 1746 would require the NRC to establish several new rules to enhance security at the nation's nuclear facilities. The rulemakings would cover threat levels and threats that facilities would be required to defend, the coordination of Federal agencies during a nuclear threat or attack, background checks for employees at nuclear facilities, and weapons policies for security personnel at nuclear facilities. We estimate that the NRC would need an additional 25 people at a cost of about \$2.5 million a year to complete these rulemakings over the 2003–2004 period. We expect that staff needs would diminish as the rulemakings are completed, thus reducing the cost to about \$1 million per year. CBO estimates all of these rulemakings would cost \$8 million over the 2003–2007 period, assuming appropriation of the necessary amounts.

Direct Spending and Revenues

CBO estimates that enacting S. 1746 would increase both offsetting receipts and direct spending of those receipts by \$2.3 million in 2003 for background checks on nuclear security personnel required by the bill; thus, the net budgetary impact of this requirement would be negligible. In addition, it would establish criminal penalties for noncompliance with such background checks and penalties for the sabotage of nuclear facilities. We estimate that any increase in penalties would be less than \$500,000 per year.

Fingerprinting and Background Checks. S. 1746 would require that all employees of covered nuclear facilities undergo fingerprinting and background checks within 60 days of passage of the bill. Such checks would be performed by the Department of Justice. Based on information from DOJ, we expect most checks would cost about \$22 per person. On average, about 1,250 people work at each of the 84 covered facilities. Because DOJ would charge a fee of \$22 for each person that applies for a background check, we estimate that the agency would collect about \$2.3 million in 2003. DOJ is authorized to spend such fees without further appropriation, and we expect that most of the money would be spent in the year in which it is collected. Thus, the net impact on DOJ spending would be negligible.

Penalties. S. 1746 would strengthen the criminal penalties for the sabotage of nuclear production, utilization, or waste storage facilities and for noncompliance with the background checks established by the bill. CBO estimates that enacting these new penalties would increase governmental receipts by less than \$500,000 a year. Any criminal fines collected would be deposited in the Crime Victims Fund and spent in subsequent years. Any resulting change in direct spending from the fund also would amount to less than \$500,000 annually.

Intergovernmental and Private-Sector Impact

S. 1746 would impose both intergovernmental and private-sector mandates as defined in UMRA by:

- Effectively increasing the annual fees collected from NRC licensees;
- Requiring new security standards and procedures at sensitive nuclear facilities; and
- Expanding the system for licensing sensitive radioactive materials.

Because several of the mandates are dependent upon future actions of the NRC, for which information currently is not available, CBO cannot precisely determine the aggregate cost of all mandates contained in the bill. However, CBO estimates that the costs to public entities would not exceed the intergovernmental threshold (\$58 million in 2002, adjusted annually for inflation), while the cost to the private sector would likely exceed the annual threshold for private-sector mandates (\$115 million in 2002, adjusted annually for inflation) in fiscal year 2004.

Increasing Annual Fees for NRC Licensees

Under current law, the NRC collects annual fees from its licensees, both public and private, to offset a major portion of its general fund appropriation. Because S. 1746 would require the NRC to engage in a variety of initiatives to augment security at licensed facilities, CBO expects that additional fees would be collected from the licensees to cover the cost of such initiatives. The duty to pay those fee increases would be considered both a private-sector and an intergovernmental mandate under UMRA, as it results in an increase in the cost of an existing mandate. Assuming an appropriation level of amounts necessary to cover the costs of the NRC's security initiatives starting in 2003, CBO estimates that the increment in fees would total approximately \$98 million in fiscal year 2003, \$124 million in fiscal year 2004, \$81 million in 2005, and drop to around \$29 million in subsequent fiscal years. Because less than 5 percent of nuclear facilities are publicly owned, CBO estimates that the increase borne by public nuclear facilities would not be significant.

Security Procedures at Sensitive Nuclear Facilities

S. 1746 would establish new security procedures for nuclear facilities in order to prevent acts of radiological sabotage and the theft of special nuclear material. Accordingly, the bill would require the NRC to promulgate rules revising:

- The threats sensitive nuclear facilities must protect against;
- The threat levels at which each facility must operate; and
- The hiring and training standards for employees of the facilities.

Compliance with each of the rules would constitute a mandate as defined by UMRA. The extent of those mandates would be based upon future actions of the NRC, which would track the recommendations of an interagency task force on nuclear infrastructure security. At this time, the NRC could not give any indication as to the scope of the rules to be issued and accordingly, CBO cannot determine the cost of compliance.

In response to the events of September 11, 2001, the NRC issued interim security measures for sensitive nuclear facilities, while further analysis regarding future regulatory action was undertaken. The interim measures, which included determinations as to the types of threats nuclear facilities must protect against, became binding prior to, or in August of this year for the vast majority of sensitive nuclear facilities. In addition, the NRC issued voluntary guidelines on the threat levels at which facilities could operate, which parallel the threat levels established by the Office of Homeland Security. The NRC indicates that most, if not all, NRC licensees adopted those guidelines. According to representatives of the nuclear industry, sensitive nuclear facilities have already spent about \$90 million to upgrade security to comply with the NRC's interim security measures. To the extent that future security and threat level regulations mirror those that are currently in place, sensitive nuclear facilities would not bear substantial additional costs associated with the mandate.

In addition, S. 1746 would require that employees of sensitive nuclear facilities undergo more extensive background investigations that would include checks of fingerprint records located in the National Crime Information Center data sets, the United States National Central Bureau of Interpol, the National Instant Criminal Background Check system, and the Immigration and Naturalization Service data sets. Employees are currently fingerprinted for an FBI criminal history check. According to the Department of Justice, the incremental cost of the expanded check would be approximately \$22, and based upon the number of individuals employed by the industry, CBO estimates that the cost that would be borne directly by licensees would be roughly \$2.3 million in 2003.

Licensing System for Sensitive Nuclear Materials

The bill would require the NRC to revise and expand the system for licensing certain radioactive materials, such as those used in industrial, medical, and research applications, based on the recommendations of an interagency task force. Information from the NRC suggests that some regulatory changes for sensitive radioactive material are already underway and that the agency does not intend to impose a heavy burden on the entities affected. Consequently, CBO expects that the costs relating to this mandate would not be significant.

Estimate Prepared By: Federal Costs: Lisa Cash Driskill; Impact on State, Local, and Tribal Governments: Angela Sietz; Impact on the Private Sector: Lauren Marks.

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

ADDITIONAL VIEWS OF SENATORS SMITH, INHOFE, VOINOVICH, AND
CHAFEE

We appreciate the leadership of the chairman to report out a bipartisan bill aimed at ensuring our nations nuclear power facilities remain among the most secured commercial facilities in the world. We believe that this bill takes important steps in achieving that goal. We are pleased with the inclusion of S. 1586, sponsored by Senators Inhofe and Smith, in the bill reported by the committee. S. 1586, provides enhanced security authority that the Nuclear Regulatory Commission has specifically requested for many years. We note that in the 106th Congress a nearly identical bill to S. 1586 was reported out of this Committee and passed the Senate by Unanimous Consent.

In the days following the committee ordering S. 1746 to be reported, the committee received detailed comments from the Nuclear Regulatory Commission on the amended version of S. 1746. These constructive comments identified specific areas where the bill should be improved in order to maximize security without delaying or impeding current security efforts already undertaken by the NRC and its licensees. We believe these comments warrant our attention and consideration prior to S. 1746 being voted on by the full Senate. It is our hope to continue to work with the chairman and members of the Committee to improve S. 1746 in order to ensure that the goals we all support will be achieved in an effective and timely manner. We thank the chairmen of the full committee and subcommittee for their leadership and for the bipartisan manner in which they have undertaken this very important security matter. We look forward to continuing to work in a bipartisan manner to adequately address issues that have been raised.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

ATOMIC ENERGY ACT OF 1954¹

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. 149A. Access to nuclear facilities.

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Sec. 170B. Uranium supply.

Sec. 170C. Protection of sensitive nuclear facilities.

Sec. 170D. Carrying of weapons.

Sec. 170E. Sensitive Radioactive Material Security.

* * * * *

CHAPTER 2. DEFINITIONS

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.

* * * * *

[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) *HOMELAND SECURITY OFFICER.*—*The term “Homeland Security Officer” means a Federal official with responsibility for coordi-*

¹This Act consists of the Act of August 1, 1946, ch. 724, as amended by the Act of Aug. 30, 1954, ch. 1073 (68 stat. 921) and by subsequent amendments. The Act appears generally in the United States Code at 42 U.S.C. 2011 et seq. Bracketed notes are used at the end of each section for the convenience of the reader to indicate the United States Code citation.

nating efforts to maintain homeland security against acts of terrorism, and designated by the President to perform the duties of the Homeland Security Officer under this Act.

(kk) *PRIVATE SECURITY FORCE.*—The term “private security force”, with respect to a sensitive nuclear facility, means personnel hired or contracted by the licensee of the sensitive nuclear facility to provide security at the sensitive nuclear facility.

(ll) *SENSITIVE NUCLEAR FACILITY.*—

(1) *IN GENERAL.*—The term “sensitive nuclear facility” means a facility licensed by the Commission (or the portion of a facility used in the conduct of an activity licensed by the Commission).

(2) *INCLUSIONS.*—The term “sensitive nuclear facility” includes—

(A) an operating commercial nuclear power plant;

(B) an independent spent fuel storage facility;

(C) a commercial nuclear power plant that is being decommissioned or a portion of a commercial nuclear power plant that contains material licensed by the Commission;

(D) a category I fuel cycle facility; and

(E) a gaseous diffusion plant.

* * * * *

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

[a. The Nuclear Regulatory Commission (in this section referred to as the “Commission”) shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search of the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.

[b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.]

a. *FINGERPRINTING AND BACKGROUND CHECKS*

(1) *IN GENERAL.*—The Nuclear Regulatory Commission (referred to in this section as the ‘Commission’) shall require the fingerprinting of each individual that is permitted—

(A) unescorted access to a facility, activity, radioactive material, or property; or

(B) access to safeguards information under section 147.

(2) *PERFORMANCE OF FINGERPRINTING.*—The Commission shall require fingerprinting under paragraph (1) to be performed by—

(A) a person that is licensed or certified by the Commission;

(B) a person that is an applicant for a license or certificate; and

(C) a person that is otherwise permitted—

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

(ii) to possess, use or transport—

(I) radioactive material; or

(II) other property regulated by the Commission and determined by the Commission to be of significance to the public health and safety or the common defense and security.

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

(4) *SUBMISSION OF FINGERPRINTS*—

(A) *IN GENERAL.*—A licensee, certificate holder, or applicant shall submit to the Attorney General, through the Commission, all fingerprints obtained under paragraph (2)—

(i) for identification and comparison against all categories of individuals whose fingerprints appear in—

(I) the National Crime Information Center data sets;

(II) the United States National Central Bureau of Interpol;

(III) the National Instant Criminal Background Check system; and

(IV) the Immigration and Naturalization Service data sets (including the Student and Exchange Visitor Information System); and

(ii) for use to conduct a criminal history background check to determine past criminal history and any outstanding arrest warrants on record with the Federal Bureau of Investigation.

(B) *COST.*—The cost of a background check conducted under this paragraph shall be paid by the licensee, certificate holder, or applicant.

(C) *PROVISION OF RESULTS.*—

(i) *ATTORNEY GENERAL.*—Notwithstanding any other provision of law, the Attorney General shall provide the pertinent results of the search to the Commission.

(ii) *THE COMMISSION.*—In accordance with regulations promulgated under this section, the Commission may provide a licensee, certificate holder, or applicant submitting the fingerprints the results of an identification and record check under this paragraph.

b. *RELIEF FROM OBLIGATIONS.*—

(1) *IN GENERAL.*—*The Commission may, by regulation, relieve any person from the obligations imposed by this section, under terms and conditions and for periods of time specified by the Commission, if the Commission determines that the provision of relief is consistent with the responsibilities of the Commission—*

- (A) *to promote the common defense and security; and*
- (B) *to protect the health and safety of the public.*

(2) *REQUIREMENTS OF ANOTHER AGENCY.*—*A person that is subject to the fingerprinting requirements of another agency of the United States shall not be subject to the obligations imposed by this section, if the Commission determines that those fingerprinting requirements afford security protection similar to that resulting from the application of this section.*

c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations—

- (1) to implement procedures for the taking of fingerprints;
- (2) to establish the conditions for use of information received from the Attorney General, in order—

- (A) to limit the dissemination of such information;

- 【(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147;】

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

- (C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

- (i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

- (ii) an arrest that resulted in dismissal of the charge or an acquittal; and

- (D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

- (3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

- (A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

- (B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodi-

cally to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

* * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—* * *

* * * * *

[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;]

k. authorize—

(1) to carry 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 prop-

erty 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 official 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;

* * * * *

SEC. 170C. PROTECTION OF SENSITIVE NUCLEAR FACILITIES.

(a) **DEFINITIONS.**—In this section:

(1) **ANTITERRORISM TEAM.**—The term ‘antiterrorism team’ means the Nuclear Infrastructure Antiterrorism Team established under subsection (h).

(2) **FEDERAL SECURITY COORDINATOR.**—The term ‘Federal security coordinator’ means the Federal security coordinator assigned to a sensitive nuclear facility under subsection (k).

(3) **TASK FORCE.**—The term ‘task force’ means the task force on nuclear infrastructure security established by subsection (b).

(4) **THREAT.**—The term ‘threat’ means a threat identified under subsection (c).

(5) **THREAT LEVEL.**—The term ‘threat level’ means a threat level determined under subsection (d).

(b) **TASK FORCE ON NUCLEAR INFRASTRUCTURE SECURITY.**—

(1) **ESTABLISHMENT.**—There is established a task force on nuclear infrastructure security.

(2) **MEMBERSHIP.**—The task force shall be comprised of—

(A) the chairman of the Commission, who shall serve as chairperson of the task force;

(B) the Secretary of Defense;

(C) the Secretary of Transportation;

(D) the Administrator of the Environmental Protection Agency;

(E) the Attorney General;

(F) the Secretary of State;

(G) the Director of the Central Intelligence Agency;

(H) the Secretary of Health and Human Services;

(I) the Director of the Federal Emergency Management Agency; and

(J) the Homeland Security Officer.

(3) **DUTIES.**—

(A) **IN GENERAL.**—The task force, in consultation with other Federal, State, and local agencies, stakeholders, and members of the public, as appropriate, shall examine the protection of sensitive nuclear facilities from potential terrorist threats.

(B) **SECURITY REVIEW.**—

(i) **IN GENERAL.**—The task force shall examine—

- (I) *the classification of threats as—*
- (aa) *an act—*
 - (AA) *by an enemy of the United States (whether a foreign government or other person); or*
 - (BB) *otherwise falling under the responsibilities of the Federal Government;*
 - or
 - (bb) *an act involving a type of risk that the licensees of the Commission should be responsible for guarding against;*
- (II) *coordination of Federal, State, and local security efforts for protection of land, water, and ground access to sensitive nuclear facilities in the event of a terrorist attack or attempted terrorist attack;*
- (III) *the adequacy of existing emergency planning zones to protect the public health and safety in the event of a terrorist attack against a sensitive nuclear facility;*
- (IV) *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 sensitive nuclear facility;*
- (V) *the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and theft of special nuclear material;*
- (VI) *the system of threat levels, consistent with the Homeland Security Advisory System, used to categorize the threats against a sensitive nuclear facility, including—*
- (aa) *procedures to ensure coordinated Federal, State, and local responses to changing threat levels for sensitive nuclear facilities;*
 - (bb) *monitoring of threats against sensitive nuclear facilities; and*
 - (cc) *procedures to notify licensees of a sensitive nuclear facility of changes in threat levels;*
- (VII) *the development, implementation, and revision of security plans for sensitive nuclear facilities;*
- (VIII) *the establishment of the antiterrorism team under subsection (h);*
- (IX) *the hiring and training standards for members of private security forces at sensitive nuclear facilities, in accordance with subsection (i);*
- (X) *the coordination of Federal resources to expedite and improve the process of performing background checks on employees with access to sensitive nuclear facilities; and*
- (XI) *the creation 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 sensitive nuclear facility, including recommendations for the establishment of a grant program for State and local governments to carry out any recommended requirements under this section.

(ii) *THREATS.*—The threats to be examined include—

(I) threats comparable to the events of September 11, 2001;

(II) cyber or biochemical threats;

(III) attacks on a sensitive nuclear facility by multiple coordinated teams of a large number of individuals;

(IV) attacks from several persons employed at the sensitive nuclear facility, some of whom may have sophisticated knowledge of the operations of the sensitive nuclear facility;

(V) attacks from individuals willing to commit suicide to carry out the attacks;

(VI) water-based and air-based attacks;

(VII) attacks using explosive devices of considerable size and modern weaponry;

(VIII) fire, especially fire of long duration; and

(IX) any combination of those threats.

(4) *REPORT.*—

(A) *IN GENERAL.*—Not later than 120 days after the date of enactment of this section, the task force shall submit to the President and Congress, in classified form and unclassified form, a report with recommendations and findings.

(B) *REVISION.*—The task force shall revise the recommendations periodically, but not less than once every 3 years.

(c) *THREATS TO SENSITIVE NUCLEAR FACILITIES.*—

(1) *IN GENERAL.*—Not later than 150 days after the task force submits the report under subsection (b)(4), the Commission shall promulgate regulations, based on and consistent with the findings and recommendations of the task force, identifying the threats that sensitive nuclear facilities must protect against to prevent acts of radiological sabotage and the theft of special nuclear material at sensitive nuclear facilities.

(2) *PROTECTION OF SAFEGUARDS INFORMATION.*—In promulgating 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 task force submits the report under subsection (b)(4), the Commission shall promulgate regulations, based on and consistent with the findings and recommendations of the task force, establishing a system for the determination of multiple threat levels to describe the threat conditions at sensitive nuclear facilities.

(e) *SECURITY PLANS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date on which the Commission establishes the threats under subsection (c), the Commission shall review, based on and consistent with the findings and recommendations of the task force, the security plan for each sensitive nuclear facility to ensure that each sensitive nuclear facility protects against those threats.

(2) *ASPECTS OF REVIEW.*—The Commission shall ensure that the security plan provides for—

(A) the deployment and capabilities of the private security force at the sensitive nuclear facility for each threat level;

(B) coordination between the private security force and the antiterrorism team for the sensitive nuclear facility, as appropriate for each threat level;

(C) secure operation of vital equipment, such as control room equipment and backup warning systems;

(D) access restrictions;

(E) security cameras, fire protection barriers, and other physical security measures;

(F) protection of spent fuel, including options such as placement of spent fuel in dry cask storage;

(G) background security checks for employees and prospective employees; and

(H) coordination among licensees of sensitive nuclear facilities and appropriate Federal, state, and local emergency response personnel.

(3) *SCHEDULE.*—The Commission shall establish a priority schedule for conducting reviews of security plans based on the vulnerability of each sensitive nuclear facility and the proximity of the sensitive nuclear facility to large population areas.

(4) *FINDINGS.*—

(A) *IN GENERAL.*—Not later than 30 days after the review of each security plan, the Commission shall submit to Congress and the licensee of each sensitive nuclear facility recommendations, findings, and a schedule for implementation of changes to security that shall be made not later than 18 months after completion of the review of the security plan.

(B) *FORM.*—The report submitted to Congress under subparagraph (A) shall be submitted in classified and unclassified form.

(5) *UPGRADES TO SECURITY PLAN.*—Not later than 30 days after the review of each security plan, the Commission shall ensure that the licensee of each sensitive nuclear facility revises, as necessary, its security plan consistent with the findings under paragraph (4).

(6) *UPGRADES TO SECURITY.*—The Commission shall ensure that the licensee of each sensitive nuclear facility makes any changes to security required by the security plan according to the Commission schedule.

(f) *EMERGENCY RESPONSE PLANS.*—

(1) *IN GENERAL.*—Not later than 150 days after the task force submits the report under subsection (b)(4), the Commission shall review, based on and consistent with the findings

and recommendations of the task force, the emergency response plans for each sensitive nuclear facility to ensure that each emergency response plan provides protection for persons living in the emergency response planning zones.

(2) *ASPECTS OF REVIEW.*—The Commission shall ensure that each emergency response plan provides 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, including both pre-emergency education and in the event of a radiological emergency;

(F) adequate emergency facilities and equipment at and around the sensitive nuclear facility;

(G) the use of methods, systems, and equipment for assessing and monitoring actual or potential impacts of a radiological emergency;

(H) appropriate evacuation and sheltering and the prophylactic use of potassium iodide;

(I) means for controlling radiological exposures;

(J) appropriate medical services;

(K) 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 sensitive nuclear facilities based on the relative degrees of vulnerability of sensitive nuclear facilities and the proximity of sensitive nuclear facilities to large population areas.

(4) *FINDINGS.*—

(A) *IN GENERAL.*—Not later than 30 days after the review of each emergency response plan, the Commission shall submit to Congress and the licensee of each sensitive nuclear facility recommendations and findings.

(B) *FORM.*—The report submitted to Congress under subparagraph (A) shall be submitted in classified and unclassified form.

(5) *UPGRADES TO EMERGENCY RESPONSE PLAN.*—Not later than 30 days after completion of the review of each emergency response plan, the Commission shall ensure that the licensee of each sensitive nuclear facility revises, as necessary, the emergency response plan for the sensitive nuclear facility consistent with the findings under paragraph (4).

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

(1) deploy the Coast Guard to a sensitive nuclear facility;

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

(3) deploy the antiterrorism team.

(h) **NUCLEAR INFRASTRUCTURE ANTITERRORISM TEAM.**—

(1) **ESTABLISHMENT.**—Not later than 1 year after the task force submits the report under subsection (b)(4), the President shall establish, based on and consistent with the findings and recommendations of the task force, the Nuclear Infrastructure Antiterrorism Team.

(2) **PURPOSE.**—The purpose of the antiterrorism team shall be to provide protection for the perimeter of sensitive nuclear facilities against the threats identified under subsection (c), in coordination with other Federal, State, local, and private entities, as appropriate, consistent with the security plan for each sensitive nuclear facility.

(i) **TRAINING PROGRAM.**—

(1) **IN GENERAL.**—Not later than 180 days after the task force submits the report under subsection (b)(4)(B), the President shall establish, based on and consistent with findings and recommendations of the task force, 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 sensitive nuclear facility.

(2) **GRANTS.**—The President may provide grants, consistent with the findings and recommendations of the task force, 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.

(j) **EMPLOYEE SECURITY.**—

(1) **REVIEW.**—Not later than 90 days after the task force submits the report under subsection (b)(4), the Commission, taking into consideration recommendations of the task force, shall review and update the hiring and training standards for employees of a sensitive nuclear facility.

(2) **DISQUALIFICATION OF INDIVIDUALS THAT PRESENT NATIONAL SECURITY RISKS.**—The Commission, based on and consistent with the findings and recommendations of the task force, shall establish qualifications and procedures, in addition to any background check conducted under section 149, to ensure that no individual that presents a threat to national security is employed at a sensitive nuclear facility.

(k) **FEDERAL SECURITY COORDINATORS.**—

(1) **IN GENERAL.**—Not later than 120 days after the task force submits the report under subsection (b)(4), the Commission, based on and consistent with findings and recommendations of the task force, shall promulgate regulations for the hiring and training of Federal security coordinators.

(2) **ASSIGNMENT OF FEDERAL SECURITY COORDINATORS.**—Not later than 60 days after the Commission promulgates regulations under paragraph (1), the Commission shall assign a Federal security coordinator, under the employment of the Commission, at each sensitive nuclear facility.

(3) *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 the sensitive nuclear facility;*

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

(C) *ensuring full and active coordination of security measures among—*

(i) *the private security force at the sensitive nuclear facility;*

(ii) *the antiterrorism team; and*

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

(l) *CLASSIFIED INFORMATION.*—*Nothing in this section shall be construed to supersede any existing 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 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 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, byproduct material, or special nuclear material; and

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

(ii) that is in such a form or quantity or concentration that the Commission determines, based on and consistent with the recommendations of the task force, 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 based on and consistent with the recommendations of the task force.

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

(b) *DUTIES.*—

(1) *IN GENERAL.*—The task force shall—

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

(B) recommend administrative and legislative actions to be taken to provide the maximum practicable degree of security against security threats.

(2) *CONSIDERATIONS.*—*In carrying out paragraph (1), the task force shall make recommendations 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) *modify current export controls on sensitive radioactive materials so that, to the extent feasible, exports from the United States of sensitive radioactive materials are made only to foreign recipients that are willing and able to control the sensitive radioactive materials in the same manner as recipients in the United States; 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 licensees 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 90 days after the date of enactment of this section, and not less frequently than once every 3 years thereafter, the task force 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 (b), the Commission shall, based on and consistent with the recommendations of the task force, take such actions as are appropriate to—

(1) revise the system for licensing sensitive radioactive materials based on and consistent with the recommendations of the task force; and

(2) ensure that States that have entered into an agreement under section 274b. establish compatible programs in a timely manner.

* * * * *

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.

* * * * *

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, or any spent nuclear fuel from such a facility; [or]

(4) any uranium enrichment [facility licensed] a utilization facility licensed under this Act 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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ENERGY REORGANIZATION ACT OF 1974

[Public Law 93-438]

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SEC 203. OFFICE OF NUCLEAR SAFETY AND SAFEGUARDS

(a) **ESTABLISHMENT; APPOINTMENT OF DIRECTOR.**—There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) **FUNCTIONS OF DIRECTOR.**—Subject to the provisions of this chapter, the Director of Nuclear Material Safety and Safeguards 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 (42 U.S.C. 2011 et seq.), associated with the processing, transport, and handling of nuclear materials, [including] not including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, [and materials] and materials, to the extent that the safeguards and security functions are delegated to the Office of Nuclear Security and Incident Response under section 212.*

(2) Review safety **[and safeguards]** of all such facilities and materials licensed under the Atomic Energy Act of 1954, **[as amended, and such review shall include, but not be limited to—**

[(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

[(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facili-

ties resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

[(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this chapter and promptly transmitted to the Congress by the Commission] (42 U.S.C. 2011 *et seq.*).

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

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SEC. 211. EMPLOYEE PROTECTION

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) -

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term "employer" includes

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant; **[and]**

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344**[.]** ;
and

(E) a contractor or subcontractor of the Commission.

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

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

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

(2) **ASSISTANT DIRECTOR.**—*The term ‘Assistant Director’ means the Assistant Director for Security Response.*

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

(4) **MOCK TERRORIST TEAM.**—*The term ‘mock terrorist team’ means the mock terrorist team described in subsection (d)(3).*

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

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

(7) **THREAT.**—*The term ‘threat’ has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.*

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

(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.**—*The Director shall perform any duties delegated by the Commission to the Director, including—*

(A) *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 Commission licensee or certificate holder that—*

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

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

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

(B) for a facility or material licensed or certified 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;

(C) 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.);

(D) developing and recommending standards and amendments to the standards of the Commission relating to the duties described in subparagraphs (A) through (C); and

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

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

(A) other officers of the Commission; and

(B) other Federal agencies.

(d) SECURITY RESPONSE UNIT.—

(1) ESTABLISHMENT.—There is established in the Office the Security Response Unit.

(2) HEAD OF UNIT.—The Unit shall be headed by an Assistant Director for Security Response.

(3) MOCK TERRORIST TEAM.—The personnel of the Unit shall include a mock terrorist team comprised of—

(A) a number of individuals, consistent with the threat, who have advanced knowledge of special weapons and tactics comparable to special operations forces of the Armed Forces;

(B) nuclear engineers, as appropriate;

(C) individuals with knowledge of the operations of the sensitive nuclear facility who are capable of actively disrupting the normal operations of the sensitive nuclear facility; and

(D) any other individual that the Commission determines should be a member of the mock terrorist team.

(4) SECURITY RESPONSE EVALUATIONS.—

(A) 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 sensitive nuclear facility to defend against the threats in accordance with the security plan for the sensitive nuclear facility.

(B) FREQUENCY OF EVALUATIONS.—Not less than once every 3 years, the Commission shall conduct and document security response evaluations at each sensitive nuclear facility to assess the ability of the private security force, in co-

operation with the antiterrorism team, at the sensitive nuclear facility to defend against the threat.

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

(D) *ACTIVITIES.*—The security response evaluation shall include force-on-force exercises by the mock terrorist team against the sensitive nuclear facility that simulate air, water, and land assaults, as appropriate.

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

(F) *CORRECTIVE ACTION.*—

(i) *IN GENERAL.*—When any of the performance criteria established under subparagraph (E) are not satisfied—

(I) the licensee 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 6 months to confirm that the licensee satisfies the performance criteria established under subparagraph (E).

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

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

(II) *FAILURE TO TAKE CORRECTIVE ACTION.*—If the licensee of a sensitive nuclear facility does not take the corrective action specified by the Commission within 30 days after the date of issuance of an order under subclause (I), the Commission shall assess a civil penalty under section 234.

(G) *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 Director of the Federal Emergency Management Agency, shall conduct emergency response exercises to evaluate the ability of Federal, State, and local emergency response personnel to respond to a radiological emergency at the sensitive nuclear facility in accordance with the emergency response plans.

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

(A) *the response capabilities, response times, and coordination and communication capabilities of the response personnel;*

(B) *the effectiveness and adequacy of emergency response and evacuation plans; and*

(C) *the availability of potassium iodide or other prophylactic medicines.*

(3) *REVISION OF EMERGENCY RESPONSE PLANS.*—*The Commission shall ensure that the emergency response plan for a sensitive 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.*

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