



**ATOMIC ENERGY DEFENSE ACT**



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## ATOMIC ENERGY DEFENSE ACT

[As Amended Through P.L. 112-239, Enacted January 2, 2013]

Division D of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314, approved Dec. 2, 2002), as amended by section 3141 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, approved Nov. 24, 2003)

## DIVISION D—ATOMIC ENERGY DEFENSE PROVISIONS

### SEC. 4001. [50 U.S.C. 2501 note] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “Atomic Energy Defense Act”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

#### DIVISION D—ATOMIC ENERGY DEFENSE PROVISIONS

Sec. 4001. Short title; table of contents.

Sec. 4002. Definitions.

#### TITLE XLI—ORGANIZATIONAL MATTERS

Sec. 4101. Naval Nuclear Propulsion Program.

Sec. 4102. Management structure for nuclear security enterprise.

Sec. 4103. Restriction on licensing requirement for certain defense activities and facilities.

#### TITLE XLII—NUCLEAR WEAPONS STOCKPILE MATTERS

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Sec. 4201. Stockpile stewardship program.

Sec. 4202. Stockpile stewardship criteria.

Sec. 4203. Nuclear weapons stockpile stewardship, management, and infrastructure plan.

[Sec. 4203A. Repealed.]

Sec. 4204. Stockpile management program.

[Sec. 4204A. Repealed.]

Sec. 4205. Annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile.

Sec. 4206. Form of certifications regarding the safety or reliability of the nuclear weapons stockpile.

Sec. 4207. Nuclear test ban readiness program.

[Sec. 4208. Repealed.]

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**Subtitle D—Other Matters**

- [Sec. 4851. Repealed.]

Sec. 4852. Payment of costs of operation and maintenance of infrastructure at Nevada National Security Site.

**SEC. 4002. [50 U.S.C. 2501] DEFINITIONS.**

In this division:

(1) The term “Administration” means the National Nuclear Security Administration.

(2) The term “Administrator” means the Administrator for Nuclear Security.

(3) The term “classified information” means any information that has been determined pursuant to Executive Order No. 12333 of December 4, 1981 (50 U.S.C. 401 note), Executive Order No. 12958 of April 17, 1995 (50 U.S.C. 435 note), or successor orders, to require protection against unauthorized disclosure and that is so designated.

(4) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(5) The term “nuclear security enterprise” means the physical facilities, technology, and human capital of the national security laboratories and the nuclear weapons production facilities.

(6) The term “national security laboratory” means any of the following:

(A) Los Alamos National Laboratory, Los Alamos, New Mexico.

(B) Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(C) Lawrence Livermore National Laboratory, Livermore, California.

(7) The term “nuclear weapons production facility” means any of the following:

(A) The Kansas City Plant, Kansas City, Missouri.

(B) The Pantex Plant, Amarillo, Texas.

(C) The Y-12 National Security Complex, Oak Ridge, Tennessee.

(D) The Savannah River Site, Aiken, South Carolina.

(E) The Nevada National Security Site, Nevada.

(F) Any facility of the Department of Energy that the Secretary of Energy, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.

(8) The term “restricted data” has the meaning given such term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

**TITLE XLI—ORGANIZATIONAL MATTERS****SEC. 4101. [50 U.S.C. 2511] NAVAL NUCLEAR PROPULSION PROGRAM.**

The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program,<sup>1</sup> shall remain in force until changed by law.

**SEC. 4102. [50 U.S.C. 2512] MANAGEMENT STRUCTURE FOR NUCLEAR SECURITY ENTERPRISE.**

(a) IN GENERAL.—The Administrator shall establish a management structure for the nuclear security enterprise in accordance with the National Nuclear Security Administration Act (50 U.S.C. 2401 et seq.).

(b) NATIONAL NUCLEAR SECURITY ADMINISTRATION COUNCIL.—

(1) The Administrator shall establish a council to be known as the “National Nuclear Security Administration Council”. The Council may advise the Administrator on—

(A) scientific and technical issues relating to policy matters;

(B) operational concerns;

(C) strategic planning;

(D) the development of priorities relating to the mission and operations of the Administration and the nuclear security enterprise; and

(E) such other matters as the Administrator determines appropriate.

(2) The Council shall be composed of the directors of the national security laboratories and the nuclear weapons production facilities.

(3) The Council may provide the Administrator or the Secretary of Energy recommendations for improving the—

(A) governance, management, effectiveness, and efficiency of the Administration; and

(B) any other matter in accordance with paragraph (1).

(4) Not later than 60 days after the date on which any recommendation under paragraph (3) is received, the Administrator or the Secretary, as the case may be, shall respond to the Council with respect to whether such recommendation will be implemented and the reasoning for implementing or not implementing such recommendation.

**SEC. 4103. [50 U.S.C. 2513] RESTRICTION ON LICENSING REQUIREMENT FOR CERTAIN DEFENSE ACTIVITIES AND FACILITIES.**

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.

<sup>1</sup>The text of the executive order is set out in this volume under Selected Other Matters.

## TITLE XLII—NUCLEAR WEAPONS STOCKPILE MATTERS

### Subtitle A—Stockpile Stewardship and Weapons Production

#### SEC. 4201. [50 U.S.C. 2521] STOCKPILE STEWARDSHIP PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, acting through the Administrator for Nuclear Security, shall establish a stewardship program to ensure—

(1) the preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification; and

(2) that the nuclear weapons stockpile is safe, secure, and reliable without the use of underground nuclear weapons testing.

(b) PROGRAM ELEMENTS.—The program shall include the following:

(1) An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the performance over time of nuclear weapons.

(2) An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.

(3) Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the National Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.

(4) Support for the use of, and experiments facilitated by, the advanced experimental facilities of the United States, including—

(A) the National Ignition Facility at Lawrence Livermore National Laboratory;

(B) the Dual Axis Radiographic Hydrodynamic Test Facility at Los Alamos National Laboratory;

(C) the Z Machine at Sandia National Laboratories; and

(D) the experimental facilities at the Nevada national security site.

(5) Support for the sustainment and modernization of facilities with production and manufacturing capabilities that are necessary to ensure the safety, security, and reliability of the nuclear weapons stockpile, including—

(A) the Pantex Plant;

(B) the Y-12 National Security Complex;

(C) the Kansas City Plant;

(D) the Savannah River Site; and

(E) production and manufacturing capabilities resident in the national security laboratories.

**SEC. 4202. [50 U.S.C. 2522] STOCKPILE STEWARDSHIP CRITERIA.**

(a) **REQUIREMENT FOR CRITERIA.**—The Secretary of Energy shall develop clear and specific criteria for judging whether the science-based tools being used by the Department of Energy for determining the safety and reliability of the nuclear weapons stockpile are performing in a manner that will provide an adequate degree of certainty that the stockpile is safe and reliable.

(b) **COORDINATION WITH SECRETARY OF DEFENSE.**—The Secretary of Energy, in developing the criteria required by subsection (a), shall coordinate with the Secretary of Defense.

**SEC. 4203. [50 U.S.C. 2523] NUCLEAR WEAPONS STOCKPILE STEWARDSHIP, MANAGEMENT, AND INFRASTRUCTURE PLAN.**

(a) **PLAN REQUIREMENT.**—The Administrator, in consultation with the Secretary of Defense and other appropriate officials of the departments and agencies of the Federal Government, shall develop and annually update a plan for sustaining the nuclear weapons stockpile. The plan shall cover, at a minimum, stockpile stewardship, stockpile management, stockpile surveillance, program direction, infrastructure modernization, human capital, and nuclear test readiness. The plan shall be consistent with the programmatic and technical requirements of the most recent annual Nuclear Weapons Stockpile Memorandum.

(b) **SUBMISSIONS TO CONGRESS.**—(1) In accordance with subsection (c), not later than March 15 of each even-numbered year, the Administrator shall submit to the congressional defense committees a summary of the plan developed under subsection (a).

(2) In accordance with subsection (d), not later than March 15 of each odd-numbered year, the Administrator shall submit to the congressional defense committees a detailed report on the plan developed under subsection (a).

(3) The summaries and reports required by this subsection shall be submitted in unclassified form, but may include a classified annex.

(c) **ELEMENTS OF BIENNIAL PLAN SUMMARY.**—Each summary of the plan submitted under subsection (b)(1) shall include, at a minimum, the following:

(1) A summary of the status of the nuclear weapons stockpile, including the number and age of warheads (including both active and inactive) for each warhead type.

(2) A summary of the status, plans, budgets, and schedules for warhead life extension programs and any other programs to modify, update, or replace warhead types.

(3) A summary of the methods and information used to determine that the nuclear weapons stockpile is safe and reliable, as well as the relationship of science-based tools to the collection and interpretation of such information.

(4) A summary of the status of the nuclear security enterprise, including programs and plans for infrastructure modernization and retention of human capital, as well as associated budgets and schedules.

(5) Identification of any modifications or updates to the plan since the previous summary or detailed report was submitted under subsection (b).

(6) Such other information as the Administrator considers appropriate.

(d) ELEMENTS OF BIENNIAL DETAILED REPORT.—Each detailed report on the plan submitted under subsection (b)(2) shall include, at a minimum, the following:

(1) With respect to stockpile stewardship and management—

(A) the status of the nuclear weapons stockpile, including the number and age of warheads (including both active and inactive) for each warhead type;

(B) for each five-year period occurring during the period beginning on the date of the report and ending on the date that is 20 years after the date of the report—

(i) the planned number of nuclear warheads (including active and inactive) for each warhead type in the nuclear weapons stockpile; and

(ii) the past and projected future total lifecycle cost of each type of nuclear weapon;

(C) the status, plans, budgets, and schedules for warhead life extension programs and any other programs to modify, update, or replace warhead types;

(D) a description of the process by which the Administrator assesses the lifetimes, and requirements for life extension or replacement, of the nuclear and non-nuclear components of the warheads (including active and inactive warheads) in the nuclear weapons stockpile;

(E) a description of the process used in recertifying the safety, security, and reliability of each warhead type in the nuclear weapons stockpile;

(F) any concerns of the Administrator that would affect the ability of the Administrator to recertify the safety, security, or reliability of warheads in the nuclear weapons stockpile (including active and inactive warheads);

(G) mechanisms to provide for the manufacture, maintenance, and modernization of each warhead type in the nuclear weapons stockpile, as needed;

(H) mechanisms to expedite the collection of information necessary for carrying out the stockpile management program required by section 4204, including information relating to the aging of materials and components, new manufacturing techniques, and the replacement or substitution of materials;

(I) mechanisms to ensure the appropriate assignment of roles and missions for each national security laboratory and nuclear weapons production facility, including mechanisms for allocation of workload, mechanisms to ensure the carrying out of appropriate modernization activities, and mechanisms to ensure the retention of skilled personnel;

(J) mechanisms to ensure that each national security laboratory has full and complete access to all weapons data to enable a rigorous peer-review process to support

the annual assessment of the condition of the nuclear weapons stockpile required under section 4205;

(K) mechanisms for allocating funds for activities under the stockpile management program required by section 4204, including allocations of funds by weapon type and facility; and

(L) for each of the five fiscal years following the fiscal year in which the report is submitted, an identification of the funds needed to carry out the program required under section 4204.

(2) With respect to science-based tools—

(A) a description of the information needed to determine that the nuclear weapons stockpile is safe and reliable;

(B) for each science-based tool used to collect information described in subparagraph (A), the relationship between such tool and such information and the effectiveness of such tool in providing such information based on the criteria developed pursuant to section 4202(a); and

(C) the criteria developed under section 4202(a) (including any updates to such criteria).

(3) An assessment of the stockpile stewardship program under section 4201 by the Administrator, in consultation with the directors of the national security laboratories, which shall set forth—

(A) an identification and description of—

(i) any key technical challenges to the stockpile stewardship program; and

(ii) the strategies to address such challenges without the use of nuclear testing;

(B) a strategy for using the science-based tools (including advanced simulation and computing capabilities) of each national security laboratory to ensure that the nuclear weapons stockpile is safe, secure, and reliable without the use of nuclear testing;

(C) an assessment of the science-based tools (including advanced simulation and computing capabilities) of each national security laboratory that exist at the time of the assessment compared with the science-based tools expected to exist during the period covered by the future-years nuclear security program; and

(D) an assessment of the core scientific and technical competencies required to achieve the objectives of the stockpile stewardship program and other weapons activities and weapons-related activities of the Administration, including—

(i) the number of scientists, engineers, and technicians, by discipline, required to maintain such competencies; and

(ii) a description of any shortage of such individuals that exists at the time of the assessment compared with any shortage expected to exist during the period covered by the future-years nuclear security program.

- (4) With respect to the nuclear security infrastructure—
- (A) a description of the modernization and refurbishment measures the Administrator determines necessary to meet the requirements prescribed in—
- (i) the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a) if such strategy has been submitted as of the date of the plan;
- (ii) the most recent quadrennial defense review if such strategy has not been submitted as of the date of the plan; and
- (iii) the most recent Nuclear Posture Review as of the date of the plan;
- (B) a schedule for implementing the measures described under subparagraph (A) during the 10-year period following the date of the plan; and
- (C) the estimated levels of annual funds the Administrator determines necessary to carry out the measures described under subparagraph (A), including a discussion of the criteria, evidence, and strategies on which such estimated levels of annual funds are based.
- (5) With respect to the nuclear test readiness of the United States—
- (A) an estimate of the period of time that would be necessary for the Administrator to conduct an underground test of a nuclear weapon once directed by the President to conduct such a test;
- (B) a description of the level of test readiness that the Administrator, in consultation with the Secretary of Defense, determines to be appropriate;
- (C) a list and description of the workforce skills and capabilities that are essential to carrying out an underground nuclear test at the Nevada National Security Site;
- (D) a list and description of the infrastructure and physical plants that are essential to carrying out an underground nuclear test at the Nevada National Security Site; and
- (E) an assessment of the readiness status of the skills and capabilities described in subparagraph (C) and the infrastructure and physical plants described in subparagraph (D).
- (6) Identification of any modifications or updates to the plan since the previous summary or detailed report was submitted under subsection (b).
- (e) NUCLEAR WEAPONS COUNCIL ASSESSMENT.—(1) For each detailed report on the plan submitted under subsection (b)(2), the Nuclear Weapons Council established by section 179 of title 10, United States Code, shall conduct an assessment that includes the following:
- (A) An analysis of the plan, including—
- (i) whether the plan supports the requirements of the national security strategy of the United States or the most

- recent quadrennial defense review, as applicable under subsection (d)(4)(A), and the Nuclear Posture Review; and
- (ii) whether the modernization and refurbishment measures described under subparagraph (A) of subsection (d)(4) and the schedule described under subparagraph (B) of such subsection are adequate to support such requirements.
- (B) An analysis of whether the plan adequately addresses the requirements for infrastructure recapitalization of the facilities of the nuclear security enterprise.
- (C) If the Nuclear Weapons Council determines that the plan does not adequately support modernization and refurbishment requirements under subparagraph (A) or the nuclear security enterprise facilities infrastructure recapitalization requirements under subparagraph (B), a risk assessment with respect to—
- (i) supporting the annual certification of the nuclear weapons stockpile; and
- (ii) maintaining the long-term safety, security, and reliability of the nuclear weapons stockpile.
- (2) Not later than 180 days after the date on which the Administrator submits the plan under subsection (b)(2), the Nuclear Weapons Council shall submit to the congressional defense committees a report detailing the assessment required under paragraph (1).
- (f) DEFINITIONS.—In this section:
- (1) The term “budget”, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31, United States Code.
- (2) The term “future-years nuclear security program” means the program required by section 3253 of the National Nuclear Security Administration Act (50 U.S.C. 2453).
- (3) The term “nuclear security budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Administrator in support of the budget for that fiscal year.
- (4) The term “quadrennial defense review” means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of title 10, United States Code.
- (5) The term “weapons activities” means each activity within the budget category of weapons activities in the budget of the Administration.
- (6) The term “weapons-related activities” means each activity under the Department of Energy that involves nuclear weapons, nuclear weapons technology, or fissile or radioactive materials, including activities related to—
- (A) nuclear nonproliferation;
- (B) nuclear forensics;
- (C) nuclear intelligence;
- (D) nuclear safety; and
- (E) nuclear incident response.

[Section 4203A repealed by section 3133(c)(1) of division C of Public Law 112–239.]

**SEC. 4204. [50 U.S.C. 2524] STOCKPILE MANAGEMENT PROGRAM.**

(a) PROGRAM REQUIRED.—The Secretary of Energy, acting through the Administrator for Nuclear Security and in consultation with the Secretary of Defense, shall carry out a program, in support of the stockpile stewardship program, to provide for the effective management of the weapons in the nuclear weapons stockpile, including the extension of the effective life of such weapons. The program shall have the following objectives:

(1) To increase the reliability, safety, and security of the nuclear weapons stockpile of the United States.

(2) To further reduce the likelihood of the resumption of underground nuclear weapons testing.

(3) To achieve reductions in the future size of the nuclear weapons stockpile.

(4) To reduce the risk of an accidental detonation of an element of the stockpile.

(5) To reduce the risk of an element of the stockpile being used by a person or entity hostile to the United States, its vital interests, or its allies.

(b) PROGRAM LIMITATIONS.—In carrying out the stockpile management program under subsection (a), the Secretary of Energy shall ensure that—

(1) any changes made to the stockpile shall be made to achieve the objectives identified in subsection (a); and

(2) any such changes made to the stockpile shall—

(A) remain consistent with basic design parameters by including, to the maximum extent feasible, components that are well understood or are certifiable without the need to resume underground nuclear weapons testing; and

(B) use the design, certification, and production expertise resident in the nuclear security enterprise to fulfill current mission requirements of the existing stockpile.

(c) PROGRAM BUDGET.—In accordance with the requirements under section 4209, for each budget submitted by the President to Congress under section 1105 of title 31, United States Code, the amounts requested for the program under this section shall be clearly identified in the budget justification materials submitted to Congress in support of that budget.

[Section 4204A repealed by section 3113(a)(1) of division C of Public Law 111–84.]

**SEC. 4205. [50 U.S.C. 2525] ANNUAL ASSESSMENTS AND REPORTS TO THE PRESIDENT AND CONGRESS REGARDING THE CONDITION OF THE UNITED STATES NUCLEAR WEAPONS STOCKPILE.**

(a) ANNUAL ASSESSMENTS REQUIRED.—For each nuclear weapon type in the stockpile of the United States, each official specified in subsection (b) on an annual basis shall, to the extent such official is directly responsible for the safety, reliability, performance, or military effectiveness of that nuclear weapon type, complete an assessment of the safety, reliability, performance, or military effectiveness (as the case may be) of that nuclear weapon type.

(b) COVERED OFFICIALS.—The officials referred to in subsection (a) are the following:

- (1) The head of each national security laboratory.
- (2) The commander of the United States Strategic Command.

(c) DUAL VALIDATION TEAMS IN SUPPORT OF ASSESSMENTS.—In support of the assessments required by subsection (a), the Administrator for Nuclear Security may establish teams, known as “dual validation teams”, to provide each national security laboratory responsible for weapons design with independent evaluations of the condition of each warhead for which such laboratory has lead responsibility. A dual validation team established by the Administrator shall—

- (1) be comprised of weapons experts from the laboratory that does not have lead responsibility for fielding the warhead being evaluated;
- (2) have access to all surveillance and underground test data for all stockpile systems for use in the independent evaluations;
- (3) use all relevant available data to conduct independent calculations; and
- (4) pursue independent experiments to support the independent evaluations.

(d) USE OF TEAMS OF EXPERTS FOR ASSESSMENTS.—The head of each national security laboratory shall establish and use one or more teams of experts, known as “red teams”, to assist in the assessments required by subsection (a). Each such team shall include experts from both of the other national security laboratories. Each such team for a national security laboratory shall—

- (1) review both the matters covered by the assessments under subsection (a) performed by the head of that laboratory and any independent evaluations conducted by a dual validation team under subsection (c);
- (2) subject such matters to challenge; and
- (3) submit the results of such review and challenge, together with the findings and recommendations of such team with respect to such review and challenge, to the head of that laboratory.

(e) REPORT ON ASSESSMENTS.—Not later than December 1 of each year, each official specified in subsection (b) shall submit to the Secretary concerned, and to the Nuclear Weapons Council, a report on the assessments that such official was required by subsection (a) to complete. The report shall include the following:

- (1) The results of each such assessment.
- (2)(A) Such official’s determination as to whether or not one or more underground nuclear tests are necessary to resolve any issues identified in the assessments and, if so—
  - (i) an identification of the specific underground nuclear tests that are necessary to resolve such issues; and
  - (ii) a discussion of why options other than an underground nuclear test are not available or would not resolve such issues.

(B) An identification of the specific underground nuclear tests which, while not necessary, might have value in resolving

any such issues and a discussion of the anticipated value of conducting such tests.

(C) Such official's determination as to the readiness of the United States to conduct the underground nuclear tests identified under subparagraphs (A)(i) and (B), if directed by the President to do so.

(3) In the case of a report submitted by the head of a national security laboratory—

(A) a concise statement regarding the adequacy of the science-based tools and methods being used to determine the matters covered by the assessments;

(B) a concise statement regarding the adequacy of the tools and methods employed by the manufacturing infrastructure required by section 4212 to identify and fix any inadequacy with respect to the matters covered by the assessments;

(C) a concise summary of the findings and recommendations of any teams under subsection (d) that relate to the assessments, together with a discussion of those findings and recommendations; and

(D) a concise summary of the results of any independent evaluation conducted by a dual validation team under subsection (c).

(4) In the case of a report submitted by the Commander of the United States Strategic Command, a discussion of the relative merits of other nuclear weapon types (if any), or compensatory measures (if any) that could be taken, that could enable accomplishment of the missions of the nuclear weapon types to which the assessments relate, should such assessments identify any deficiency with respect to such nuclear weapon types.

(5) An identification and discussion of any matter having an adverse effect on the capability of the official submitting the report to accurately determine the matters covered by the assessments.

(f) SUBMITTALS TO THE PRESIDENT AND CONGRESS.—(1) Not later than March 1 of each year, the Secretary of Defense and the Secretary of Energy shall submit to the President—

(A) each report, without change, submitted to either Secretary under subsection (e) during the preceding year;

(B) any comments that the Secretaries individually or jointly consider appropriate with respect to each such report;

(C) the conclusions that the Secretaries individually or jointly reach as to the safety, reliability, performance, and military effectiveness of the nuclear weapons stockpile of the United States; and

(D) any other information that the Secretaries individually or jointly consider appropriate.

(2) Not later than March 15 of each year, the President shall forward to Congress the matters received by the President under paragraph (1) for that year, together with any comments the President considers appropriate.

(g) CLASSIFIED FORM.—Each submittal under subsection (f) shall be in classified form only, with the classification level required for each portion of such submittal marked appropriately.

(h) DEFINITIONS.—In this section:

(1) The term “national security laboratory” has the meaning given such term in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471).

(2) The term “Secretary concerned” means—

(A) the Secretary of Energy, with respect to matters concerning the Department of Energy; and

(B) the Secretary of Defense, with respect to matters concerning the Department of Defense.

**SEC. 4206. [50 U.S.C. 2526] FORM OF CERTIFICATIONS REGARDING THE SAFETY OR RELIABILITY OF THE NUCLEAR WEAPONS STOCKPILE.**

Any certification submitted to the President by the Secretary of Defense or the Secretary of Energy regarding confidence in the safety or reliability of a nuclear weapon type in the United States nuclear weapons stockpile shall be submitted in classified form only.

**SEC. 4207. [50 U.S.C. 2527] NUCLEAR TEST BAN READINESS PROGRAM.**

(a) FINDINGS.—The Congress makes the following findings:

(1) On September 17, 1987, the United States and the Soviet Union announced that they would resume full-scale, stage-by-stage negotiations on issues relating to nuclear testing, including further intermediate limitations on nuclear testing leading to the ultimate objective of a comprehensive nuclear test ban.

(2) It was agreed that the first step in these negotiations would be to reach agreement on verification measures that will make possible the ratification of the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976.

(3) To achieve the agreement on verification measures, the United States and the Soviet Union have agreed to design and conduct a Joint Verification Experiment at the test sites of each country during the summer of 1988.

(4) At the Moscow summit in May 1988, President Reagan and General Secretary Gorbachev reaffirmed their commitment to negotiations on “effective verification measures which will make it possible to ratify the Threshold Test Ban Treaty of 1974 and Peaceful Nuclear Explosions Treaty of 1976, and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process”.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive ban on nuclear explosives testing is negotiated and ratified within the framework agreed to by the United States and the Soviet Union.

(c) **PURPOSES OF PROGRAM.**—The purposes of the program under subsection (b) shall be the following:

(1) To assure that the United States maintains a vigorous program of stockpile inspection and non-explosive testing so that, if a low-threshold or comprehensive test ban is entered into, the United States remains able to detect and identify potential problems in stockpile reliability and safety in existing designs of nuclear weapons.

(2) To assure that the specific materials, components, processes, and personnel needed for the remanufacture of existing nuclear weapons or the substitution of alternative nuclear warheads are available to support such remanufacture or substitution if such action becomes necessary in order to satisfy reliability and safety requirements under a low-threshold or comprehensive test ban agreement.

(3) To assure that a vigorous program of research in areas related to nuclear weapons science and engineering is supported so that, if a low-threshold or comprehensive test ban agreement is entered into, the United States is able to maintain a base of technical knowledge about nuclear weapons design and nuclear weapons effects.

(d) **CONDUCT OF PROGRAM.**—The Secretary of Energy shall carry out the program provided for in subsection (b). The program shall be carried out with the participation of representatives of the Department of Defense, the nuclear weapons production facilities, and the national nuclear weapons laboratories.

[Section 4208 repealed by section 3133(e)(1)(A) of division C of Public Law 112–239.]

**SEC. 4209. [50 U.S.C. 2529] REQUIREMENTS FOR SPECIFIC REQUEST FOR NEW OR MODIFIED NUCLEAR WEAPONS.**

(a) **REQUIREMENT FOR REQUEST FOR FUNDS FOR DEVELOPMENT.**—(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code.

(2) The activities described in this paragraph are as follows:

(A) The conduct, or provision for conduct, of research and development which could lead to the production of a new nuclear weapon by the United States.

(B) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a new nuclear weapon by the United States.

(C) The conduct, or provision for conduct, of research and development which could lead to the production of a modified nuclear weapon by the United States.

(D) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a modified nuclear weapon by the United States.

(b) **BUDGET REQUEST FORMAT.**—The Secretary shall include in a request for funds under subsection (a) the following:

(1) In the case of funds for activities described in subparagraph (A) or (C) of subsection (a)(2), a single dedicated line item for all such activities for new nuclear weapons or modified nuclear weapons that are in phase 1, 2, or 2A or phase 6.1, 6.2, or 6.2A (as the case may be), or any concept work prior to phase 1 or 6.1 (as the case may be), of the nuclear weapons acquisition process.

(2) In the case of funds for activities described in subparagraph (B) or (D) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapon that is in phase 3 or higher or phase 6.3 or higher (as the case may be) of the nuclear weapons acquisition process.

(c) EXCEPTION.—Subsection (a) shall not apply to funds for purposes of conducting, or providing for the conduct of, research and development, or manufacturing and engineering, determined by the Secretary to be necessary to address proliferation concerns.

(d) DEFINITIONS.—In this section:

(1) The term “modified nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which—

(A) is in the nuclear weapons stockpile as of the date of the enactment of this Act; and

(B) is being modified in order to meet a military requirement that is other than the military requirements applicable to such nuclear weapon when first placed in the nuclear weapons stockpile.

(2) The term “new nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which is neither—

(A) in the nuclear weapons stockpile on the date of the enactment of this Act; nor

(B) in production as of that date.

**SEC. 4210. [50 U.S.C. 2530] TESTING OF NUCLEAR WEAPONS.**

(a) UNDERGROUND TESTING.—No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.

(b) ATMOSPHERIC TESTING.—None of the funds appropriated pursuant to the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1547) or any other Act for any fiscal year may be available to maintain the capability of the United States to conduct atmospheric testing of a nuclear weapon.

[Section 4211 repealed by section 3131(d)(3) of division C of Public Law 112–239.]

**SEC. 4212. [50 U.S.C. 2532] MANUFACTURING INFRASTRUCTURE FOR REFABRICATION AND CERTIFICATION OF NUCLEAR WEAPONS STOCKPILE.**

(a) MANUFACTURING PROGRAM.—(1) The Secretary of Energy shall carry out a program for purposes of establishing within the Government a manufacturing infrastructure that has the capabili-

ties of meeting the following objectives as specified in the Nuclear Posture Review:

- (A) To provide a stockpile surveillance engineering base.
  - (B) To refabricate and certify weapon components and types in the enduring nuclear weapons stockpile, as necessary.
  - (C) To fabricate and certify new nuclear warheads, as necessary.
  - (D) To support nuclear weapons.
  - (E) To supply sufficient tritium in support of nuclear weapons to ensure an upload hedge in the event circumstances require.
- (2) The purpose of the program carried out under paragraph (1) shall also be to develop manufacturing capabilities and capacities necessary to meet the requirements specified in the annual Nuclear Weapons Stockpile Review.

(b) **REQUIRED CAPABILITIES.**—The manufacturing infrastructure established under the program under subsection (a) shall include the following capabilities (modernized to attain the objectives referred to in that subsection):

- (1) The weapons assembly capabilities of the Pantex Plant.
- (2) The weapon secondary fabrication capabilities of the Y-12 Plant, Oak Ridge, Tennessee.
- (3) The capabilities of the Savannah River Site relating to tritium recycling and fissile materials components processing and fabrication.
- (4) The non-nuclear component capabilities of the Kansas City Plant.

(c) **NUCLEAR POSTURE REVIEW.**—For purposes of subsection (a), the term “Nuclear Posture Review” means the Department of Defense Nuclear Posture Review as contained in the Report of the Secretary of Defense to the President and the Congress dated February 19, 1995, or subsequent such reports.

**SEC. 4213. [50 U.S.C. 2533] REPORTS ON CRITICAL DIFFICULTIES AT NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES.**

(a) **REPORTS BY HEADS OF LABORATORIES AND PLANTS.**—In the event of a difficulty at a national security laboratory or a nuclear weapons production facility that has a significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Administrator a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.

(b) **TRANSMITTAL BY ADMINISTRATOR.**—Not later than 10 days after receipt of a report under subsection (a), the Administrator shall transmit the report (together with the comments of the Administrator) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.

(c) **REPORTS BY NUCLEAR WEAPONS COUNCIL.**—[Omitted Amendment]

(d) **INCLUSION OF REPORTS IN ANNUAL STOCKPILE CERTIFICATION.**—Any report submitted pursuant to subsection (a) shall also be included with the decision documents that accompany the

annual certification of the safety and reliability of the United States nuclear weapons stockpile which is provided to the President for the year in which such report is submitted.

**SEC. 4214. [50 U.S.C. 2534] PLAN FOR TRANSFORMATION OF NATIONAL NUCLEAR SECURITY ADMINISTRATION NUCLEAR SECURITY ENTERPRISE.**

(a) **PLAN REQUIRED.**—The Secretary of Energy shall develop a plan to transform the nuclear security enterprise so as to achieve a responsive infrastructure by 2030. The plan shall be designed to accomplish the following objectives:

(1) To maintain the safety, reliability, and security of the United States nuclear weapons stockpile.

(2) To continue Stockpile Life Extension Programs that the Nuclear Weapons Council considers necessary.

(3) To prepare to produce replacement warheads under the Reliable Replacement Warhead program at a rate necessary to meet future stockpile requirements, commencing with a first production unit in 2012 and achieving steady-state production using modern manufacturing processes by 2025.

(4) To eliminate, within the nuclear security enterprise, duplication of production capability except to the extent required to ensure the safety, reliability, and security of the stockpile.

(5) To maintain the current philosophy within the national security laboratories of peer review of nuclear weapons designs while eliminating duplication of laboratory capabilities except to the extent required to ensure the safety, reliability, and security of the stockpile.

(6) To maintain the national security mission, and in particular the science-based Stockpile Stewardship Program, as the primary mission of the national security laboratories while optimizing the work-for-others activities of those laboratories to support other national security objectives in fields such as defense, intelligence, and homeland security.

(7) To consolidate to the maximum extent practicable, and to provide for the ultimate disposition of, special nuclear material throughout the nuclear security enterprise, with the ultimate goal of eliminating Category I and II special nuclear material from the national security laboratories no later than March 1, 2012, so as to further reduce the footprint of the nuclear security enterprise, reduce security costs, and reduce transportation costs for special nuclear material. This objective does not preclude the retention of Category I and II special nuclear materials at a national security laboratory if the transformation plan required by this subsection envisions a pit production capability (including interim pit production) at a national security laboratory.

(8) To employ a risk-based approach to ensure compliance with Design Basis Threat security requirements.

(9) To expeditiously dismantle inactive nuclear weapons to reduce the size of the stockpile to the lowest level required by the Nuclear Weapons Council.

(10) To operate the nuclear security enterprise in a more cost-effective manner.

(b) CONSULTATION.—The Secretary of Energy shall develop the transformation plan required by subsection (a) in consultation with the Secretary of Defense and the Nuclear Weapons Council.

**SEC. 4215. [50 U.S.C. 2535] REPLACEMENT PROJECT FOR CHEMISTRY AND METALLURGY RESEARCH BUILDING, LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.**

(a) REPLACEMENT BUILDING REQUIRED.—The Secretary of Energy shall construct at Los Alamos National Laboratory, New Mexico, a building to replace the functions of the existing Chemistry and Metallurgy Research Building at Los Alamos National Laboratory associated with Department of Energy Hazard Category 2 special nuclear material operations.

(b) LIMITATION ON COST.—The cost of the building constructed under subsection (a) may not exceed \$3,700,000,000. If the Secretary determines the cost will exceed such amount, the Secretary shall submit a detailed justification for such increase to the congressional defense committees.

(c) PROJECT BASIS.—The construction authorized by subsection (a) shall use as its basis the facility project in the Department of Energy Readiness and Technical Base designated 04–D–125 (chemistry and metallurgy facility replacement project at Los Alamos National Laboratory).

(d) ASSISTANCE.—(1) In carrying out this section, the Secretary shall procure the services of the Commander of the Naval Facilities Engineering Command to assist the Secretary with respect to the program management, oversight, and design activities of the project authorized by subsection (a).

(2) The Secretary shall carry out this subsection using funds made available for the National Nuclear Security Administration.

(e) DEADLINE FOR COMMENCEMENT OF OPERATIONS.—The building constructed under subsection (a) shall commence operations by not later than December 31, 2026.

**SEC. 4216. [50 U.S.C. 2536] REPORTS ON LIFETIME EXTENSION PROGRAMS.**

(a) REPORTS REQUIRED.—Before proceeding beyond phase 6.2 activities with respect to any lifetime extension program, the Nuclear Weapons Council established by section 179 of title 10, United States Code, shall submit to the congressional defense committees a report on such phase 6.2 activities, including—

(1) an assessment of the lifetime extension options considered for the phase 6.2 activities, including whether the subsystems and components in each option are considered to be a refurbishment, reuse, or replacement of such subsystem or component; and

(2) an assessment of the option selected for the phase 6.2 activities, including—

(A) whether the subsystems and components will be refurbished, reused, or replaced; and

(B) the advantages and disadvantages of refurbishment, reuse, and replacement for each such subsystem and component.

(b) PHASE 6.2 ACTIVITIES DEFINED.—In this section, the term “phase 6.2 activities” means, with respect to a lifetime extension program, the phase 6.2 feasibility study and option down-select.

**SEC. 4217. [50 U.S.C. 2537] SELECTED ACQUISITION REPORTS AND INDEPENDENT COST ESTIMATES ON LIFE EXTENSION PROGRAMS AND NEW NUCLEAR FACILITIES.**

(a) **SELECTED ACQUISITION REPORTS.**—(1) At the end of each fiscal-year quarter, the Secretary of Energy, acting through the Administrator, shall submit to the congressional defense committees a report on each nuclear weapon system undergoing life extension. The reports shall be known as Selected Acquisition Reports for the weapon system concerned.

(2) The information contained in the Selected Acquisition Report for a fiscal-year quarter for a nuclear weapon system shall be the information contained in the Selected Acquisition Report for such fiscal-year quarter for a major defense acquisition program under section 2432 of title 10, United States Code, expressed in terms of the nuclear weapon system.

(b) **INDEPENDENT COST ESTIMATES.**—(1) The Secretary, acting through the Administrator, shall submit to the congressional defense committees and the Nuclear Weapons Council established under section 179 of title 10, United States Code, an independent cost estimate of the following:

(A) Each nuclear weapon system undergoing life extension at the completion of phase 6.2A, relating to design definition and cost study.

(B) Each nuclear weapon system undergoing life extension before initiation of phase 6.5, relating to first production.

(C) Each new nuclear facility within the nuclear security enterprise that is estimated to cost more than \$500,000,000 before such facility achieves critical decision 2 in the acquisition process.

(2) A cost estimate for purposes of this subsection may not be prepared by the Department of Energy or the Administration.

(c) **AUTHORITY FOR FURTHER ASSESSMENTS.**—Upon the request of the Administrator, the Secretary of Defense, acting through the Director of Cost Assessment and Program Evaluation and in consultation with the Administrator, may conduct an independent cost assessment of any initiative or program of the Administration that is estimated to cost more than \$500,000,000.

**SEC. 4218. [50 U.S.C. 2538] ADVICE TO THE PRESIDENT AND CONGRESS REGARDING THE SAFETY, SECURITY, AND RELIABILITY OF UNITED STATES NUCLEAR WEAPONS STOCKPILE.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; 42 U.S.C. 2121 note) from conducting underground nuclear tests “unless

a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”.

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note) requires the Secretary of Energy to “establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.”

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth “any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy”.

(6) President Clinton declared in July 1993 that “to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons”. This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 42 U.S.C. 2121 note) also requires that the Secretary of Energy establish a “stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons”.

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear testing, in the future they will provide, under the Department of Energy’s stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274o) requires that the directors of the national security laboratories and the nuclear weapons production facilities submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional de-

fense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed “the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban”.

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being “advised by the Nuclear Weapons Council, the Directors of DOE’s national security laboratories, and the Commander of United States Strategic Command”, to provide the President with the information regarding the certification referred to in paragraph (10).

(12) The Joint Nuclear Weapons Council established by section 179 of title 10, United States Code, is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including “considering safety, security, and control issues for existing weapons”. The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) POLICY.—

(1) IN GENERAL.—It is the policy of the United States—

(A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and

(B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) NUCLEAR WEAPONS STOCKPILE.—It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the national security laboratories and nuclear weapons production facilities.

(3) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c) ADDITION OF PRESIDENT TO RECIPIENTS OF REPORTS BY HEADS OF LABORATORIES AND PLANTS.—[Omitted—Amendment]

(d) TEN-DAY TIME LIMIT FOR TRANSMITTAL OF REPORT.—[Omitted—Amendment]

(e) ADVICE AND OPINIONS REGARDING NUCLEAR WEAPONS STOCKPILE.—In addition to a director of a national security laboratory or a nuclear weapons production facility (under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274o)), any member of the Joint Nuclear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) EXPRESSION OF INDIVIDUAL VIEWS.—

(1) IN GENERAL.—No individual, including representatives of the President, may take any action against, or otherwise constrain, a director of a national security laboratory or a nuclear weapons production facility, a member of the Nuclear Weapons Council established under section 179 of title 10, United States Code, or the Commander of the United States Strategic Command from presenting the professional views of the director, member, or Commander, as the case may be, to the President, the National Security Council, or Congress regarding—

(A) the safety, security, reliability, or credibility of the nuclear weapons stockpile and nuclear forces; or

(B) the status of, and plans for, the capabilities and infrastructure that support and sustain the nuclear weapons stockpile and nuclear forces.

(2) CONSTRUCTION.—Nothing in paragraph (1)(B) may be construed to affect the interagency budget process.

(g) REPRESENTATIVE OF THE PRESIDENT DEFINED.—In this section, the term ‘representative of the President’ means the following:

(1) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(2) Any member or official of the National Security Council.

(3) Any member or official of the Joint Chiefs of Staff.

(4) Any official of the Office of Management and Budget.

## Subtitle B—Tritium

### SEC. 4231. [50 U.S.C. 2541] TRITIUM PRODUCTION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons.

(b) LOCATION OF TRITIUM PRODUCTION FACILITY.—The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.

**SEC. 4232. [50 U.S.C. 2542] TRITIUM RECYCLING.**

(a) IN GENERAL.—Except as provided in subsection (b), the following activities shall be carried out at the Savannah River Site, South Carolina:

(1) All tritium recycling for weapons, including tritium re-fitting.

(2) All activities regarding tritium formerly carried out at the Mound Plant, Ohio.

(b) EXCEPTION.—The following activities may be carried out at the Los Alamos National Laboratory, New Mexico:

(1) Research on tritium.

(2) Work on tritium in support of the defense inertial confinement fusion program.

(3) Provision of technical assistance to the Savannah River Site regarding the weapons surveillance program.

**SEC. 4233. [50 U.S.C. 2543] TRITIUM PRODUCTION.**

(a) NEW TRITIUM PRODUCTION FACILITY.—The Secretary of Energy shall commence planning and design activities and infrastructure development for a new tritium production facility.

(b) IN-REACTOR TESTS.—The Secretary may perform in-reactor tests of tritium target rods as part of the activities carried out under the commercial light water reactor program.

**SEC. 4234. [50 U.S.C. 2544] MODERNIZATION AND CONSOLIDATION OF TRITIUM RECYCLING FACILITIES.**

The Secretary of Energy shall carry out activities at the Savannah River Site, South Carolina, to—

(1) modernize and consolidate the facilities for recycling tritium from weapons; and

(2) provide a modern tritium extraction facility so as to ensure that such facilities have a capacity to recycle tritium from weapons that is adequate to meet the requirements for tritium for weapons specified in the Nuclear Weapons Stockpile Memorandum.

**SEC. 4235. [50 U.S.C. 2545] PROCEDURES FOR MEETING TRITIUM PRODUCTION REQUIREMENTS.**

(a) PRODUCTION OF NEW TRITIUM.—The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

(b) SUPPORT.—To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.

(c) DESIGN AND ENGINEERING DEVELOPMENT.—The Secretary shall—

(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.

## TITLE XLIII—PROLIFERATION MATTERS

[Section 4301 repealed by section 3117(a) of division C of Public Law 111-84.]

### SEC. 4302. [50 U.S.C. 2562] NONPROLIFERATION INITIATIVES AND ACTIVITIES.

(a) INITIATIVE FOR PROLIFERATION PREVENTION PROGRAM.—(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.

(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—

(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or

(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.

(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—

(i) is currently involved in activities described in subparagraph (A)(i); or

(ii) was not formerly involved in activities described in subparagraph (A)(ii).

(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.

(B) For purposes of this paragraph, the term “country of proliferation concern” means any country so designated by the Director of National Intelligence for purposes of the Initiatives for Proliferation Prevention program.

(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:

(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes.

(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.

(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.

(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.

(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.

(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.

(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program to offset the amount of such payment.

(b) NUCLEAR CITIES INITIATIVE.—(1) No amounts authorized to be appropriated by title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.

(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.

(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.

(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.

(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of

the United States Government that participates in or contributes to the initiative. The report shall describe separately any inter-agency participation in or contribution to the initiative.

(c) REPORT.—(1) Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.

(2) The report shall include the following:

(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the case may be, and means for measuring the achievement of such objectives.

(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.

(C) A list of the institutes and scientists associated with weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—

(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and

(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative.

(d) NUCLEAR CITIES INITIATIVE DEFINED.—For purposes of this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.

**SEC. 4303. [50 U.S.C. 2563] ANNUAL REPORT ON STATUS OF NUCLEAR MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM.**

(a) REPORT REQUIRED.—Not later than January 1 of each year, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the status of efforts during the preceding fiscal year under the Nuclear Materials Protection, Control, and Accounting Program of the Department of Energy to secure weapons-usable nuclear materials in Russia that have been identified as being at risk for theft or diversion.

(b) CONTENTS.—Each report under subsection (a) shall include the following:

(1) The number of buildings, including building locations, that received complete and integrated materials protection, control, and accounting systems for nuclear materials described in subsection (a) during the year covered by such report.

(2) The amounts of highly enriched uranium and plutonium in Russia that have been secured under systems described in paragraph (1) as of the date of such report.

(3) The amount of nuclear materials described in subsection (a) that continues to require securing under systems described in paragraph (1) as of the date of such report.

(4) A plan for actions to secure the nuclear materials identified in paragraph (3) under systems described in paragraph (1), including an estimate of the cost of such actions.

(5) The amounts expended through the fiscal year preceding the date of such report to secure nuclear materials described in subsection (a) under systems described in paragraph (1), set forth by total amount and by amount per fiscal year.

(c) **LIMITATION ON USE OF CERTAIN FUNDS.**—(1) No amounts authorized to be appropriated for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act for purposes of the Nuclear Materials Protection, Control, and Accounting Program may be obligated or expended after September 30, 2000, for any project under the program at a site controlled by the Russian Ministry of Atomic Energy (MINATOM) in Russia until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the access policy established with respect to such project, including a certification that the access policy has been implemented.

(2) The access policy with respect to a project under this subsection shall—

(A) permit appropriate determinations by United States officials regarding security requirements, including security upgrades, for the project; and

(B) ensure verification by United States officials that Department of Energy assistance at the project is being used for the purposes intended.

**SEC. 4304. [50 U.S.C. 2564] NUCLEAR CITIES INITIATIVE.**

(a) **IN GENERAL.**—(1) The Secretary of Energy may, in accordance with the provisions of this section, expand and enhance the activities of the Department of Energy under the Nuclear Cities Initiative.

(2) In this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the joint statement dated July 24, 1998, signed by the Vice President of the United States and the Prime Minister of the Russian Federation and the agreement dated September 22, 1998, between the United States and the Russian Federation.

(b) **FUNDING FOR FISCAL YEAR 2001.**—There is hereby authorized to be appropriated for the Department of Energy for fiscal year 2001 \$30,000,000 for purposes of the Nuclear Cities Initiative.

(c) LIMITATION PENDING SUBMISSION OF AGREEMENT.—No amount authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended to provide assistance under the Initiative for more than three nuclear cities in Russia and two serial production facilities in Russia until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of a written agreement between the United States Government and the Government of the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work.

(d) LIMITATION PENDING IMPLEMENTATION OF PROJECT REVIEW PROCEDURES.—(1) Not more than \$8,750,000 of the amounts referred to in subsection (b) may be obligated or expended for purposes of the Initiative until the Secretary of Energy establishes and implements project review procedures for projects under the Initiative and submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the project review procedures so established and implemented.

(2) The project review procedures established under paragraph (1) shall ensure that any scientific, technical, or commercial project initiated under the Initiative—

(A) will not enhance the military or weapons of mass destruction capabilities of Russia;

(B) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(C) will be commercially viable; and

(D) will be carried out in conjunction with an appropriate commercial, industrial, or nonprofit entity as partner.

(e) LIMITATION PENDING CERTIFICATION AND REPORT.—No amount in excess of \$17,500,000 authorized to be appropriated for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended for purposes of providing assistance under the Initiative until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:

(1) A copy of the written agreement between the United States and the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work within five years of the date of the agreement in exchange for receiving assistance through the Initiative.

(2) A certification by the Secretary—

(A) that project review procedures for all projects under the Initiative have been established and are being implemented; and

(B) that those procedures will ensure that any scientific, technical, or commercial project initiated under the Initiative—

(i) will not enhance the military or weapons of mass destruction capabilities of Russia;

(ii) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(iii) will be commercially viable within three years after the date of the initiation of the project; and

(iv) will be carried out in conjunction with an appropriate commercial, industrial, or other nonprofit entity as partner.

(3) A report setting forth the following:

(A) A description of the project review procedures process.

(B) A list of the projects under the Initiative that have been reviewed under such project review procedures.

(C) A description for each project listed under subparagraph (B) of the purpose, expected life-cycle costs, out-year budget costs, participants, commercial viability, expected time for income generation, and number of Russian jobs created.

(f) PLAN FOR RESTRUCTURING THE RUSSIAN NUCLEAR COMPLEX.—(1) The President, acting through the Secretary of Energy, is urged to enter into discussions with the Russian Federation for purposes of the development by the Russian Federation of a plan to restructure the Russian nuclear complex in order to meet changes in the national security requirements of Russia by 2010.

(2) The plan under paragraph (1) should include the following:

(A) Mechanisms to consolidate the nuclear weapons production capacity in Russia to a capacity that is consistent with the obligations of Russia under current and future arms control agreements.

(B) Mechanisms to increase transparency regarding the restructuring of the Russian nuclear complex and weapons-surplus nuclear materials inventories in Russia to the levels of transparency for such matters in the United States, including the participation of Department of Energy officials with expertise in transparency of such matters.

(C) Measurable milestones that will permit the United States and the Russian Federation to monitor progress under the plan.

(g) ENCOURAGEMENT OF CAREERS IN NONPROLIFERATION.—(1) In carrying out actions under this section, the Secretary of Energy may carry out a program to encourage students in the United States and in the Russian Federation to pursue careers in areas relating to nonproliferation.

(2) Of the amounts made available under the Initiative for fiscal year 2001 in excess of \$17,500,000, up to \$2,000,000 shall be available for purposes of the program under paragraph (1).

(3) The Administrator for Nuclear Security shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives before any funds are expended pursuant to paragraph (2). Any such notification shall include—

- (A) an identification of the amount to be expended under paragraph (2) during fiscal year 2001;
- (B) the recipients of the funds; and
- (C) specific information on the activities that will be conducted using those funds.

(h) DEFINITIONS.—In this section:

(1) The term “nuclear city” means any of the closed nuclear cities within the complex of the Russian Ministry of Atomic Energy as follows:

- (A) Sarov (Arzamas–16).
- (B) Zarechnyy (Penza–19).
- (C) Novoural’sk (Sverdlovsk–44).
- (D) Lesnoy (Sverdlovsk–45).
- (E) Ozersk (Chelyabinsk–65).
- (F) Snezhinsk (Chelyabinsk–70).
- (G) Trehgornyy (Zlatoust–36).
- (H) Seversk (Tomsk–7).
- (I) Zheleznogorsk (Krasnoyarsk–26).
- (J) Zelenogorsk (Krasnoyarsk–45).

(2) The term “Russian nuclear complex” means all of the nuclear cities.

(3) The term “serial production facilities” means the facilities in Russia that are located at the following cities:

- (A) Avangard.
- (B) Lesnoy (Sverdlovsk–45).
- (C) Trehgornyy (Zlatoust–36).
- (D) Zarechnyy (Penza–19).

**SEC. 4305. [50 U.S.C. 2565] AUTHORITY TO CONDUCT PROGRAM RELATING TO FISSILE MATERIALS.**

The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.

**SEC. 4306. [50 U.S.C. 2566] DISPOSITION OF WEAPONS-USABLE PLUTONIUM AT SAVANNAH RIVER SITE.**

(a) PLAN FOR CONSTRUCTION AND OPERATION OF MOX FACILITY.—(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2012, and thereafter, the MOX production objective, and to produce 1 metric ton of mixed-oxide fuel by December 31, 2012; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed-oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1).

(B) Each report under subparagraph (A) for years before 2010 shall include—

- (i) an assessment of compliance with the schedules included with the plan under paragraph (2); and
- (ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2012.

(C) Each report under subparagraph (A) for years after 2014 shall—

- (i) address whether the MOX production objective has been met; and
- (ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) Each report under subparagraph (A) for years after 2019 shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

- (i) Compliance with such objective.
- (ii) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) CORRECTIVE ACTIONS.—(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (g) by 12 months or more, the Secretary shall submit to Congress, not later than August 15 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established milestones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2012, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2012 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2012.

(5) If, after January 1, 2014, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of de-

fense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to consideration or selection of such option.

(C) Upon submittal of a report under paragraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) CONTINGENT REQUIREMENT FOR REMOVAL OF PLUTONIUM AND MATERIALS FROM SAVANNAH RIVER SITE.—If the MOX production objective is not achieved as of January 1, 2014, the Secretary shall, consistent with the National Environmental Policy Act of 1969 and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2016, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2022, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2022, but not processed by the MOX facility.

(d) ECONOMIC AND IMPACT ASSISTANCE.—(1) If the MOX production objective is not achieved as of January 1, 2016, the Secretary shall, subject to the availability of appropriations, pay to the State of South Carolina each year beginning on or after that date through 2021 for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the later of—

(A) the date on which the MOX production objective is achieved in such year; or

(B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If, as of January 1, 2022, the MOX facility has not processed mixed-oxide fuel from defense plutonium and defense plutonium materials in the amount of not less than—

(i) one metric ton, in each of any two consecutive calendar years; and

(ii) three metric tons total,

the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the removal by the Secretary from the State of South Carolina of an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2022, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) If the State of South Carolina obtains an injunction that prohibits the Department from taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) FAILURE TO COMPLETE PLANNED DISPOSITION PROGRAM.—If on July 1 each year beginning in 2025 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for—

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or

(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) REMOVAL OF MIXED-OXIDE FUEL UPON COMPLETION OF OPERATIONS OF MOX FACILITY.—If, one year after the date on which operation of the MOX facility permanently ceases, any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or

(2) a plan for removing such fuel from the State of South Carolina.

(g) BASELINE.—Not later than December 31, 2006, the Secretary shall submit to Congress a report on the construction and operation of the MOX facility that includes a schedule for revising the requirements of this section during fiscal year 2007 to conform with the schedule established by the Secretary for the MOX facility, which shall be based on estimated funding levels for the fiscal year.

(h) DEFINITIONS.—In this section:

(1) MOX PRODUCTION OBJECTIVE.—The term “MOX production objective” means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX FACILITY.—The term “MOX facility” means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) DEFENSE PLUTONIUM; DEFENSE PLUTONIUM MATERIALS.—The terms “defense plutonium” and “defense plutonium materials” mean weapons-usable plutonium.

**SEC. 4306A. [50 U.S.C. 2567] DISPOSITION OF SURPLUS DEFENSE PLUTONIUM AT SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA.**

(a) **CONSULTATION REQUIRED.**—The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) **NOTICE REQUIRED.**—For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) **PLAN FOR DISPOSITION.**—The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

- (1) A review of each option considered for such disposal.
- (2) An identification of the preferred option for such disposal.
- (3) With respect to the facilities for such disposal that are required by the Department of Energy's Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—
  - (A) a statement of the cost of construction and operation of such facilities;
  - (B) a schedule for the expeditious construction of such facilities, including milestones; and
  - (C) a firm schedule for funding the cost of such facilities.
- (4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) **PLAN FOR ALTERNATIVE DISPOSITION.**—If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

(e) **SUBMISSION OF PLANS.**—Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) **LIMITATION ON PLUTONIUM SHIPMENTS.**—If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah

River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) **ANNUAL REPORT ON FUNDING FOR FISSILE MATERIALS DISPOSITION ACTIVITIES.**—The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.

**SEC. 4307. [50 U.S.C. 2572] INTERNATIONAL AGREEMENTS ON NUCLEAR WEAPONS DATA.**

The Secretary of Energy may, with the concurrence of the Secretary of State and in coordination with the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, enter into agreements with countries or international organizations to conduct data collection and analysis to determine accurately and in a timely manner the source of any components of, or fissile material used or attempted to be used in, a nuclear device or weapon.

**SEC. 4308. [50 U.S.C. 2573] INTERNATIONAL AGREEMENTS ON INFORMATION ON RADIOACTIVE MATERIALS.**

The Secretary of Energy may, with the concurrence of the Secretary of State and in coordination with the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, enter into agreements with countries or international organizations—

(1) to acquire for the materials information program of the Department of Energy validated information on the physical characteristics of radioactive material produced, used, or stored at various locations, in order to facilitate the ability to determine accurately and in a timely manner the source of any components of, or fissile material used or attempted to be used in, a nuclear device or weapon; and

(2) to obtain access to information described in paragraph (1) in the event of—

(A) a nuclear detonation; or

(B) the interdiction or discovery of a nuclear device or weapon or nuclear material.

## **TITLE XLIV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS**

### **Subtitle A—Environmental Restoration and Waste Management**

#### **SEC. 4401. [50 U.S.C. 2581] DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACCOUNT.**

(a) **ESTABLISHMENT.**—There is hereby established in the Treasury of the United States for the Department of Energy an account to be known as the “Defense Environmental Restoration and Waste Management Account” (hereafter in this section referred to as the “Account”).

(b) **AMOUNTS IN ACCOUNT.**—All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

#### **SEC. 4402. [50 U.S.C. 2582] REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAM.**

(a) **AUTHORITY TO DEVELOP FUTURE USE PLANS.**—The Secretary of Energy may develop future use plans for any defense nuclear facility at which environmental restoration and waste management activities are occurring.

(b) **REQUIREMENT TO DEVELOP FUTURE USE PLANS.**—The Secretary shall develop a future use plan for each of the following defense nuclear facilities:

- (1) Hanford Site, Richland, Washington.
- (2) Rocky Flats Plant, Golden, Colorado.
- (3) Savannah River Site, Aiken, South Carolina.
- (4) Idaho National Engineering Laboratory, Idaho.

(c) **CITIZEN ADVISORY BOARD.**—(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.

(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.

(d) **REQUIREMENT TO CONSULT WITH CITIZEN ADVISORY BOARD.**—In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to sub-

section (c) or a similar advisory board already in existence as of September 23, 1996, for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.

(e) 50-YEAR PLANNING PERIOD.—A future use plan developed under this section shall cover a period of at least 50 years.

(f) DEADLINES.—For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.

(g) REPORT.—Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.

(h) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modification to a future use plan with respect to a defense nuclear facility that was developed before September 23, 1996.

(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

**SEC. 4402A. [50 U.S.C. 2582A] FUTURE-YEARS DEFENSE ENVIRONMENTAL MANAGEMENT PLAN.**

(a) IN GENERAL.—The Secretary of Energy shall submit to Congress each year, at or about the same time that the President's budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, United States Code, a future-years defense environmental management plan that—

(1) reflects the estimated expenditures and proposed appropriations included in that budget for the Department of Energy for environmental management; and

(2) covers a period that includes the fiscal year for which that budget is submitted and not less than the four succeeding fiscal years.

(b) ELEMENTS.—Each future-years defense environmental management plan required by subsection (a) shall contain the following:

(1) A detailed description of the projects and activities relating to defense environmental management to be carried out during the period covered by the plan at the sites specified in subsection (c) and with respect to the activities specified in subsection (d).

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support such projects and activities.

(3) With respect to each site specified in subsection (c), the following:

(A) A statement of each milestone included in an enforceable agreement governing cleanup and waste remediation for that site for each fiscal year covered by the plan.

(B) For each such milestone, a statement with respect to whether each such milestone will be met in each such fiscal year.

(C) For any milestone that will not be met, an explanation of why the milestone will not be met and the date by which the milestone is expected to be met.

(c) SITES SPECIFIED.—The sites specified in this subsection are the following:

- (1) The Idaho National Laboratory, Idaho.
- (2) The Waste Isolation Pilot Plant, Carlsbad, New Mexico.
- (3) The Savannah River Site, Aiken, South Carolina.
- (4) The Oak Ridge National Laboratory, Oak Ridge, Tennessee.
- (5) The Hanford Site, Richland, Washington.
- (6) Any defense closure site of the Department of Energy.
- (7) Any site of the National Nuclear Security Administration.

(d) ACTIVITIES SPECIFIED.—The activities specified in this subsection are the following:

- (1) Program support.
- (2) Program direction.
- (3) Safeguards and security.
- (4) Technology development and deployment.
- (5) Federal contributions to the Uranium Enrichment Decontamination and Decommissioning Fund established under section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g).

**SEC. 4403. [50 U.S.C. 2583] INTEGRATED FISSILE MATERIALS MANAGEMENT PLAN.**

(a) PLAN.—The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—

(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to achieve budgetary and other efficiencies in the discharge of those responsibilities; and

(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.

(b) SUBMITTAL TO CONGRESS.—The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.

**SEC. 4404. [50 U.S.C. 2584] BASELINE ENVIRONMENTAL MANAGEMENT REPORTS.**

(a) ANNUAL ENVIRONMENTAL RESTORATION REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) BIENNIAL WASTE MANAGEMENT REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects for waste management, including pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) CONTENTS OF REPORTS.—A report required under subsection (a) or (b) shall be based on compliance with all applicable provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report; and

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment; and

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment.

(d) BIENNIAL STATUS AND VARIANCE REPORTS.—(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activi-

ties and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of completion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and estimated expenditures of more than 15 percent or \$10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) COMPLIANCE TRACKING.—In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy's compliance with relevant Federal and State regulatory milestones.

**SEC. 4405. [50 U.S.C. 2585] ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES.**

(a) ACCELERATED CLEANUP.—The Secretary of Energy shall accelerate the schedule for environmental restoration and waste man-

agement activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.

(b) CONSIDERATION OF FACTORS.—In making a determination under subsection (a), the Secretary shall consider the following:

(1) The cost savings achievable by the Federal Government.

(2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 4404 of this Act.

(3) The potential for reuse of the site.

(4) The risks that the site poses to local health and safety.

(5) The proximity of the site to populated areas.

(c) REPORT.—Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).

(d) SAVINGS PROVISION.—Nothing in this section may be construed to affect a specific statutory requirement for a specific environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment.

**SEC. 4406. [50 U.S.C. 2586] DEFENSE WASTE CLEANUP TECHNOLOGY PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) COORDINATION OF RESEARCH ACTIVITIES.—(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a), the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and

other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a).

(c) REPORT.—(1) The Secretary shall submit to Congress not later than April 1 each year a report on the research activities of the Department of Energy for the development of technologies referred to in subsection (a). The report shall cover such activities for the fiscal year preceding the fiscal year in which the report is submitted. The Secretary shall include in the report the following:

(A) A description and assessment of each research program being carried out by or for the Department of Energy and the identification of the individual laboratory, contractor, or institution of higher education responsible for the research program.

(B) An assessment of the extent to which (i) there are practical applications of the technologies being researched, and (ii) such technologies will likely facilitate compliance by the Department of Energy with applicable environmental laws and regulations.

(C) An accounting of the funds allocated to each research program and to each laboratory, contractor, or institution of higher education carrying out the research program.

(D) An assessment of the research projects that have been coordinated with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies pursuant to subsection (b).

(2) The first report required by paragraph (1) shall be submitted not later than April 1, 1990.

(d) DEFINITIONS.—As used in this section:

(1) The term “defense waste” means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term “inactive defense waste disposal site” means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.

**SEC. 4407. [50 U.S.C. 2587] REPORT ON ENVIRONMENTAL RESTORATION EXPENDITURES.**

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31, United States Code), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.

**SEC. 4408. [50 U.S.C. 2588] PUBLIC PARTICIPATION IN PLANNING FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT AT DEFENSE NUCLEAR FACILITIES.**

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.

**Subtitle B—Closure of Facilities****SEC. 4421. [50 U.S.C. 2601] PROJECTS TO ACCELERATE CLOSURE ACTIVITIES AT DEFENSE NUCLEAR FACILITIES.**

(a) **IN GENERAL.**—The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) **PURPOSE.**—The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) **ELIGIBLE PROJECTS.**—(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more

- effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;
- (iv) specific incentives for cost savings;
  - (v) financial accountability; and
  - (vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;
- (E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential for application to other locations and facilities without requiring the development of new technologies; and
- (F) demonstrate that the project can be completed within 10 years from the date of its selection.
- (d) PROGRAM ADMINISTRATION.—The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.
- (e) SELECTION OF PROJECTS.—(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.
- (2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.
- (f) MULTIYEAR CONTRACTS.—Notwithstanding section 304B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(d)), the Secretary of Energy may enter into multi-year contracts to carry out projects selected under this section for up to 10 program years.
- (g) FUNDING.—(1) In the budget submitted to Congress under section 1105(a) of title 31, United States Code, each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.
- (2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.
- (3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.
- (4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.
- (h) ANNUAL REPORT.—The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) DURATION OF PROGRAM.—No closure-acceleration project selected under this section may be carried out after September 23, 2011.

(j) SAVINGS PROVISION.—Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

**SEC. 4422. [50 U.S.C. 2602] REPORTS IN CONNECTION WITH PERMANENT CLOSURES OF DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES.**

(a) TRAINING AND JOB PLACEMENT SERVICES PLAN.—Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the environmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.

(b) CLOSURE REPORT.—Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility, the Secretary of Energy shall submit to Congress a report containing—

(1) a complete survey of environmental problems at the facility;

(2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and

(3) a discussion of the proposed cleanup schedule.

## Subtitle C—Privatization

### SEC. 4431. [50 U.S.C. 2611] DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION PROJECTS.

(a) **AUTHORITY TO ENTER INTO CONTRACTS.**—The Secretary of Energy may, using funds authorized to be appropriated by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) for a project referred to in that section, enter into a contract that—

- (1) is awarded on a competitive basis;
- (2) requires the contractor to construct or acquire any equipment or facilities required to carry out the contract;
- (3) requires the contractor to bear any of the costs of the construction, acquisition, and operation of such equipment or facilities that arise before the commencement of the provision of goods or services under the contract; and
- (4) provides for payment to the contractor under the contract only upon the meeting of performance specifications in the contract.

(b) **NOTICE AND WAIT.**—(1) The Secretary may not enter into a contract under subsection (a), exercise an authorization to proceed with such a contract or extend any contract period for such a contract by more than one year until 30 days after the date on which the Secretary submits to the congressional defense committees a report with respect to the contract.

(2) Except as provided in paragraph (3), a report under paragraph (1) with respect to a contract shall set forth—

- (A) the anticipated costs and fees of the Department under the contract, including the anticipated maximum amount of such costs and fees;
- (B) any performance specifications in the contract;
- (C) the anticipated dates of commencement and completion of the provision of goods or services under the contract;
- (D) the allocation between the Department and the contractor of any financial, regulatory, or environmental obligations under the contract;
- (E) any activities planned or anticipated to be required with respect to the project after completion of the contract;
- (F) the site services or other support to be provided the contractor by the Department under the contract;
- (G) the goods or services to be provided by the Department or contractor under the contract, including any additional obligations to be borne by the Department or contractor with respect to such goods or services;
- (H) if the contract provides for financing of the project by an entity or entities other than the United States, a detailed comparison of the costs of financing the project through such entity or entities with the costs of financing the project by the United States;
- (I) the schedule for the contract;
- (J) the costs the Department would otherwise have incurred in obtaining the goods or services covered by the con-

tract if the Department had not proposed to obtain the goods or services under this section;

(K) an estimate and justification of the cost savings, if any, to be realized through the contract, including the assumptions underlying the estimate;

(L) the effect of the contract on any ancillary schedules applicable to the facility concerned, including milestones in site compliance agreements; and

(M) the plans for maintaining financial and programmatic accountability for activities under the contract.

(3) In the case of a contract under subsection (a) at the Hanford Reservation, the report under paragraph (1) shall set forth—

(A) the matters specified in paragraph (2); and

(B) if the contract contemplates two pilot vitrification plants—

(i) an analysis of the basis for the selection of each of the plants in lieu of a single pilot vitrification plant; and

(ii) a detailed comparison of the costs to the United States of two pilot plants with the costs to the United States of a single pilot plant.

(c) COST VARIATIONS.—(1)(A) The Secretary may not enter into a contract for a project referred to in subparagraph (B), or obligate funds attributable to the capital portion of the cost of such a contract, whenever the current estimated cost of the project exceeds the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(B) Subparagraph (A) applies to the following:

(i) A project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85).

(ii) A project authorized by section 3103 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2824) for which a contract has not been entered into as of November 18, 1997.

(2) The Secretary may not obligate funds attributable to the capital portion of the cost of a contract entered into before such date for a project authorized by such section 3103 whenever the current estimated cost of the project equals or exceeds 110 percent of the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(d) USE OF FUNDS FOR TERMINATION OF CONTRACT.—Not later than 15 days before the Secretary obligates funds available for a project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to terminate the contract for the project under subsection (a), the Secretary shall notify the congressional defense committees of the Secretary's intent to obligate the funds for that purpose.

(e) ANNUAL REPORT ON CONTRACTS.—(1) Not later than February 28 of each year, the Secretary shall submit to the congressional defense committees a report on the activities, if any, carried out under each contract referred to in paragraph (2) during the preceding year. The report shall include an update with respect to each such contract of the matters specified under subsection (b)(1) as of the date of the report.

(2) A contract referred to in paragraph (1) is the following:

(A) A contract under subsection (a) for a project referred to in that subsection.

(B) A contract under section 3103 of the National Defense Authorization Act for Fiscal Year 1997.

(f) ASSESSMENT OF CONTRACTING WITHOUT SUFFICIENT APPROPRIATIONS.—Not later than 90 days after November 18, 1997, the Secretary shall submit to the congressional defense committees a report assessing whether, and under what circumstances, the Secretary could enter into contracts for defense environmental management privatization projects in the absence of sufficient appropriations to meet obligations under such contracts without thereby violating the provisions of section 1341 of title 31, United States Code.

### **Subtitle D—Hanford Reservation, Washington**

#### **SEC. 4441. [50 U.S.C. 2621] SAFETY MEASURES FOR WASTE TANKS AT HANFORD NUCLEAR RESERVATION.**

(a) IDENTIFICATION AND MONITORING OF TANKS.—Not later than February 3, 1991, the Secretary of Energy shall identify which single-shelled or double-shelled high-level nuclear waste tanks at the Hanford Nuclear Reservation, Richland, Washington, may have a serious potential for release of high-level waste due to uncontrolled increases in temperature or pressure. After completing such identification, the Secretary shall determine whether continuous monitoring is being carried out to detect a release or excessive temperature or pressure at each tank so identified. If such monitoring is not being carried out, as soon as practicable the Secretary shall install such monitoring, but only if a type of monitoring that does not itself increase the danger of a release can be installed.

(b) ACTION PLANS.—Not later than March 5, 1991, the Secretary of Energy shall develop action plans to respond to excessive temperature or pressure or a release from any tank identified under subsection (a).

(c) PROHIBITION.—Beginning March 5, 1991, no additional high-level nuclear waste (except for small amounts removed and returned to a tank for analysis) may be added to a tank identified under subsection (a) unless the Secretary determines that no safer alternative than adding such waste to the tank currently exists or that the tank does not pose a serious potential for release of high-level nuclear waste.

(d) REPORT.—Not later than May 5, 1991, the Secretary shall submit to Congress a report on actions taken to promote tank safety, including actions taken pursuant to this section, and the Secretary's timetable for resolving outstanding issues on how to handle the waste in such tanks.

#### **SEC. 4442. [50 U.S.C. 2622] HANFORD WASTE TANK CLEANUP PROGRAM REFORMS.**

(a) ESTABLISHMENT OF OFFICE OF RIVER PROTECTION.—The Secretary of Energy shall establish an office at the Hanford Res-

ervation, Richland, Washington, to be known as the “Office of River Protection” (in this section referred to as the “Office”).

(b) MANAGEMENT AND RESPONSIBILITIES OF OFFICE.—(1) The Office shall be headed by a senior official of the Department of Energy, who shall report to the Assistant Secretary of Energy for Environmental Management.

(2) The head of the Office shall be responsible for managing all aspects of the River Protection Project, Richland, Washington, including Hanford Tank Farm operations and the Waste Treatment Plant.

(c) DEPARTMENT RESPONSIBILITIES.—The Secretary shall provide the manager of the Office with the resources and personnel necessary to manage the tank waste privatization program at Hanford in an efficient and streamlined manner.

(d) NOTIFICATION.—The Assistant Secretary of Energy for Environmental Management shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives written notification detailing any changes in the roles, responsibilities, and reporting relationships that involve the Office.

(e) TERMINATION.—The Office shall terminate on September 30, 2019. The Office may be extended beyond that date if the Assistant Secretary of Energy for Environmental Management determines in writing that termination would disrupt effective management of the Hanford Tank Farm operations.

**SEC. 4443. [50 U.S.C. 2623] RIVER PROTECTION PROJECT.**

The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the “River Protection Project”. Any reference to that project in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.

**SEC. 4444. [50 U.S.C. 2624] FUNDING FOR TERMINATION COSTS OF RIVER PROTECTION PROJECT, RICHLAND, WASHINGTON.**

The Secretary of Energy may not use appropriated funds to establish a reserve for the payment of any costs of termination of any contract relating to the River Protection Project, Richland, Washington (as designated by section 4443), that is terminated after October 30, 2000. Such costs may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs, and not otherwise obligated; or

(3) funds appropriated specifically for the payment of such costs.

## Subtitle E—Savannah River Site, South Carolina

### SEC. 4451. [50 U.S.C. 2631] ACCELERATED SCHEDULE FOR ISOLATING HIGH-LEVEL NUCLEAR WASTE AT THE DEFENSE WASTE PROCESSING FACILITY, SAVANNAH RIVER SITE.

The Secretary of Energy shall accelerate the schedule for the isolation of high-level nuclear waste in glass canisters at the Defense Waste Processing Facility at the Savannah River Site, South Carolina, if the Secretary determines that the acceleration of such schedule—

(1) will achieve long-term cost savings to the Federal Government; and

(2) could accelerate the removal and isolation of high-level nuclear waste from long-term storage tanks at the site.

### SEC. 4452. [50 U.S.C. 2632] MULTI-YEAR PLAN FOR CLEAN-UP.

The Secretary of Energy shall develop and implement a multi-year plan for the clean-up of nuclear waste at the Savannah River Site that results, or has resulted, from the following:

(1) Nuclear weapons activities carried out at the site.

(2) The processing, treating, packaging, and disposal of Department of Energy domestic and foreign spent nuclear fuel rods at the site.

### SEC. 4453. [50 U.S.C. 2633] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H-canyon facility at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facility.

### SEC. 4453A. [50 U.S.C. 2634] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide the technical staff necessary to operate and so maintain such facilities.

### SEC. 4453B. [50 U.S.C. 2635] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.

### SEC. 4453C. [50 U.S.C. 2636] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site and shall provide technical staff necessary to operate and maintain such facilities at that state of readiness.

**SEC. 4453D. [50 U.S.C. 2637] CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.**

The Secretary shall continue operations and maintain a high state of readiness at the H-canyon facility and the F-canyon facility at the Savannah River Site, and shall provide technical staff necessary to operate and so maintain such facilities, pending the development and implementation of the plan referred to in section 4452.

**SEC. 4454. [50 U.S.C. 2638] LIMITATION ON USE OF FUNDS FOR DECOMMISSIONING F-CANYON FACILITY.**

No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F-canyon facility at the Savannah River Site until the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board, a report setting forth—

(1) an assessment whether or not all materials present in the F-canyon facility as of the date of the report that required stabilization have been safely stabilized as of that date;

(2) an assessment whether or not the requirements applicable to the F-canyon facility to meet the future needs of the United States for fissile materials disposition can be met through full use of the H-canyon facility at the Savannah River Site; and

(3) if it appears that one or more of the requirements described in paragraph (2) cannot be met through full use of the H-canyon facility—

(A) an identification by the Secretary of each such requirement that cannot be met through full use of the H-canyon facility; and

(B) for each requirement so identified, the reasons why such requirement cannot be met through full use of the H-canyon facility and a description of the alternative capability for fissile materials disposition that is needed to meet such requirement.

## **TITLE XLV—SAFEGUARDS AND SECURITY MATTERS**

### **Subtitle A—Safeguards and Security**

**SEC. 4501. [50 U.S.C. 2651] PROHIBITION ON INTERNATIONAL INSPECTIONS OF DEPARTMENT OF ENERGY FACILITIES UNLESS PROTECTION OF RESTRICTED DATA IS CERTIFIED.**

(a) **PROHIBITION ON INSPECTIONS.**—The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.

(b) EXTENSION OF NOTICE-AND-WAIT REQUIREMENT REGARDING PROPOSED COOPERATION AGREEMENTS.—[Omitted-Amendment]

[Subsection (c) repealed by section 3131(j) of division C of Public Law 112–239.]

**SEC. 4502. [50 U.S.C. 2652] RESTRICTIONS ON ACCESS TO NATIONAL SECURITY LABORATORIES BY FOREIGN VISITORS FROM SENSITIVE COUNTRIES.**

(a) BACKGROUND REVIEW REQUIRED.—The Secretary of Energy may not admit to any facility of a national security laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.

(b) MORATORIUM PENDING CERTIFICATION.—(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national security laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.

(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:

(A) January 3, 2000.

(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, of each of the following:

(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.

(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.

(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

(c) WAIVER OF MORATORIUM.—(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of indi-

viduals whose admission to a national security laboratory is determined by the Secretary to be in the interest of the national security of the United States.

(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:

(A) A detailed justification for the waiver.

(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.

(C) The Secretary's certification that the admission of that individual or delegation to a national security laboratory is in the interest of the national security of the United States.

(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

(d) EXCEPTION TO MORATORIUM FOR CERTAIN INDIVIDUALS.—The moratorium under subsection (b) shall not apply to any person who—

(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and

(2) has undergone a background review in accordance with subsection (a).

(e) EXCEPTION TO MORATORIUM FOR CERTAIN PROGRAMS.—The moratorium under subsection (b) shall not apply—

(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or

(2) to the materials protection control and accounting program of the Department.

(f) SENSE OF CONGRESS REGARDING BACKGROUND REVIEWS.—It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "background review", commonly known as an indices check, means a review of information provided by the Director of National Intelligence and the Director of the Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

(2) The term “sensitive countries list” means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.

**SEC. 4503. [50 U.S.C. 2653] BACKGROUND INVESTIGATIONS OF CERTAIN PERSONNEL AT DEPARTMENT OF ENERGY FACILITIES.**

The Secretary of Energy shall ensure that an investigation meeting the requirements of section 145 of the Atomic Energy Act of 1954 (42 U.S.C. 2165) is made for each Department of Energy employee, or contractor employee, at a national security laboratory or nuclear weapons production facility who—

- (1) carries out duties or responsibilities in or around a location where Restricted Data is present; or
- (2) has or may have regular access to a location where Restricted Data is present.

**SEC. 4504. [50 U.S.C. 2654] DEPARTMENT OF ENERGY COUNTERINTELLIGENCE POLYGRAPH PROGRAM.**

(a) **NEW COUNTERINTELLIGENCE POLYGRAPH PROGRAM REQUIRED.**—The Secretary of Energy shall carry out, under regulations prescribed under this section, a new counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.

(b) **AUTHORITIES AND LIMITATIONS.**—(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.

(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rulemaking for the new program.

(c) **REPEAL OF EXISTING POLYGRAPH PROGRAM.**—Effective 30 days after the Secretary submits to the congressional defense committees the Secretary’s certification that the final rule for the new counterintelligence polygraph program required by subsection (a) has been fully implemented, section 4504A is repealed.

(d) **REPORT ON FURTHER ENHANCEMENT OF PERSONNEL SECURITY PROGRAM.**—(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.

(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

(e) **POLYGRAPH REVIEW DEFINED.**—In this section, the term “Polygraph Review” means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

**SEC. 4505. [50 U.S.C. 2656] NOTICE TO CONGRESSIONAL COMMITTEES OF CERTAIN SECURITY AND COUNTERINTELLIGENCE FAILURES WITHIN ATOMIC ENERGY DEFENSE PROGRAMS.**

(a) **REQUIRED NOTIFICATION.**—The Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each significant atomic energy defense intelligence loss. Any such notification shall be provided only after consultation with the Director of National Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.

(b) **SIGNIFICANT ATOMIC ENERGY DEFENSE INTELLIGENCE LOSSES.**—<sup>1</sup> In this section, the term “significant atomic energy defense intelligence loss” means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.

(c) **MANNER OF NOTIFICATION.**—Notification of a significant atomic energy defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.

(d) **PROCEDURES.**—The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(e) **STATUTORY CONSTRUCTION.**—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413) for the President to ensure that the congressional intelligence committees are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.

<sup>1</sup> Section 3131(m)(1)(B) of division C of Public Law 112–239 provides for an amendment to strike “NUCLEAR” and insert “ATOMIC ENERGY”. The casing of the matter being struck and the inserted should have appeared in uppercase initial large cap letters (i.e. “[N]UCLEAR” and “[A]TOMIC [E]NERGY”). Such amendment was carried out and conformed with the existing casing of the other words in the heading in order to reflect the probable intent of Congress.

**SEC. 4506. [50 U.S.C. 2657] SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES.**

Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees the report entitled "Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities", or any successor report to such report.<sup>1</sup>

**SEC. 4507. [50 U.S.C. 2658] REPORT ON COUNTERINTELLIGENCE AND SECURITY PRACTICES AT NATIONAL SECURITY LABORATORIES.**

(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national security laboratories (whether or not classified activities are carried out at the facility).

(b) CONTENT OF REPORT.—The report shall include, with respect to each national security laboratory, the following:

(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.

(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.

(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.

(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).

(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.

**SEC. 4508. [50 U.S.C. 2659] REPORT ON SECURITY VULNERABILITIES OF NATIONAL SECURITY LABORATORY COMPUTERS.**

(a) REPORT REQUIRED.—Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national security laboratories.

(b) PREPARATION OF REPORT.—In preparing the report, the National Counterintelligence Policy Board shall establish a so-called "red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national security laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.

<sup>1</sup>Section 3141(h)(7)(D) of Public Law 108-136, which directed the amendment of section 4506(b), could not be executed because of the repeal of subsection (b) by Public Law 106-65.

(c) SUBMISSION OF REPORT TO SECRETARY OF ENERGY AND TO FBI DIRECTOR.—Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.

(d) FORWARDING TO CONGRESSIONAL COMMITTEES.—Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:

(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 4509. DESIGN AND USE OF PROTOTYPES OF NUCLEAR WEAPONS FOR INTELLIGENCE PURPOSES.**

(a) PROTOTYPES.—The Administrator shall develop and carry out a plan for the national security laboratories and nuclear weapons production facilities to design and build prototypes of nuclear weapons to further intelligence estimates with respect to foreign nuclear weapons activities.

(b) PROHIBITION ON PRODUCTION OF NUCLEAR YIELDS.—In carrying out subsection (a), the Administrator may not conduct any experiments that produce a nuclear yield.

## Subtitle B—Classified Information

**SEC. 4521. [50 U.S.C. 2671] REVIEW OF CERTAIN DOCUMENTS BEFORE DECLASSIFICATION AND RELEASE.**

(a) IN GENERAL.—The Secretary of Energy shall ensure that, before a document of the Department of Energy that contains national security information is released or declassified, such document is reviewed to determine whether it contains restricted data.

(b) LIMITATION ON DECLASSIFICATION.—The Secretary may not implement the automatic declassification provisions of Executive Order 12958 if the Secretary determines that such implementation could result in the automatic declassification and release of documents containing restricted data.

**SEC. 4522. [50 U.S.C. 2672] PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.**

(a) PLAN FOR PROTECTION AGAINST RELEASE.—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 12958 (50 U.S.C. 435 note).

(b) PLAN ELEMENTS.—The plan under subsection (a) shall include the following:

(1) The actions to be taken in order to ensure that records subject to Executive Order No. 12958 are reviewed on a page-by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.

(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.

(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.

(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.

(7) The funding, personnel, and other resources required to carry out the plan.

(8) A timetable for implementation of the plan.

(c) LIMITATION ON DECLASSIFICATION OF CERTAIN RECORDS.—

(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.

(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.

(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified in the plan pursuant to subsection (b)(1), to be a record that is highly unlikely to contain Restricted Data or Formerly Restricted Data.

(d) SUBMISSION OF PLAN.—The Secretary of Energy shall submit the plan required under subsection (a) to the following:

(1) The Committee on Armed Services of the Senate.

(2) The Committee on Armed Services of the House of Representatives.

(3) The Assistant to the President for National Security Affairs.

(e) SUBMISSION OF REVIEWS.—The Secretary of Energy shall, in each even-numbered year, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to subsection (b)(5) to the committees and Assistant to the President specified in subsection (d).

(f) REPORT AND NOTIFICATION REGARDING INADVERTENT RELEASES.—(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.

(2) The Secretary of Energy shall, in each even-numbered year beginning in 2010, submit to the committees and Assistant to the President specified in subsection (d) a report identifying any inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 discovered in the two-year period preceding the submittal of the report.

(g) DEFINITION.—In this section, the term “Restricted Data” has the meaning given that term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

**SEC. 4523. [50 U.S.C. 2673] SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.**

(a) SUPPLEMENT TO PLAN.—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 4522.

(b) CONTENTS OF SUPPLEMENT.—The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 4522) to all records subject to Executive Order No. 12958 that were determined before October 17, 1998, to be suitable for declassification.

(c) LIMITATION ON DECLASSIFICATION OF RECORDS.—All records referred to in subsection (b) shall be treated, for purposes of subsection (a) of section 4522, in the same manner as records referred to in subsection (a) of such section.

(d) SUBMISSION OF SUPPLEMENT.—The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in subsection (d) of section 4522.

**SEC. 4524. [50 U.S.C. 2674] PROTECTION OF CLASSIFIED INFORMATION DURING LABORATORY-TO-LABORATORY EXCHANGES.**

(a) PROVISION OF TRAINING.—The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.

(b) COUNTERING OF ESPIONAGE AND INTELLIGENCE-GATHERING ABROAD.—(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Depart-

ment contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

**SEC. 4525. [50 U.S.C. 2675] IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES.**

(a) AMOUNTS FOR DECLASSIFICATION OF RECORDS.—The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.

(b) CERTIFICATION REQUIRED WITH RESPECT TO AUTOMATIC DECLASSIFICATION OF RECORDS.—No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.

(c) REPORT ON AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF ENERGY RECORDS.—Not later than February 1, 2001, the Secretary of Energy shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:

(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.

(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.

(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.

## Subtitle C—Emergency Response

### SEC. 4541. [50 U.S.C. 2691] RESPONSIBILITY FOR DEFENSE PROGRAMS EMERGENCY RESPONSE PROGRAM.

The Office of Military Applications under the Assistant Secretary of Energy for Defense Programs shall retain responsibility for the Defense Programs Emergency Response Program within the Department of Energy.

## TITLE XLVI—PERSONNEL MATTERS

### Subtitle A—Personnel Management

#### SEC. 4601. [50 U.S.C. 2701] AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

(a) **AUTHORITY.**—(1) Notwithstanding any provision of title 5, United States Code, governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

(B) appoint persons to such positions.

(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.

(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.

(b) **OPM REVIEW.**—(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5, United States Code.

(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5, United States Code, or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved; or

(B) cease appointment of persons under such authority.

(c) TERMINATION.—(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2016.

(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).

**SEC. 4602. [50 U.S.C. 2702] WHISTLEBLOWER PROTECTION PROGRAM.**

(a) PROGRAM REQUIRED.—The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

(b) COVERED INDIVIDUALS.—For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

(c) PROTECTED DISCLOSURES.—For purposes of this section, a protected disclosure is a disclosure—

(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;

(2) made to a person or entity specified in subsection (d); and

(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:

(A) A violation of law or Federal regulation.

(B) Gross mismanagement, a gross waste of funds, or abuse of authority.

(C) A false statement to Congress on an issue of material fact.

(d) PERSONS AND ENTITIES TO WHICH DISCLOSURES MAY BE MADE.—A person or entity specified in this subsection is any of the following:

(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.

(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.

(3) The Inspector General of the Department of Energy.

(4) The Federal Bureau of Investigation.

(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

(e) OFFICIAL CAPACITY OF PERSONS TO WHOM INFORMATION IS DISCLOSED.—A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d)

who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.

(f) ASSISTANCE AND GUIDANCE.—The Secretary, acting through the Inspector General of the Department of Energy, shall provide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.

(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.

(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.

(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

(g) REGULATIONS.—The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

(h) NOTIFICATION TO COVERED INDIVIDUALS.—The Secretary shall notify each covered individual of the following:

(1) The rights of that individual under this section.

(2) The assistance and guidance provided under this section.

(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

(i) COMPLAINT BY COVERED INDIVIDUALS.—If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

(j) INVESTIGATION BY OFFICE OF HEARINGS AND APPEALS.—(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—

(A) determine whether or not the complaint is frivolous; and

(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.

(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—

(A) the individual who submitted the complaint on which the investigation is based;

(B) the contractor concerned, if any; and

(C) the Secretary of Energy.

(k) REMEDIAL ACTION.—(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—

(A) in the case of a Department employee, take appropriate actions to abate the action; or

(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.

(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(1) RELATIONSHIP TO OTHER LAWS.—The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–512) or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

(m) ANNUAL REPORT.—(1) Not later than 30 days after the commencement of each fiscal year, the Director shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

(n) IMPLEMENTATION REPORT.—Not later than December 5, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the implementation of the program required by this section.

**SEC. 4603. [50 U.S.C. 2703] EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE PROJECT FACILITIES.**

(a) AUTHORITY TO PROVIDE INCENTIVES.—Notwithstanding any other provision of law, the Secretary of Energy may provide to any eligible employee of the Department of Energy one or more of the incentives described in subsection (d).

(b) ELIGIBLE EMPLOYEES.—An individual is an eligible employee of the Department of Energy for purposes of this section if the individual—

(1) has worked continuously at a closure facility for at least two years;

(2) is an employee (as that term is defined in section 2105(a) of title 5, United States Code);

(3) has a fully satisfactory or equivalent performance rating during the most recent performance period and is not subject to an adverse notice regarding conduct; and

(4) meets any other requirement or condition under subsection (d) for the incentive which is provided the employee under this section.

(c) CLOSURE FACILITY DEFINED.—For purposes of this section, the term “closure facility” means a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421.

(d) INCENTIVES.—The incentives that the Secretary may provide under this section are the following:

(1) The right to accumulate annual leave provided by section 6303 of title 5, United States Code, for use in succeeding years until it totals not more than 90 days, or not more than 720 hours based on a standard work week, at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, except that—

(A) any annual leave that remains unused when an employee transfers to a position in a department or agency of the Federal Government shall be liquidated upon the transfer by payment to the employee of a lump sum for leave in excess of 30 days, or in excess of 240 hours based on a standard work week; and

(B) upon separation from service, annual leave accumulated under this paragraph shall be treated as any other accumulated annual leave is treated.

(2) The right to be paid a retention allowance in a lump sum in compliance with paragraphs (1) and (2) of section 5754(b) of title 5, United States Code, if the employee meets the requirements of section 5754(a) of that title, except that the retention allowance may exceed 25 percent, but may not be more than 30 percent, of the employee's rate of basic pay.

(e) AGREEMENT.—An eligible employee of the Department of Energy provided an incentive under this section shall enter into an agreement with the Secretary to remain employed at the closure facility at which the employee is employed as of the date of the agreement until a specific date or for a specific period of time.

(f) VIOLATION OF AGREEMENT.—(1) Except as provided under paragraph (3), an eligible employee of the Department of Energy who violates an agreement under subsection (e), or is dismissed for cause, shall forfeit eligibility for any incentives under this section as of the date of the violation or dismissal, as the case may be.

(2) Except as provided under paragraph (3), an eligible employee of the Department of Energy who is paid a retention allowance under subsection (d)(2) and who violates an agreement under subsection (e), or is dismissed for cause, before the end of the period or date of employment agreed upon under such agreement shall refund to the United States an amount that bears the same ratio to the aggregate amount so paid to or received by the employee as the unserved part of such employment bears to the total period of employment agreed upon under such agreement.

(3) The Secretary may waive the applicability of paragraph (1) or (2) to an employee otherwise covered by such paragraph if the Secretary determines that there is good and sufficient reason for the waiver.

(g) REPORT.—The Secretary shall include in each report on a closure project under section 4421(h) a report on the incentives, if any, provided under this section with respect to the project for the period covered by such report.

(h) AUTHORITY WITH RESPECT TO HEALTH COVERAGE.—[Omitted-Amendment]

## (i) AUTHORITY WITH RESPECT TO VOLUNTARY SEPARATIONS.—

(1) The Secretary may—

(A) separate from service any employee at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421 who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary determines that such participation would impair the performance of the mission of the Department of Energy.

(j) TERMINATION.—The authority to provide incentives under this section terminates on March 31, 2007.

**SEC. 4604. [50 U.S.C. 2704] DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES WORKFORCE RESTRUCTURING PLAN.**

(a) IN GENERAL.—Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

(1) the reconfiguration of the defense nuclear facility; and

(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) CONSULTATION.—(1) In developing a plan referred to in subsection (a), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) OBJECTIVES.—In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the workforce at a Department of Energy defense nuclear facility—

(A) should be accomplished so as to minimize social and economic impacts;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

(A) programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101-510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).

(d) IMPLEMENTATION.—The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).

(e) SUBMITTAL TO CONGRESS.—(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.

(2) In addition to the plans submitted under paragraph (1), the Secretary shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under subsection (c)(6).

(f) DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITY DEFINED.—In this section, the term “Department of Energy defense nuclear facility” means—

(1) a production facility or utilization facility (as those terms are defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;<sup>2</sup>

(2) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

(3) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada National Security Site, Nevada and the Pantex facility, Texas);

(4) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

(5) any facility described in paragraphs (1) through (4) that—

(A) is no longer in operation;

(B) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

(C) was operated for national security purposes.

**SEC. 4605. [50 U.S.C. 2705] AUTHORITY TO PROVIDE CERTIFICATE OF COMMENDATION TO DEPARTMENT OF ENERGY AND CONTRACTOR EMPLOYEES FOR EXEMPLARY SERVICE IN STOCKPILE STEWARDSHIP AND SECURITY.**

(a) **AUTHORITY TO PRESENT CERTIFICATE OF COMMENDATION.**—The Secretary of Energy may present a certificate of commendation to any current or former employee of the Department of Energy, and any current or former employee of a Department contractor, whose service to the Department in matters relating to stockpile stewardship and security assisted the Department in furthering the national security interests of the United States.

(b) **CERTIFICATE.**—The certificate of commendation presented to a current or former employee under subsection (a) shall include an appropriate citation of the service of the current or former employee described in that subsection, including a citation for dedication, intellect, and sacrifice in furthering the national security interests of the United States by maintaining a strong, safe, and viable United States nuclear deterrent during the Cold War or thereafter.

(c) **DEPARTMENT OF ENERGY DEFINED.**—For purposes of this section, the term “Department of Energy” includes any predecessor agency of the Department of Energy.

<sup>2</sup>The text of the executive order is set out in this volume under Selected Other Matters.

## Subtitle B—Education and Training

### SEC. 4621. [50 U.S.C. 2721] EXECUTIVE MANAGEMENT TRAINING IN THE DEPARTMENT OF ENERGY.

(a) ESTABLISHMENT OF TRAINING PROGRAM.—The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.

(b) TRAINING PROVISIONS.—The training program shall at a minimum include instruction in the following areas:

(1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.

(2) Methods of evaluating technical performance.

(3) Federal and State environmental laws and requirements for compliance with such environmental laws, including timely compliance with reporting requirements in such laws.

(4) The establishment of program milestones and methods to evaluate success in meeting such milestones.

(5) Methods for conducting long-range technical and budget planning.

(6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.

### SEC. 4622. [50 U.S.C. 2722] STOCKPILE STEWARDSHIP RECRUITMENT AND TRAINING PROGRAM.

(a) CONDUCT OF PROGRAM.—As part of the stockpile stewardship program established pursuant to section 4201, the Secretary of Energy shall conduct a stockpile stewardship recruitment and training program at the Sandia National Laboratories, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

(b) SUPPORT OF DUAL-USE PROGRAMS.—As part of the recruitment and training program, the directors of the laboratories referred to in subsection (a)(1) may employ undergraduate students, graduate students, and postdoctoral fellows to carry out research sponsored by such laboratories for military or nonmilitary dual-use programs related to nuclear weapons stockpile stewardship.

(c) ESTABLISHMENT OF RETIREE CORPS.—As part of the training and recruitment program, the Secretary, in coordination with the directors of the laboratories referred to in subsection (a)(1), shall establish for the laboratories a retiree corps of retired scientists who have expertise in research and development of nuclear weapons. The directors may employ the retired scientists on a part-time basis to provide appropriate assistance on nuclear weapons issues, to contribute relevant information to be archived, and to help to provide training to other scientists.

### SEC. 4623. [50 U.S.C. 2723] FELLOWSHIP PROGRAM FOR DEVELOPMENT OF SKILLS CRITICAL TO THE NUCLEAR SECURITY ENTERPRISE.

(a) IN GENERAL.—The Secretary of Energy shall conduct a fellowship program for the development of skills critical to the ongoing mission of the nuclear security enterprise. Under the fellowship program, and research assistance to eligible individuals to facilitate

the development by such individuals of skills critical to maintaining the ongoing mission of the nuclear security enterprise.

(b) **ELIGIBLE INDIVIDUALS.**—Individuals eligible for participation in the fellowship program are United States citizens who are the following:

(1) Students pursuing graduate degrees in fields of science or engineering that are related to nuclear weapons engineering or to the science and technology base of the Department of Energy.

(2) Individuals engaged in postdoctoral studies in such fields.

(c) **COVERED FACILITIES.**—The Secretary shall carry out the fellowship program at or in connection with the national security laboratories and nuclear weapons production facilities.

(d) **ADMINISTRATION.**—The Secretary shall carry out the fellowship program at a facility referred to in subsection (c) through the stockpile manager of the facility.

(e) **ALLOCATION OF FUNDS.**—The Secretary shall, in consultation with the Assistant Secretary of Energy for Defense Programs, allocate funds available for the fellowship program under subsection (f) among the facilities referred to in subsection (c). The Secretary shall make the allocation after evaluating an assessment by the weapons program director of each such facility of the personnel and critical skills necessary at the facility for carrying out the ongoing mission of the facility.

(f) **AGREEMENT.**—(1) The Secretary may allow an individual to participate in the program only if the individual signs an agreement described in paragraph (2).

(2) An agreement referred to in paragraph (1) shall be in writing, shall be signed by the participant, and shall include the participant's agreement to serve, after completion of the course of study for which the assistance was provided, as a full-time employee in a position in the nuclear security enterprise for a period of time to be established by the Secretary of Energy of not less than one year, if such a position is offered to the participant.

## Subtitle C—Worker Safety

### SEC. 4641. [50 U.S.C. 2731] WORKER PROTECTION AT NUCLEAR WEAPONS FACILITIES.

(a) **TRAINING GRANT PROGRAM.**—(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—

(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) to develop curricula for such training and education.

(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—

(i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and

(ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.

(B) The Secretary shall give preference in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a).

(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.

(b) ENFORCEMENT OF EMPLOYEE SAFETY STANDARDS.—(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—

(A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).

(2) Civil penalties assessed under this subsection may not exceed \$5,000 for each day in which a failure referred to in paragraph (1)(B) occurs.

(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(d) DEFINITIONS.—For the purposes of this section, the term “hazardous substance” includes radioactive waste and mixed radioactive and hazardous waste.

(e) FUNDING.—Of the funds authorized to be appropriated pursuant to section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), \$10,000,000 may be used for the purpose of carrying out this section.

**SEC. 4642. [50 U.S.C. 2732] SAFETY OVERSIGHT AND ENFORCEMENT AT DEFENSE NUCLEAR FACILITIES.**

(a) SAFETY AT DEFENSE NUCLEAR FACILITIES.—The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include activities relating to—

- (A) the assessment of the safety of defense nuclear facilities;
- (B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;
- (C) the provision to the Secretary of oversight reports that—
- (i) contain validated technical information; and
  - (ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and
- (D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);
- (3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and
- (4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.
- (b) REPORT.—Not later than January 5, 1995, the Secretary shall submit to Congress a report describing the following:
- (1) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).
  - (2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.
  - (3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:
    - (A) The Associate Deputy Secretary of Energy for Field Management.
    - (B) The Assistant Secretary of Energy for Defense Programs.
    - (C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

**SEC. 4643. [50 U.S.C. 2733] PROGRAM TO MONITOR DEPARTMENT OF ENERGY WORKERS EXPOSED TO HAZARDOUS AND RADIOACTIVE SUBSTANCES.**

- (a) IN GENERAL.—The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.
- (b) IMPLEMENTATION OF PROGRAM.—(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement

the program. Such regulations shall, to the extent practicable, provide for a process to—

(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

(F) ensure that employee participation in the program is voluntary.

(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

(A) The American College of Occupational and Environmental Medicine.

(B) The National Academy of Sciences.

(C) The National Council on Radiation Protection.

(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.

(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

(6) The Secretary shall commence carrying out the program described in this subsection not later than October 23, 1993.

(c) AGREEMENT WITH SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than April 23, 1993, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

(d) DEFINITIONS.—In this section:

(1) The term “Department of Energy defense nuclear facility” has the meaning given that term in section 4604(f).

(2) The term “Department of Energy employee” means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

**SEC. 4644. [50 U.S.C. 2734] PROGRAMS FOR PERSONS WHO MAY HAVE BEEN EXPOSED TO RADIATION RELEASED FROM HANFORD NUCLEAR RESERVATION.**

(a) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), the Secretary of Energy shall make available \$3,000,000 to the State of Washington, \$1,000,000 to the State of Oregon, and \$1,000,000 to the State of Idaho. Such funds shall be used to develop and implement programs for the benefit of persons who may have been exposed to radiation released from the Department of Energy Hanford Nuclear Reservation (Richland, Washington) between the years 1944 and 1972.

(b) PROGRAMS.—The programs to be developed by the States may include only the following activities:

(1) Preparing and distributing information on the health effects of radiation to health care professionals, and to persons who may have been exposed to radiation.

(2) Developing and implementing mechanisms for referring persons who may have been exposed to radiation to health care professionals with expertise in the health effects of radiation.

(3) Evaluating and, if feasible, implementing, registration and monitoring of persons who may have been exposed to radiation released from the Hanford Nuclear Reservation.

(c) PLAN AND REPORTS.—(1) The States of Washington, Oregon, and Idaho shall jointly develop a single plan for implementing this section.

(2) Not later than May 5, 1991, such States shall submit to the Secretary of Energy and the Congress a copy of the plan developed under paragraph (1).

(3) Not later than May 5, 1992, such States shall submit to the Secretary of Energy and the Congress a single report on the implementation of the plan developed under paragraph (1).

(4) In developing and implementing the plan, such States shall consult with persons carrying out current radiation dose and epidemiological research programs (including the Hanford Thyroid Dis-

ease Study of the Centers for Disease Control and the Hanford Environmental Dose Reconstruction Project of the Department of Energy), and may not cause substantial damage to such research programs.

(d) PROHIBITION ON DISCLOSURE OF EXPOSURE INFORMATION.—  
(1) Except as provided in paragraph (2), a person may not disclose to the public the following:

(A) Any information obtained through a program that identifies a person who may have been exposed to radiation released from the Hanford Nuclear Reservation.

(B) Any information obtained through a program that identifies a person participating in any of the programs developed under this section.

(C) The name, address, and telephone number of a person requesting information referred to in subsection (b)(1).

(D) The name, address, and telephone number of a person who has been referred to a health care professional under subsection (b)(2).

(E) The name, address, and telephone number of a person who has been registered and monitored pursuant to subsection (b)(3).

(F) Information that identifies the person from whom information referred to in this paragraph was obtained under a program or any other third party involved with, or identified by, any such information so obtained.

(G) Any other personal or medical information that identifies a person or party referred to in subparagraphs (A) through (F).

(H) Such other information or categories of information as the chief officers of the health departments of the States of Washington, Oregon, and Idaho jointly designate as information covered by this subsection.

(2) Information referred to in paragraph (1) may be disclosed to the public if the person identified by the information, or the legal representative of that person, has consented in writing to the disclosure.

(3) The States of Washington, Oregon, and Idaho shall establish uniform procedures for carrying out this subsection, including procedures governing the following:

(A) The disclosure of information under paragraph (2).

(B) The use of the Hanford Health Information Network database.

(C) The future disposition of the database.

(D) Enforcement of the prohibition provided in paragraph (1) on the disclosure of information described in that paragraph.

**SEC. 4645. [50 U.S.C. 2735] USE OF PROBABILISTIC RISK ASSESSMENT TO ENSURE NUCLEAR SAFETY OF FACILITIES OF THE ADMINISTRATION AND THE OFFICE OF ENVIRONMENTAL MANAGEMENT.**

(a) NUCLEAR SAFETY AT NNSA AND DOE FACILITIES.—The Administrator and the Secretary of Energy shall ensure that the methods for assessing, certifying, and overseeing nuclear safety at the facilities specified in subsection (c) use national and inter-

national standards and nuclear industry best practices, including probabilistic or quantitative risk assessment if sufficient data exist.

(b) ADEQUATE PROTECTION.—The use of probabilistic or quantitative risk assessment under subsection (a) shall be to support, rather than replace, the requirement under section 182 of the Atomic Energy Act of 1954 (42 U.S.C. 2232) that the utilization or production of special nuclear material will be in accordance with the common defense and security and will provide adequate protection to the health and safety of the public.

(c) FACILITIES SPECIFIED.—Subsection (a) shall apply—

(1) to the Administrator with respect to the national security laboratories and the nuclear weapons production facilities; and

(2) to the Secretary of Energy with respect to defense nuclear facilities of the Office of Environmental Management of the Department of Energy.

**SEC. 4646. [50 U.S.C. 2736] NOTIFICATION OF NUCLEAR CRITICALITY AND NON-NUCLEAR INCIDENTS.**

(a) NOTIFICATION.—The Secretary of Energy and the Administrator, as the case may be, shall submit to the appropriate congressional committees a notification of a nuclear criticality incident resulting from a covered program that results in an injury or fatality or results in the shutdown, or partial shutdown, of a covered facility by not later than 15 days after the date of such incident.

(b) ELEMENTS OF NOTIFICATION.—Each notification submitted under subsection (a) shall include the following:

(1) A description of the incident, including the cause of the incident.

(2) In the case of a criticality incident, whether the incident caused a facility, or part of a facility, to be shut down.

(3) The effect, if any, on the mission of the Administration or the Office of Environmental Management of the Department of Energy.

(4) Any corrective action taken in response to the incident.

(c) DATABASE.—(1) The Secretary shall maintain a record of incidents described in paragraph (2).

(2) An incident described in this paragraph is any of the following incidents resulting from a covered program:

(A) A nuclear criticality incident that results in an injury or fatality or results in the shutdown, or partial shutdown, of a covered facility.

(B) A non-nuclear incident that results in serious bodily injury or fatality at a covered facility.

(d) COOPERATION.—In carrying out this section, the Secretary and the Administrator shall ensure that each management and operating contractor of a covered facility cooperates in a timely manner.

(e) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means—

(A) the congressional defense committees; and

(B) the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

- (2) The term “covered facility” means—
- (A) a facility of the nuclear security enterprise; and
  - (B) a facility conducting activities for the defense environmental cleanup program of the Office of Environmental Management of the Department of Energy.
- (3) The term “covered program” means—
- (A) programs of the Administration; and
  - (B) defense environmental cleanup programs of the Office of Environmental Management of the Department of Energy.

## TITLE XLVII—BUDGET AND FINANCIAL MANAGEMENT MATTERS

### Subtitle A—Recurring National Security Authorization Provisions

#### SEC. 4701. [50 U.S.C. 2741] DEFINITIONS.

In this subtitle:

- (1) The term “DOE national security authorization” means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.
- (2) The term “congressional defense committees” means—
- (A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and
  - (B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.
- (3) The term “minor construction threshold” means \$10,000,000.

#### SEC. 4702. [50 U.S.C. 2742] REPROGRAMMING.

(a) IN GENERAL.—Except as provided in subsection (b) and in sections 4710 and 4711, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

- (1) in amounts that exceed, in a fiscal year—
- (A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or
  - (B) \$5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or
- (2) which has not been presented to, or requested of, Congress.

(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

- (1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and
- (2) a period of 30 days has elapsed after the date on which such committees receive the report.

(c) REPORT.—The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to

be taken and the facts and circumstances relied upon in support of the proposed action.

(d) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(e) LIMITATIONS.—

(1) TOTAL AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) PROHIBITED ITEMS.—Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

**SEC. 4703. [50 U.S.C. 2743] MINOR CONSTRUCTION PROJECTS.**

(a) AUTHORITY.—Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

(b) ANNUAL REPORT.—The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) COST VARIATION REPORTS TO CONGRESSIONAL COMMITTEES.—If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) MINOR CONSTRUCTION PROJECT DEFINED.—In this section, the term “minor construction project” means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

**SEC. 4704. [50 U.S.C. 2744] LIMITS ON CONSTRUCTION PROJECTS.**

(a) CONSTRUCTION COST CEILING.—Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

(1) the amount authorized for the project; or

(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

(1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and

(2) a period of 30 days has elapsed after the date on which the report is received by the committees.

(c) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(d) EXCEPTION FOR MINOR PROJECTS.—Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

**SEC. 4705. [50 U.S.C. 2745] FUND TRANSFER AUTHORITY.**

(a) TRANSFER TO OTHER FEDERAL AGENCIES.—The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) TRANSFER WITHIN DEPARTMENT OF ENERGY.—

(1) TRANSFERS PERMITTED.—Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) MAXIMUM AMOUNTS.—Not more than 5 percent of any such authorization may be transferred to another authorization under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) LIMITATIONS.—The authority provided by this subsection to transfer authorizations—

(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and

(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) NOTICE TO CONGRESS.—The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

**SEC. 4706. [50 U.S.C. 2746] CONCEPTUAL AND CONSTRUCTION DESIGN.**

(a) CONCEPTUAL DESIGN.—

(1) REQUIREMENT.—Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the

Secretary of Energy shall complete a conceptual design for that project.

(2) **REQUESTS FOR CONCEPTUAL DESIGN FUNDS.**—If the estimated cost of completing a conceptual design for a construction project exceeds \$3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) **EXCEPTIONS.**—The requirement in paragraph (1) does not apply to a request for funds—

(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

(B) for emergency planning, design, and construction activities under section 4707.

(b) **CONSTRUCTION DESIGN.**—

(1) **AUTHORITY.**—Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed \$600,000.

(2) **LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN PROJECTS.**—If the total estimated cost for construction design in connection with any construction project exceeds \$600,000, funds for that design must be specifically authorized by law.

**SEC. 4707. [50 U.S.C. 2747] AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.**

(a) **AUTHORITY.**—The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) **LIMITATION.**—The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) **SPECIFIC AUTHORITY.**—The requirement of section 4706(b)(2) does not apply to emergency planning, design, and construction activities conducted under this section.

**SEC. 4708. [50 U.S.C. 2748] SCOPE OF AUTHORITY TO CARRY OUT PLANT PROJECTS.**

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

**SEC. 4709. [50 U.S.C. 2749] AVAILABILITY OF FUNDS.**

(a) **IN GENERAL.**—Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

(b) **EXCEPTION FOR PROGRAM DIRECTION FUNDS.**—Amounts appropriated for program direction pursuant to a DOE national security authorization for a fiscal year shall remain available to be obligated only until the end of that fiscal year.

**SEC. 4710. [50 U.S.C. 2750] TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.**

(a) **TRANSFER AUTHORITY FOR DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.**—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) **LIMITATIONS.**—

(1) **NUMBER OF TRANSFERS.**—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) **AMOUNTS TRANSFERRED.**—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) **DETERMINATION REQUIRED.**—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) **IMPERMISSIBLE USES.**—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) **EXEMPTION FROM REPROGRAMMING REQUIREMENTS.**—The requirements of section 4702 shall not apply to transfers of funds pursuant to subsection (a).

(d) **NOTIFICATION.**—The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) **DEFINITIONS.**—In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated.

(2) The term “defense environmental management funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restora-

tion and waste management activities necessary for national security programs.

**SEC. 4711. [50 U.S.C. 2751] TRANSFER OF WEAPONS ACTIVITIES FUNDS.**

(a) **TRANSFER AUTHORITY FOR WEAPONS ACTIVITIES FUNDS.**—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) **LIMITATIONS.**—

(1) **NUMBER OF TRANSFERS.**—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) **AMOUNTS TRANSFERRED.**—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) **DETERMINATION REQUIRED.**—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

(A) is necessary to address a risk to health, safety, or the environment; or

(B) will result in cost savings and efficiencies.

(4) **LIMITATION.**—A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) **IMPERMISSIBLE USES.**—Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) **EXEMPTION FROM REPROGRAMMING REQUIREMENTS.**—The requirements of section 4702 shall not apply to transfers of funds pursuant to subsection (a).

(d) **NOTIFICATION.**—The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) **DEFINITIONS.**—In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.

(2) The term “weapons activities funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

**SEC. 4712. [50 U.S.C. 2752] FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.**

Subject to the provisions of appropriation Acts and section 4702, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connec-

tion with all national security programs of the Department of Energy.

**SEC. 4713. [50 U.S.C. 2753] NOTIFICATION OF COST OVERRUNS FOR CERTAIN DEPARTMENT OF ENERGY PROJECTS.**

(a) ESTABLISHMENT OF COST AND SCHEDULE BASELINES.—

(1) STOCKPILE LIFE EXTENSION PROJECTS.—

(A) IN GENERAL.—The Administrator shall establish a cost and schedule baseline for each nuclear stockpile life extension project of the Administration.

(B) PER UNIT COST.—The cost baseline developed under subparagraph (A) shall include, with respect to each life extension project, an estimated cost for each warhead in the project.

(C) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

(2) DEFENSE-FUNDED CONSTRUCTION PROJECTS.—

(A) IN GENERAL.—The Secretary of Energy shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each construction project that is—

(i) in excess of \$50,000,000; and

(ii) carried out by the Department using funds authorized to be appropriated for a fiscal year pursuant to a DOE national security authorization.

(B) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(3) DEFENSE ENVIRONMENTAL MANAGEMENT PROJECTS.—

(A) IN GENERAL.—The Secretary shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each defense environmental management project that is—

(i) in excess of \$50,000,000; and

(ii) carried out by the Department pursuant to such protocols.

(B) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(b) NOTIFICATION OF COSTS EXCEEDING BASELINE.—The Administrator or the Secretary, as applicable, shall notify the congressional defense committees not later than 30 days after determining that—

- (1) the total cost for a project referred to in paragraph (1), (2), or (3) of subsection (a) will exceed an amount that is equal to 125 percent of the cost baseline established under subsection (a) for that project; and

(2) in the case of a stockpile life extension project referred to in subsection (a)(1), the cost for any warhead in the project will exceed an amount that is equal to 200 percent of the cost baseline established under subsection (a)(1)(B) for each warhead in that project.

(c) NOTIFICATION OF DETERMINATION WITH RESPECT TO TERMINATION OR CONTINUATION OF PROJECTS.—Not later than 90 days after submitting a notification under subsection (b) with respect to a project, the Administrator or the Secretary, as applicable, shall—

(1) notify the congressional defense committees with respect to whether the project will be terminated or continued; and

(2) if the project will be continued, certify to the congressional defense committees that—

(A) a revised cost and schedule baseline has been established for the project and, in the case of a stockpile life extension project referred to in subparagraph (A) or (B) of subsection (a)(1), a revised estimate of the cost for each warhead in the project has been made;

(B) the continuation of the project is necessary to the mission of the Department of Energy and there is no alternative to the project that would meet the requirements of that mission; and

(C) a management structure is in place adequate to manage and control the cost and schedule of the project.

(d) APPLICABILITY OF REQUIREMENTS TO REVISED COST AND SCHEDULE BASELINES.—A revised cost and schedule baseline established under subsection (c) shall—

(1) be submitted to the congressional defense committees with the certification submitted under subsection (c)(2); and

(2) be subject to the notification requirements of subsections (b) and (c) in the same manner and to the same extent as a cost and schedule baseline established under subsection (a).

## Subtitle B—Penalties

### SEC. 4721. [50 U.S.C. 2761] RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER ENVIRONMENTAL LAWS.

(a) RESTRICTION.—Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) EXCEPTION.—Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or re-

scinded) and the Secretary of Energy fails to use the funds for such purpose.

**SEC. 4722. [50 U.S.C. 2762] RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER CLEAN AIR ACT.**

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

## Subtitle C—Other Matters

[Section 4731 repealed by section 3131(u)(1) of division C of Public Law 112-239.]

**SEC. 4732. [50 U.S.C. 2772] QUARTERLY REPORTS ON FINANCIAL BALANCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES.**

(a) **REPORTS REQUIRED.**—Not later than 15 days after the end of each fiscal year quarter, the Secretary of Energy shall submit to the congressional defense committees a report on the financial balances for each atomic energy defense program at the budget control levels used in the report accompanying the most current Act appropriating funds for energy and water development.

(b) **ELEMENTS.**—Each report under subsection (a) shall set forth, for each program covered by such report, the following as of the end of the fiscal year quarter covered by such report:

(1) The total amount authorized to be appropriated, including amounts authorized to be appropriated in the current fiscal year and amounts authorized to be appropriated for prior fiscal years.

(2) The amount unobligated.

(3) The amount unobligated but committed.

(4) The amount obligated but uncOSTED.

(c) **PRESENTATION.**—Each report under subsection (a) shall present information as follows:

(1) For each program, in summary form and by fiscal year.

(2) With financial balances in connection with funding under recurring DOE national security authorizations (as that term is defined in section 4701(1)) presented separately from balances in connection with funding under any other provisions of law.

## TITLE XLVIII—ADMINISTRATIVE MATTERS

### Subtitle A—Contracts

#### SEC. 4801. [50 U.S.C. 2781] COSTS NOT ALLOWED UNDER COVERED CONTRACTS.

(a) IN GENERAL.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b)(1) REGULATIONS.—Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:

(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or ad-

vice of experts, with respect to topics directly related to the performance of the contract.

(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(c) DEFINITION.—In this section, “covered contract” means a contract for an amount more than \$100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

**SEC. 4802. [50 U.S.C. 2782] PROHIBITION AND REPORT ON BONUSES TO CONTRACTORS OPERATING DEFENSE NUCLEAR FACILITIES.**

(a) PROHIBITION.—The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor’s compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor’s qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.

(b) DEFINITION.—In this section, the term “Department of Energy defense nuclear facility” has the meaning given such term by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

(c) REGULATIONS.—The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.

**SEC. 4803. [50 U.S.C. 2783] CONTRACTOR LIABILITY FOR INJURY OR LOSS OF PROPERTY ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS.**

(a) SHORT TITLE.—This section may be cited as the “Atomic Testing Liability Act”.

(b) FEDERAL REMEDIES APPLICABLE; EXCLUSIVENESS OF REMEDIES.—

(1) REMEDY.—The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, by the Act of March 9, 1920 (46 U.S.C. App. 741–752), or by the Act of March 3, 1925 (46 U.S.C. App. 781–790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) EXCLUSIVITY.—The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the

Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(c) **PROCEDURE.**—A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) **ACTIONS COVERED.**—The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, United States Code, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28, United States Code.

(e) **“CONTRACTOR” DEFINED.**—For purposes of this section, the term “contractor” includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

**SEC. 4804. [50 U.S.C. 2784] NOTICE-AND-WAIT REQUIREMENT APPLICABLE TO CERTAIN THIRD-PARTY FINANCING ARRANGEMENTS.**

(a) **NOTICE-AND-WAIT REQUIREMENT.**—The Secretary of Energy may not enter into an arrangement described in subsection (b) until 30 days after the date on which the Secretary notifies the congressional defense committees in writing of the proposed arrangement.

(b) **COVERED ARRANGEMENTS.**—

(1) IN GENERAL.—Except as provided in paragraph (2), an arrangement referred to in subsection (a) is any alternative financing arrangement, third-party financing arrangement, public-private partnership, privatization arrangement, private capital arrangement, or other financing arrangement that—

(A) is entered into in connection with a project conducted using funds authorized to be appropriated to the Department of Energy to carry out programs necessary for national security; and

(B) involves a contractor or Federal agency obtaining and charging to the Department of Energy as an allowable cost under a contract the use of office space, facilities, or other real property assets with a value of at least \$5,000,000.

(2) EXCEPTION.—An arrangement referred to in subsection (a) does not include an arrangement that—

(A) involves the Department of Energy or a contractor acquiring or entering into a capital lease for office space, facilities, or other real property assets; or

(B) is entered into in connection with a capital improvement project undertaken as part of an energy savings performance contract under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287).

**SEC. 4805. [50 U.S.C. 2785] PUBLICATION OF CONTRACTOR PERFORMANCE EVALUATIONS LEADING TO AWARD FEES.**

(a) IN GENERAL.—The Administrator shall take appropriate actions to make available to the public, to the maximum extent practicable, contractor performance evaluations conducted by the Administration of management and operating contractors of the nuclear security enterprise that results in the award of an award fee to the contractor concerned.

(b) FORMAT.—Performance evaluations shall be made public under this section in a common format that facilitates comparisons of performance evaluations between and among similar management and operating contracts.

## **Subtitle B—Research and Development**

**SEC. 4811. [50 U.S.C. 2791] LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT PROGRAMS.**

(a) AUTHORITY.—Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.

(b) REGULATIONS.—The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.

(c) FUNDING.—Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) DEFINITION.—For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

**SEC. 4812. [50 U.S.C. 2792] LIMITATIONS ON USE OF FUNDS FOR LABORATORY DIRECTED RESEARCH AND DEVELOPMENT PURPOSES.**

(a) GENERAL LIMITATIONS.—(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the environmental restoration mission, waste management mission, or materials stabilization mission, as the case may be, of the Department of Energy.

(b) DEFINITION.—In this section, the term “laboratory directed research and development” has the meaning given that term in section 4811(d).

**SEC. 4812A. [50 U.S.C. 2793] LIMITATION ON USE OF FUNDS FOR CERTAIN RESEARCH AND DEVELOPMENT PURPOSES.**

(a) LIMITATION.—No funds authorized to be appropriated or otherwise made available to the Department of Energy for fiscal year 1997 under section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(b) ANNUAL REPORT.—(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.

(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.

(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.

**SEC. 4813. [50 U.S.C. 2794] CRITICAL TECHNOLOGY PARTNERSHIPS AND COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS.**

(a) PARTNERSHIPS.—For the purpose of facilitating the transfer of technology, the Secretary of Energy shall ensure, to the maximum extent practicable, that atomic energy defense activities research on, and development of, any dual-use critical technology is conducted through cooperative research and development agreements, or other arrangements, that involve laboratories of the Department of Energy and other entities.

(b) COOPERATIVE RESEARCH AND DEVELOPMENT CENTERS.—(1) Subject to the availability of appropriations provided for such purpose, the Administrator for Nuclear Security shall establish a cooperative research and development center described in paragraph (2) at each national security laboratory.

(2) A cooperative research and development center described in this paragraph is a center to foster collaborative scientific research, technology development, and the appropriate transfer of research and technology to users in addition to the national security laboratories.

(3) In establishing a cooperative research and development center under this subsection, the Administrator—

(A) shall enter into cooperative research and development agreements with governmental, public, academic, or private entities; and

(B) may enter into a contract with respect to constructing, purchasing, managing, or leasing buildings or other facilities.

(c) DEFINITIONS.—In this section:

(1) The term “dual-use critical technology” means a technology—

(A) that is critical to atomic energy defense activities, as determined by the Secretary of Energy;

(B) that has military applications and nonmilitary applications; and

(C) that either—

(i)(I) appears on the list of national critical technologies contained in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)); and

(II) has not been expressly deleted from such list by such a report subsequently submitted to Congress by the President; or

(ii)(I) appears on the list of critical technologies contained in an annual defense critical technologies plan submitted to Congress by the Secretary of Defense pursuant to section 2506 of title 10, United States Code; and

(II) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.

(2) The term “cooperative research and development agreement” has the meaning given that term by section 12(d) of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)).

(3) The term “other entities” means—

(A) firms, or a consortium of firms, that are eligible to participate in a partnership or other arrangement with a laboratory of the Department of Energy, as determined in accordance with applicable law and regulations; or

(B) firms, or a consortium of firms, described in subparagraph (A) in combination with one or more of the following:

(i) Institutions of higher education in the United States.

(ii) Departments and agencies of the Federal Government other than the Department of Energy.

(iii) Agencies of State Governments.

(iv) Any other persons or entities that may be eligible and appropriate, as determined in accordance with applicable laws and regulations.

(4) The term “atomic energy defense activities” does not include activities covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program.<sup>3</sup>

**SEC. 4814. [50 U.S.C. 2795] UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM.**

(a) FINDINGS.—Congress makes the following findings:

(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.

(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.

(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.

(b) PROGRAM.—The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.

<sup>3</sup>The text of the executive order is set out in this volume under Selected Other Matters.

## Subtitle C—Facilities Management

### SEC. 4831. [50 U.S.C. 2811] TRANSFERS OF REAL PROPERTY AT CERTAIN DEPARTMENT OF ENERGY FACILITIES.

(a) TRANSFER REGULATIONS.—(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) INDEMNIFICATION.—(1) Except as provided in paragraph (3) and subject to subsection (c), in the sale or lease of real property pursuant to the regulations prescribed under subsection (a), the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Secretary has authority to provide indemnification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(c) CONDITIONS.—(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;

(B) furnishes to the Secretary copies of pertinent papers received by the person or entity;

(C) furnishes evidence or proof of the claim;

(D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and

(E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) **AUTHORITY OF SECRETARY OF ENERGY.**—(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1), the Secretary may settle or defend the claim on behalf of that person or entity.

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) **RELATIONSHIP TO OTHER LAW.**—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(f) **DEFINITIONS.**—In this section:

(1) The term “defense nuclear facility” has the meaning provided by the term “Department of Energy defense nuclear facility” in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

(2) The terms “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings provided by section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

**SEC. 4832. [50 U.S.C. 2812] ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS.**

(a) **AUTHORITY FOR PROGRAMS AT NUCLEAR WEAPONS PRODUCTIONS FACILITIES.**—The Administrator for Nuclear Security shall authorize the head of each nuclear weapons production facility to establish an Engineering and Manufacturing Research, Development, and Demonstration Program under this section.

(b) **PROJECTS AND ACTIVITIES.**—The projects and activities carried out through the program at a nuclear weapons production facility under this section shall support innovative or high-risk design and manufacturing concepts and technologies with potentially high payoff for the nuclear security enterprise. Those projects and activities may include—

(1) replacement of obsolete or aging design and manufacturing technologies;

(2) development of innovative agile manufacturing techniques and processes; and

(3) training, recruitment, or retention of essential personnel in critical engineering and manufacturing disciplines.

**SEC. 4833. [50 U.S.C. 2813] PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS.**

(a) **PURPOSE.**—The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

(b) **USE OF PROCEEDS TO DEFRAY COSTS.**—(1) Notwithstanding section 3302 of title 31, United States Code, the Secretary may retain from the proceeds of the sale, lease, or disposal of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

(A) the cost of administering the sale, lease, or disposal;

(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and

(C) any other cost associated with the sale, lease, or disposal.

(c) **COVERED TRANSACTIONS.**—Subsection (b) applies to the following transactions:

(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are under the jurisdiction of the Defense Environmental Management Program.

(d) **APPLICABILITY OF DISPOSAL AUTHORITY.**—Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40, United States Code, to the disposal of equipment and other personal property covered by this section.

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## Subtitle D—Other Matters

[Section 4851 repealed by section 3131(q)(2) of division C of Public Law 112–239.]

**SEC. 4852. [50 U.S.C. 2822] PAYMENT OF COSTS OF OPERATION AND MAINTENANCE OF INFRASTRUCTURE AT NEVADA NATIONAL SECURITY SITE.**

Notwithstanding any other provision of law and effective as of September 30, 1996, the costs associated with operating and maintaining the infrastructure at the Nevada National Security Site, Nevada, with respect to any activities initiated at the site after that date by the Department of Defense pursuant to a work-for-others agreement may be paid for from funds authorized to be appropriated to the Department of Energy for activities at the Nevada National Security Site.