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**SELECTED TEXT OF ATOMIC ENERGY ACT,  
EXECUTIVE ORDERS AND OTHER LAWS  
OF GENERAL INTEREST  
TO SAFEGUARDS AND SECURITY EXECUTIVES**

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## PREFACE

This document is one of a three report set. BNL 52201 is titled, "Selected Text of Atomic Energy Act, Executive Orders and Other Laws of General Interest to Safeguards and Security Executives", and contains detailed information for use by executives. BNL 52202 is titled, "U.S. Statutes of General Interest to Safeguards and Security Officers", and contains less detail than BNL 52201. It is intended for use by officers. BNL 52203 is titled, "U.S. Statutes for Enforcement by Security Inspectors", and only contains statutes to be applied by uniformed security inspectors.

These are a newly updated version of a set of documents of similar titles published in September 1988, which were an updated version of an original set of documents published in November 1983. The first two versions were prepared by Jerry J. Cadwell, Esq. The current version was prepared by Jerry J. Cadwell, Esq. and Charles J. Ruger, both of the Engineering Technology Division, Brookhaven National Laboratory, Upton, New York. They both wish to express their thanks to Jeanne Madaia, Ann Fort, and Janice DePass for their invaluable assistance in the final preparation of these documents.



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<sup>1</sup>Sec. means a section of the Atomic Energy Act. Section means a section of this report.

<sup>2</sup>Volume 2 refers to this book. Volume 1 refers to a companion book entitled U.S. Statutes of General Interest to Safeguards and Security Officers.

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**II. TITLE 42. UNITED STATES CODE  
CHAPTER 23 - DEVELOPMENT AND CONTROL OF ATOMIC ENERGY  
(ATOMIC ENERGY ACT OF 1954 AS AMENDED)**

**SUBCHAPTER I. GENERAL PROVISIONS**

***42 U.S.C. § 2011 (Section 1). Declaration***

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that--

- (a) the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and
- (b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

***42 U.S.C. § 2012 (Sec. 2). Findings***

The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

- (a) The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.
- (b) [Repealed]
- (c) The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.
- (d) The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.
- (e) Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

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\*Section numbers refer to the corresponding section of the Atomic Energy Act of 1954.

- (f) The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.
- (g) Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.
- (h) [Repealed]
- (i) In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

**42 U.S.C. § 2013 (Sec. 3). Purpose**

It is the purpose of this Act to effectuate the policies set forth above by providing for--

- (a) a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;
- (b) a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;
- (c) a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.
- (d) a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;
- (e) a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and
- (f) a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

**42 U.S.C. § 2014 (Sec. 11). Definitions**

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

- (a) The term "agency of the United States" means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.
- (b) The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91(c), 103, 104, or 144 [42 USCS §§ 2074, 2077, 2094, 2112, 2121(c), 2133, 2134, 2164], and made pursuant to section 123 [42 U.S.C. § 2153].
- (c) The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.
- (d) The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.
- (e) The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
- (f) The term "Commission" means the Atomic Energy Commission.
- (g) The term "common defense and security" means the common defense and security of the United States.
- (h) The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.
- (i) The term "design" means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.
- (j) The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy,

as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170 [42 U.S.C. § 2210].

- (k) The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.
- (l) The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.
- (m) The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170 [42 U.S.C. § 2210].
- (n) The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.
- (o) The term "Joint Committee" means the Joint Committee on Atomic Energy.
- (p) The term "licensed activity" means an activity licensed pursuant to this Act and covered by the provisions of section 170(a) [42 U.S.C. § 2210(a)].
- (q) The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: Provided, however, That as the term is used in section 170 l. [42 U.S.C. § 2210 (l)], it shall include any such occurrence outside the United States: And provided further, That as the term is used in section 170 d. [42 U.S.C. § 2210(d)], it shall include any such occurrence outside the United States if such occurrence involves source, special

nuclear, or byproduct material owned by, and used by or under contract with, the United States: And provided further, That as the term is used in section 170 c. [42 U.S.C. § 2210(c)], it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act [42 U.S.C. §§ 2071 et seq.; 2091 et seq.; 2111 et seq.; 2131 et seq.], which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

- (r) The term "operator" means any individual who manipulates the controls of a utilization or production facility.
- (s) The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.
- (t) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 170 c. [42 U.S.C. § 2210(c)], and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170 d. [42 U.S.C. § 2210(d)] has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.
- (u) The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.
- (v) The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility or the construction and operation of a uranium enrichment production facility

using Atomic Vapor Laser Isotope Separation technology, such term as used in chapters 10 and 16 [42 U.S.C. §§ 2131 et seq. and §§ 2231 et seq.] shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

- (w) The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of section 170 [42 U.S.C. §§ 2210(a), (c), (k)], claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: Provided, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.
- (x) The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.
- (y) The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 [42 U.S.C. § 2162].
- (z) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 [42 U.S.C. § 2091] to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.
- (aa) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 [42 U.S.C. § 2071], determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (bb) The term "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

- (cc) The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.
- (dd) The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).
- (ee) The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.
- (ff) The term "nuclear waste activities", as used in section 170 [42 U.S.C. § 2210], means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265) [unclassified].
- (gg) The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is--
- (1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and
  - (2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

- (hh) The term "public liability action", as used in section 170 [42 U.S.C. § 2210], means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170 [42 U.S.C. § 2210], and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.
- [(ii)](jj) Legal costs. As used in section 170 [42 U.S.C. § 2210], the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

### **SUBCHAPTER III. RESEARCH**

#### **42 U.S.C. § 2051 (Sec. 31). Research assistance**

- (a) The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to--
- (1) nuclear processes;
  - (2) the theory and production of atomic energy, including processes, materials, and devices related to such production;
  - (3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;
  - (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy;
  - (5) the protection of health and the promotion of safety during research and production activities; and
  - (6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.
- (b) The Commission is further authorized to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection (a).



- (c) The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. § 5], upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.
- (d) The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.

**42 U.S.C. § 2052 (Sec. 32). Research by the Commission**

The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 31 [42 U.S.C. § 2051].

**42 U.S.C. § 2053 (Sec. 33). Research for others**

Where the Commission finds private facilities or laboratories are inadequate for the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 [42 U.S.C. § 2051] as it deems appropriate to the development of energy. To the extent the Commission determines that private facilities or laboratories are inadequate to the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.

**SUBCHAPTER IV. PRODUCTION OF SPECIAL NUCLEAR MATERIAL**

**42 U.S.C. § 2061 (Sec. 41). Ownership and operation of production facilities**

- (a) Ownership of production facilities. The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31 [42 U.S.C. § 2051], and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; (2) are licensed by the Commission under this title [42 U.S.C. §§ 2011 et seq.]; or (3) are owned by the United States Enrichment Corporation.

- (b) Operation of the Commission's production facilities. The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. § 5], upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.
- (c) Operation of other production facilities. Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.

***42 U.S.C. § 2062 (Sec. 42). Irradiation of materials***

The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.

***42 U.S.C. § 2063 (Sec. 43). Acquisition of production facilities***

The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. § 5], upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, condemn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefore.

**42 U.S.C. § 2064 (Sec. 44). *Disposition of energy***

If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this Act shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.

**SUBCHAPTER V. SPECIAL NUCLEAR MATERIAL**

**42 U.S.C. § 2071 (Sec. 51). *Special nuclear material***

The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: Provided, however, That the Joint Committee, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

**42 U.S.C. § 2072 (Sec. 52). *[Repealed]***

**42 U.S.C. § 2073 (Sec. 53). *Domestic distribution of special nuclear material***

- (a) Issuance of licenses. The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123 [42 U.S.C. § 2153], special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material--
- (1) for the conduct of research and development activities of the types specified in section 31 [42 U.S.C. § 2051];

- (2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104 [42 U.S.C. § 2134];
  - (3) for use under a license issued pursuant to section 103 [42 U.S.C. § 2133];
  - (4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.
- (b) Minimum criteria. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of--
- (1) the physical characteristics of the special nuclear material to be distributed;
  - (2) the quantities of special nuclear material to be distributed; and
  - (3) the intended use of the special nuclear material to be distributed.
- (c) Distribution.
- (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: Provided, however, That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104(b) [42 U.S.C. § 2133 or 2134(b)] for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.
  - (2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.
  - (3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

- (4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed by lease under subsection 53(a)(1), (2) or (4) [subsec. (a)(1), (2), (4) of this section] and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection 53(a)(3) [subsec. (a)(3) of this section]. The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection 53(a)(1), (2) or (4) [subsec. (a)(1), (2), or (4) of this section], considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.
- (d) Determination of charges. In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to section 103 or 104 [42 U.S.C. §§ 2133, 2134], in addition to consideration of the cost thereof, the Commission shall take into consideration--
- (1) the use to be made of the special nuclear material;
  - (2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;
  - (3) the energy value of the special nuclear material in the particular use for which the license is issued;
  - (4) whether the special nuclear material is to be used in facilities licensed pursuant to section 103 or 104 [42 U.S.C. §§ 2133, 2134]. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 103 [42 U.S.C. § 2133]; and
  - (5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103 [42 U.S.C. § 2133], the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53(c)(2) [subsec (c)(2) of this section], and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104 [42 U.S.C. § 2134].
- (e) Conditions. Each license issued pursuant to this section shall contain and be subject to the following conditions--
- (1) [Repealed]

- (2) no right to the special nuclear material shall be conferred by the license except as defined by the license;
  - (3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act;
  - (4) all special nuclear material shall be subject to the right of recapture or control reserved by section 108 [42 U.S.C. § 2138] and to all other provisions of this Act;
  - (5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this Act;
  - (6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;
  - (7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and
  - (8) except to the extent that the indemnification and limitation of liability provisions of section 170 [42 U.S.C. § 2210] apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.
- (f) Independent research and development activities. The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.

***42 U.S.C. § 2074 (Sec. 54). Foreign distribution of special nuclear material***

- a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123 [42 U.S.C. § 2153]. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value \$10,000 in the case of one nation or \$50,000 in the case of any group of nations. The

Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: Provided, however, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123 [42 U.S.C. § 2153], to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: Provided, however, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): And provided further, That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: And provided further, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sa[42 U.S.C. § 2134], established by the Commission pursuant to section 56 [42 U.S.C. § 2076], and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

- b. Notwithstanding the provisions of sections 123, 124, and 125 [42 U.S.C. §§ 2153, 2154, and 2153 note], the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57d. [42 U.S.C. § 2077(d)], exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any

person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

- c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.
- d. The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):
  - (1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or
  - (2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.
- e. The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2)(E) [42 U.S.C. § 2160 a. (2)(E)] shall be subject to the requirements of section 131 [42 U.S.C. § 2160].

**42 U.S.C. § 2075 (Sec. 55). Acquisition**

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 [42 U.S.C. § 2074] or any guaranteed purchase prices established pursuant to section 56 [42 U.S.C. § 2076], and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. § 5], upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section [:] Providing, That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a. (2)(E) [42 U.S.C. § 2160a. (2)(E)] shall be subject to the requirements of section 131 [42 U.S.C. § 2160].



**42 U.S.C. § 2076 (Sec. 56). *Guaranteed purchase prices***

The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 [42 U.S.C. § 2134] and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 [42 U.S.C. § 2133 or 2134] and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: Provided, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53 [42 U.S.C. § 2073].

**42 U.S.C. § 2077 (Sec. 57). *Prohibition***

- (a) Possession without license. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53 [42 U.S.C. § 2073], no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.
- (b) Production. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123 [42 U.S.C. § 2153], including a specific authorization in a subsequent arrangement under section 131 of this Act [42 U.S.C. § 2160], or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: Provided, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978 [enacted Mar. 10, 1978], establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency

administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978 [enacted Mar. 10, 1978] shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: Provided further, That the export of component parts as defined in subsection 11 v. (2) or 11 cc. (2) [42 U.S.C. § 2014(v)(2), or 2014(cc)(2)] shall be governed by sections 109 and 126 of this Act [42 U.S.C. §§ 2139 and 2155]: Provided further, That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91) [42 U.S.C. § 7172(d)] the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54 d. [42 U.S.C. § 2074d.], section 64 [42 U.S.C. § 2094], or section 111 b [42 U.S.C. § 2141b.].

- (c) Distribution. The Commission shall not--
- (1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54 [42 U.S.C. § 2074]; or
  - (2) distribute any special nuclear material or issue a license pursuant to section 53 [42 U.S.C. § 2073] to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.
- (d) Establishment of classes of special nuclear materials. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.
- (e) Special nuclear material, as defined in section 11 [42 U.S.C. § 2014], produced in facilities licensed under section 103 or 104 [42 U.S.C. §§ 2133, 2134] may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

**42 U.S.C. § 2078 (Sec. 58). Review**

Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56 [42 U.S.C. § 2076], or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53 [42 U.S.C. § 2073], the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Joint Committee and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): Provided, however, That the Joint Committee, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.

**SUBCHAPTER VI. SOURCE MATERIAL**

**42 U.S.C. § 2091 (Sec. 61). Source material**

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: Provided, however, That the Joint Committee, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

**42 U.S.C. § 2092 (Sec. 62). License for transfers required**

Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

**42 U.S.C. § 2093 (Sec. 63). Domestic distribution of source material**

- (a) Licenses. The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material--
  - (1) for the conduct of research and development activities of the types specified in section 31 [42 U.S.C. § 2051];

- (2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104 [42 U.S.C. § 2134];
  - (3) for use under a license issued pursuant to section 103 [42 U.S.C. § 2133]; or
  - (4) for any other use approved by the Commission as an aid to science or industry.
- (b) Minimum criteria. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of--
- (1) the physical characteristics of the source material to be distributed;
  - (2) the quantities of source material to be distributed; and
  - (3) the intended use of the source material to be distributed.
- (c) Determination of charges. The Commission may make a reasonable charge determined pursuant to subsection 161(m) [42 U.S.C. § 2201(m)] for the source material licensed and distributed under subsection 63(a)(1), subsection 63(a)(2), or subsection 63(a)(4) [subsec. (a)(1), (2), (4), of this section], and shall make a reasonable charge determined pursuant to subsection 161(m) [42 U.S.C. § 2201(m)], for the source material licensed and distributed under subsection 63(a)(3) [subsec. (a)(3) of this section]. The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection 63(a)(1), subsection 63(a)(2), or subsection 63(a)(4) [subsec. (a)(1), (2), (4), of this section], considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the source material will be used.

***42 U.S.C. § 2094 (Sec. 64). Foreign distribution of source material***

The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123 [42 U.S.C. § 2153]. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

***42 U.S.C. § 2095 (Sec. 65). Reporting***

The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any

source material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.

**42 U.S.C. § 2096 (Sec. 66). Acquisition**

The Commission is authorized and directed, to the extent it deems necessary to effectuate the provisions of this Act--

- (a) to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;
- (b) to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and
- (c) to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

Any purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. § 5], upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.

**42 U.S.C. § 2097 (Sec. 67). Operations on lands belonging to the United States**

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: Provided, however, That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

**42 U.S.C. § 2098 (Sec. 68). Public and acquired lands**

- (a) Benefit by location, entry, or settlement. No individual, corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or

settlement is made, and subsequent to the date of the enactment of this Act [Aug. 30, 1954] made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

- (b) Reservation of mineral rights. Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, inserted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946, or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is hereby released, remised, and quitclaimed to the person or persons entitled upon the date of this Act [Aug. 19, 1958] under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under applicable Federal or State laws: Provided, however, That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954, as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be subject to any rights which may have been granted by the United States pursuant to any such reservation, but the releasees shall be subrogated to the rights of the United States.
- (c) Mining claim for or based upon discovery of source material. Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended, and particularly section 5(b)(7) thereof, or the provisions of the Act of August 12, 1953 (67 Stat. 539) [30 U.S.C. §§ 501 et seq.], and particularly section 3 thereof [30 U.S.C. § 503], any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material.

**42 U.S.C. § 2099 (Sec. 69). Prohibition**

The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

## SUBCHAPTER VII. BYPRODUCT MATERIAL

### ***42 U.S.C. § 2111 (Sec. 81). Domestic distribution***

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84 [42 U.S.C. § 2112 or 2114]. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: Provided, however, That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

### ***42 U.S.C. § 2112 (Sec. 82). Foreign distribution of byproduct material***

- (a) Cooperation with other nations. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123 [42 U.S.C. § 2153].
- (b) Distribution. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such material as would be charged for the material if it were distributed within the United States: Provided, however, That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: And provided further, That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

- (c) Persons licensed to distribute. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

#### **SUBCHAPTER VIII. MILITARY APPLICATION OF ATOMIC ENERGY**

##### **42 U.S.C. § 2121 (Sec. 91). Authority**

- (a) Research and development; production of atomic weapons; disposal of hazardous waste; technologies for international control agreements; transfers to enhance prospects for commercialization of technology. The Commission is authorized to--
- (1) conduct experiments and do research and development work in the military application of atomic energy;
  - (2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year;
  - (3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;
  - (4) carry out research on and development of technologies needed for the effective negotiation and verification of international agreements on control of special nuclear materials and nuclear weapons; and
  - (5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations so that the prospects for commercialization of such technology are enhanced.
- (b) Delivery of material or weapons to Department of Defense; acquisition of weapon for military purposes. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: Provided, however, That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.



- (c) Cooperation with other nations. The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of section 57, 62, or 81 [42 U.S.C. § 2077, 2092, or 2111], to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President--
- (1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;
  - (2) utilization facilities for military applications; and
  - (3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and
  - (4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: Provided, however, That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: And provided further, That such nation has made substantial progress in the development of atomic weapons, whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: Provided, however, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123 [42 U.S.C. § 2153]: And provided further, That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

**42 U.S.C. § 2122 (Sec. 92). Prohibition**

It shall be unlawful, except as provided in section 91 [42 U.S.C. § 2121], for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31(a) or section 101 [42 U.S.C. §§ 2051(a), 2131].

**42 U.S.C. § 2122a (Sec. 93). Congressional oversight of special access programs**

- (a) Annual report on special access programs.
  - (1) In general. Not later than February 1 of each year, the Secretary of Energy shall submit to the congressional defense committees a report on special access programs of the Department of Energy carried out under the atomic energy defense activities of the Department.
  - (2) Matters to be included. Each such report shall set forth--
    - (A) the total amount requested for such programs in the President's budget for the next fiscal year submitted under section 1105 of title 31, United States Code; and
    - (B) for each such program in that budget, the following:
      - (i) A brief description of the program.
      - (ii) A brief discussion of the major milestones established for the program.
      - (iii) The actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted.
      - (iv) The estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.
- (b) Annual report on new special access programs.
  - (1) In general. Not later than February 1 of each year, the Secretary of Energy shall submit to the congressional defense committees a report that, with respect to each new special access program, provides--
    - (A) notice of the designation of the program as a special access program; and
    - (B) justification for such designation.
  - (2) Matters to be included. A report under paragraph (1) with respect to a program shall include--
    - (A) the current estimate of the total program cost for the program; and

- (B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.
  - (3) New special access program defined. In this subsection, the term "new special access program" means a special access program that has not previously been covered in a notice and justification under this subsection.
- (c) Reports on changes in classification of special access programs.
  - (1) Notice to congressional committees. Whenever a change in the classification of a special access program of the Department of Energy is planned to be made or whenever classified information concerning a special access program of the Department of Energy is to be declassified and made public, the Secretary of Energy shall submit to the congressional defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.
  - (2) Time for notice. Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.
  - (3) Time waiver for exceptional circumstances. If the Secretary determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Department of Energy, the Secretary may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.
- (d) Notice of change in SAP designation criteria. Whenever there is a modification or termination of the policy and criteria used for designating a program of the Department of Energy as a special access program, the Secretary of Energy shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.
- (e) Waiver authority.
  - (1) In general. The Secretary of Energy may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. The Secretary may waive the report-and-wait requirement in subsection (f) if the Secretary determines that compliance with such requirement would adversely affect the national security. Any waiver under this paragraph shall be made on a case-by-case basis.

- (2) Limited notice required. If the Secretary exercises the authority provided under paragraph (1), the Secretary shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and rank-ing minority member of each of the congressional defense committees.
- (f) Report and wait for initiating new programs. A special access program may not be initiated until--
  - (1) the congressional defense committees are notified of the program; and
  - (2) a period of 30 days elapses after such notification is received.
- (g) Congressional defense committees defined. In this section, the term "congressional defense committees" means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.

#### **SUBCHAPTER IX. ATOMIC ENERGY LICENSES**

##### ***42 U.S.C. § 2131 (Sec. 101). License required***

It shall be unlawful, except as provided in section 91 [42 U.S.C. § 2121], for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104 [42 U.S.C. §§ 2133, 2134].

##### ***42 U.S.C. § 2132 (Sec. 102). Utilization and production facilities for industrial or commercial purposes***

- (a) Except as provided in subsections (b) and (c), or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103 [42 U.S.C. § 2133].
- (b) Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104(b) [42 U.S.C. § 2134(b)] prior to enactment into law of this subsection, shall be issued under subsection 104(b) [42 U.S.C. § 2134(b)].
- (c) Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104(b) [42 U.S.C. § 2134(b)].

**42 U.S.C. § 2133 (Sec. 103). Commercial licenses**

- (a) **Conditions.** The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123 [42 U.S.C. § 2153], utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 [42 U.S.C. §§ 2231 et seq.] and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.
- (b) **Nonexclusive basis.** The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.
- (c) **License period.** Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.
- (d) **Limitations.** No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 [42 U.S.C. § 2153], or except under the provisions of section 109 [42 U.S.C. § 2139]. No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.
- [(e)](f) **Notice in event of accidents which could result in accidental release of contaminants.** Each license issued for a utilization facility under this section or section 104 b. [42 U.S.C. § 2134(b)] shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act [42 U.S.C. § 2237], the

Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. [42 U.S.C. § 2134(b)] which is in effect on the date of enactment of this subsection [enacted June 30, 1980] to include the provisions required under this subsection.

**42 U.S.C. § 2134 (Sec. 104). Medical therapy and research and development**

- (a) The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.
- (b) As provided for in subsection 102(b) or 102(c) [42 U.S.C. § 2132(b) or (c)], or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.
- (c) The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 31 [42 U.S.C. § 2051] and which are not facilities of the type specified in subsection 104(b) [subsec. (b) of this section]. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.
- (d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 [42 U.S.C. § 2153] or except under the provisions of section 109 [42 U.S.C. § 2139]. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

**42 U.S.C. § 2135 (Sec. 105). Antitrust provisions**

- (a) Nothing contained in this Act shall relieve any person from the operation of the following Acts, as amended, "An Act to protect trade and commerce against unlawful restraints and monopolies" approved July second, eighteen hundred and ninety [15 U.S.C. §§ 1 et seq., 15 note]; sections seventy-three to seventy-seven, inclusive, of

an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes" approved August twenty-seven, eighteen hundred and ninety-four [15 U.S.C. §§ 8 et seq.]; "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October fifteen, nineteen hundred and fourteen [15 U.S.C. §§ 12, 13, 14 et seq., 20, 21, 22 et seq.; 29 U.S.C. §§ 52, 53]; and "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" approved September twenty-six, nineteen hundred and fourteen [15 U.S.C. §§ 41 et seq., 47, 48, 50 et seq.]. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws cited above, to have violated any of the provisions of such laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

- (b) The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.
- (c)
  - (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.
  - (2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103 [42 U.S.C. § 2133]: Provided, however, That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 [42 U.S.C. § 2133] unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.
  - (3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104(b) [42 U.S.C. § 2134(b)] prior to the enactment into law of this subsection [Dec. 19, 1970], any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application

for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection [Dec. 19, 1970], whichever is later.

- (4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advise called for in paragraph (1) of this subsection.
- (5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105(a) [subsec. (a) of this section].
- (6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.
- (7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105(a) [subsec. (a) of this section].
- (8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection [Dec. 19, 1970], which permit would be for issuance under section 103 [42 U.S.C. § 2133], and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: Provided, That any construction permit or operating license so issued shall contain such



conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

**42 U.S.C. § 2136 (Sec. 106). *Classes of facilities***

The Commission may--

- (a) group the facilities licensed either under section 103 or under section 104 [42 U.S.C. § § 2133, 2134] into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;
- (b) define the various activities to be carried on at each such class of facility; and
- (c) designate the amounts of special nuclear material available for use by each such facility.

**42 U.S.C. § 2137 (Sec. 107). *Operators' licenses***

The Commission shall--

- (a) prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this Act;
- (b) determine the qualifications of such individuals;
- (c) issue licenses to such individuals in such form as the Commission may prescribe; and
- (d) suspend such licenses for violations of any provision of this Act or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

**42 U.S.C. § 2138 (Sec. 108). *War or national emergency***

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 103 or 104 [42 U.S.C. § § 2133, 2134], and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

**42 U.S.C. § 2139 (Sec. 109). Component and other parts of facilities**

- a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 v. (2) or 11 cc. (2) [42 U.S.C. § 2014(v)(2) or (cc)(2)] the Commission may issue general licenses for domestic activities required to be licensed under section 101 [42 U.S.C. § 2131], if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.
- b. After consulting with the Secretaries of State, Energy, and Commerce and the Director, the Commission is authorized and directed to determine which component parts as defined in subsection 11 v. (2) or 11 cc. (2) [42 U.S.C. § 2014(v)(2) or (cc)(2)] and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b. (2) [42 U.S.C. § 2155 b. (2)], no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: Provided, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act [42 U.S.C. § 2155].
- c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126 a. [42 U.S.C. § 2155a.], that the export would be inimical to the common defense and security of the United States.

**42 U.S.C. § 2139a. Regulations for export; prior consultation**

The Commission, not later than one hundred and twenty days after the date of the enactment of this Act [enacted Mar. 10, 1978], shall publish regulations to implement the provisions of subsections b. and c. of section 109 of the 1954 Act [42 U.S.C. § 2139b., c.]. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

The President, within not more than one hundred and twenty days after the date of enactment of this Act [enacted Mar. 10, 1978], shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Commission,

which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

#### **Comment**

42 U.S.C. § 2139a is not in the Atomic Energy Act but was authorized in Pub. L. 95-242 Title III § 309(b), March 10, 1978, 92 Stat. 141.

#### **42 U.S.C. § 2140 (Sec. 110). Exclusions**

Nothing in this chapter [42 U.S.C. §§ 2131 et seq.] shall be deemed--

- (a) to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or
- (b) to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91 [42 U.S.C. § 2121], or for the use of such facility by the Department of Defense or a contractor thereof.

#### **42 U.S.C. § 2141 (Sec. 111). Distribution of special nuclear materials**

- (a) The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 54, 64, and 82 of this Act [42 U.S.C. 2074, 2094, and 2112], respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: Provided, That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act [42 U.S.C. § 2112].
- (b) The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act [42 U.S.C. §§ 2074 or 2094] other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision [enacted Mar. 10, 1978] and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act [42 U.S.C. §

2156] or their equivalent and any applicable criteria in subsection [section] 128 [42 U.S.C. § 2157] are met, and that the proposed distribution would not be inimical to the common defense and security.

## **SUBCHAPTER X. INTERNATIONAL ACTIVITIES**

### ***42 U.S.C. § 2151 (Sec. 121). Cooperation with other nations***

Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act [Aug. 30, 1954] shall be deemed to be of no force or effect.

### ***42 U.S.C. § 2152 (Sec. 122). Policies contained in international arrangements***

In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act [Aug. 30, 1954].

### ***42 U.S.C. § 2153 (Sec. 123). Cooperation with other nations***

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 [42 U.S.C. §§ 2073, 2074, 2077, 2094, 2112, 2121, 2133, 2134, 2164] shall be undertaken until--

- a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:
  - (1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;
  - (2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;
  - (3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. [42 U.S.C. § 2121(c)], a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive

nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

- (4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. [42 U.S.C. § 2121(c)] and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;
- (5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b. or 144 c. [42 U.S.C. §§ 2121(c), 2164(b),(c)], any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;
- (6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;
- (7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b), (c)], a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;
- (8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., [42 U.S.C. §§ 2121(c), 2164(b), (c)], a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

- (9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. or 144 c. [42 U.S.C. §§ 2121(c), 2164(b), (c)], a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164 (b), (c)]) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b), (c)], any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act [42 U.S.C. §§ 2011 et seq.], with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b),(c)], any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c. or 144 b. [42 U.S.C. §§ 2121(c), 2164(b)] which are to be implemented by the Department of Defense, by the Secretary of Defense;

- b. the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined

in section 130 g. of this Act [42 U.S.C. § 2159g.] concerning the consistency of the terms of the proposed agreement with all the requirements of this Act [42 U.S.C. §§ 2011 et seq.], and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

- c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g. [42 U.S.C. § 2159g.]): Provided, however, That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and
  
- d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b), (c)], or if entailing implementation of section 53, 54 a., 103, or 104 [42 U.S.C. §§ 2073, 2074 a., 2133, or 2134] in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act [42 U.S.C. § 2159g.]) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b),(c)], the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: Provided, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection 123 a. [42 U.S.C. § 2153 a.], has been submitted to the Congress: Provided further, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130i. of this Act.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. [42 U.S.C. §§ 2121(c), 2164(b),(c)]) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2) [subsec. a.(2) of this section], such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) [42 U.S.C. § 2157 b. (3)] for purposes of the Commission's consideration of applications and requests under section 126 a. (2) [42 U.S.C. § 2155 a. (2)] and there shall be no congressional review pursuant to section 128 [42 U.S.C. § 2157] of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

#### **42 U.S.C. § 2153a. Additional requirements**

- (a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: Provided, That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 131 of the 1954 Act [42 U.S.C. § 2160], and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: And provided further, That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after the date of enactment of this Act [enacted Mar. 10, 1978] entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.
- (b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (except an agreement for cooperation pursuant to subsection 91 c., 144 b., or 144 c. of the 1954 Act [42 U.S.C. §§ 2121(c), 2164(b), (c)]) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any



component part or group of component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

### **Comment**

42 U.S.C. § 2153a is not in the Atomic Energy Act, but was authorized in Pub. L. 95-242 Title IV, § 402, March 10, 1978, 92 Stat. 145.

### **42 U.S.C. § 2153b. Peaceful nuclear activities**

The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

- (a) No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that--
  - (1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;
  - (2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under the control of any non-nuclear-weapon state;
  - (3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear activities;
  - (4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and
  - (5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.
- (b) (1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in paragraph aa. (2) of section 11 of the 1954 Act [42 U.S.C. § 2014 (aa) (2)]) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or

uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

- (2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.
- (c) Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.
- (d) Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

#### **Comment**

42 U.S.C. § 2153b is not in the Atomic Energy Act, but was authorized in Pub. L. 95-242 Title IV, § 403, March 10, 1978, 92 Stat. 146.

#### ***42 U.S.C. § 2153c. Renegotiation of agreements for cooperation***

- (a) The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on the date of enactment of this Act [enacted Mar. 10, 1978], or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreements under the 1954 Act. To the extent that an agreement for cooperation in effect on the date of enactment of this Act [enacted Mar. 10, 1978] with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 127 of the 1954 Act [42 U.S.C. § 2156] with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on the date of enactment of this Act [enacted Mar.

10, 1978] with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 123 a. of the 1954 Act [42 U.S.C. § 2153a.], the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in the 1954 Act shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on the date of enactment of this Act. [enacted Mar. 10, 1978].

- (b) The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 123 a. of the 1954 Act [42 U.S.C. § 2153a.] and the export policy goals set forth in section 401 [42 U.S.C. § 2153] to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.'
- (c) If the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.
- (d) If the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of United States nonproliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to subsection 130 b. through g. of the 1954 Act [42 U.S.C. § 2159b.-g.].

#### **Comment**

42 U.S.C. § 2153c is not in the Atomic Energy Act, but was authorized in Pub. L. 95-242 Title IV, § 404, March 10, 1978, 92 Stat. 147.

#### **42 U.S.C. § 2153d. Authority to continue agreements**

- (a) The amendments to section 123 of the 1954 Act [42 U.S.C. 2153] made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to the date of enactment of this Act [enacted Mar. 10, 1978].

- (b) Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement for Cooperation.

**Comment**

42 U.S.C. § 2153d is not in the Atomic Energy Act, but was authorized in Pub L. 95-242 Title IV, § 405, March 10, 1978, 92 Stat. 148.

***42 U.S.C. § 2153e. Protection of the environment***

The President shall endeavor to provide in any agreement entered into pursuant to section 123 of the 1954 Act [42 U.S.C. § 2153] for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

**Comment**

42 U.S.C. § 2153e is not in the Atomic Energy Act, but was authorized in Pub L. 95-242 Title IV, § 407, March 10, 1978, 92 Stat. 148.

***42 U.S.C. § 2153e-1. Report to Congress with respect to 42 U.S.C. § 2153e as condition precedent***

No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled "Protection of the Environment" [42 U.S.C. § 2153e] which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

**Comment**

42 U.S.C. § 2153e-1 is not in the Atomic Energy Act, but was authorized in Pub. L. 95-630 Title XIX, § 1913, Nov. 10, 1978, 92 Stat. 3727.

***42 U.S.C. § 2153f. Application to provisions and agreements in effect on March 10, 1978***

- (a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges--
- (1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect [enacted Mar. 10, 1978], shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to sections 91 c., 144 b., or 144 c. of the 1954 Act [42 U.S.C. §§ 2121(c), 2164(b),(c)] or arrangements pursuant thereto as it was in effect immediately prior to the date of enactment of this Act [enacted Mar. 10, 1978].

#### **Comment**

42 U.S.C. § 2153f is not in the Atomic Energy Act, but was authorized in Pub. L. 95-242 Title VI, § 603 (a),(b), March 10, 1978, 92 Stat. 152.

#### **42 U.S.C. § 2154 (Sec. 124). *International atomic pool***

The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54a., 57, 64, 82, 103, 104, or 144(a) [42 U.S.C. §§ 2074, 2077, 2094, 2112, 2133, 2134, 2164(a)]: Provided, however, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123 [42 U.S.C. § 2153].

### **SUBCHAPTER XI. CONTROL OF INFORMATION**

#### **42 U.S.C. § 2161 (Sec. 141). *Policy***

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

- (a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144 [42 U.S.C. § 2164]; and
- (b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

**42 U.S.C. § 2162 (Sec. 142). Classification and declassification of Restricted Data**

- (a) **Determination.** The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.
- (b) **Review.** The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.
- (c) **Joint determination regarding data relating to military use of atomic weapons.** In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.
- (d) **Removal of data from Restricted Data category.** The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: Provided, however, That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection 144(b) [42 U.S.C. § 2164(b)].
- (e) **Removal of information concerning atomic energy programs of other nations from Restricted Data category.** The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended [50 U.S.C. § 403(d)], and can be adequately safeguarded as defense information.
- (f) **Release of Restricted Data.** Notwithstanding any other law, the President may publicly release Restricted Data regarding the nuclear weapons stockpile of the United States if the United States and member states of the Commonwealth of Independent States reach reciprocal agreement on the release of such data.

**42 U.S.C. § 2163 (Sec. 143). Department of Defense participation**

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145(b) and 145(c) [42 U.S.C. § 2165(b), (c)] to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: Provided, however, That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: And provided further, That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145 [42 U.S.C. § 2165].

**42 U.S.C. § 2164 (Sec. 144). International cooperation**

(a) Role of Commission. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on--

- (1) refining, purification, and subsequent treatment of source material;
- (2) civilian reactor development;
- (3) production of special nuclear material;
- (4) health and safety;
- (5) industrial and other applications of atomic energy for peaceful purposes; and
- (6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: And provided further, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123 [42 U.S.C. § 2153], or is undertaken pursuant to an agreement existing on the effective date of this Act [Aug. 30, 1954].

(b) Role of Department of Defense. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to--

- (1) the development of defense plans;

- (2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;
- (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and
- (4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: Provided, however, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123 [42 U.S.C. § 2153].

- (c) Exchange of information. In addition to the cooperation authorized in subsections 144(a) and 144(b) [subsecs. (a), (b) of this section], the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and--

- (1) to exchange with that nation Restricted Data concerning atomic weapons: Provided, That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and
- (2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: Provided, however, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123 [42 U.S.C. § 2153].

- (d) Communication by other agencies. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144(a), (b), or (c) [subsecs. (a), (b), (c) of this section], such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.



Executive Order 10899 of December 12, 1960, which affects 42 U.S.C. § 2164 reads:

**EXECUTIVE ORDER 10899 - AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE CENTRAL INTELLIGENCE AGENCY**

Source: The provisions of Executive Order 10899 of Dec. 9, 1960, appear at 25 FR 12729, 3 CFR, 1959-1963 Comp., p. 427, unless otherwise noted.

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011, *et seq.*), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144 a, b, or c of the Act (42 U.S.C. 2162 (a), (b), or (c)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162 (d)) as is determined

- (i) by the President, pursuant to the provisions of the Act, or
- (ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

Editorial Note Executive Order 10899, insofar as it refers to functions of the Atomic Energy Commission, was modified by EO 12038 of Feb. 3, 1978, to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974.

Executive Order 11057 of October 18, 1962, which also effects 42 U.S.C. § 2164 recites the following:

## EXECUTIVE ORDER 11057 - AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE DEPARTMENT OF STATE

Source: The provisions of Executive Order 11057 of Oct. 18, 1962, appear at 27 FR 10289, 3 CFR, 1959-1963 Comp., p. 648, unless otherwise noted.

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011, *et seq.*), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the Act (42 U.S.C. 2164(b)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162 (d)) as is determined

- (i) by the President, pursuant to the provisions of the Act, or
- (ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the those agencies, or in accordance with procedures approved by the Atomic Energy Commission and Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

Editorial Note Executive Order 11057, insofar as it refers to functions of the Atomic Energy Commission, was modified by EO 12038 of Feb. 3, 1978, to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233).

### **42 U.S.C. § 2165 (Sec. 145). Restrictions**

- (a) Agreement by contractor or licensee. No arrangement shall be made under section 31 [42 U.S.C. § 2051], no contract shall be made or continued in effect under section 41 [42 U.S.C. § 2061], and no license shall be issued under section 103 or 104 [42 U.S.C. §§ 2133, 2134], unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service

Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

- (b) **Employment; access to Restricted Data.** Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.
- (c) **Acceptance of investigation and report by another Government agency.** In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.
- (d) **Field investigation by F.B.I.** In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.
- (e) **Presidential determination of need for investigation.** If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.
- (f) **Certification of specific positions for investigation.** Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.
- (g) **Standards and specifications for investigations.** The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done,

and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

- (h) Access to Restricted Data in time of war or national disaster. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145(b) [subsec. (b) of this section], to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

**42 U.S.C. § 2166 (Sec. 146). General provisions**

- (a) Sections 141 to 145 [42 U.S.C. §§ 2161--2165], inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.
- (b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

**42 U.S.C. § 2167 (Sec. 147). Safeguards information**

- (a) In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code [5 U.S.C. § 552(b)(3)], the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed--
  - (1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;
  - (2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or
  - (3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2) if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health

and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection--

- (A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and
- (B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act [42 U.S.C. § 2282]. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

- (b) For the purposes of section 223 of this Act [42 U.S.C. § 2273], any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act [42 U.S.C. § 2201(b)].
- (c) Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code [5 U.S.C. § 552(a)(4)(B)].
- (d) Upon prescribing or issuing any regulation or order under subsection a. [(a)] of this section, the Commission shall submit to Congress a report that:
  - (1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;
  - (2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and
  - (3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

- (e) In addition to the reports required under subsection d. [(d)] of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:
- (1) identify any information protected from disclosure pursuant to such regulation or order;
  - (2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, as specified under subsection a. [(a)] of this section; and
  - (3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

**42 U.S.C. § 2168 (Sec. 148). Prohibition against the dissemination of certain unclassified information**

- (a) (1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code [5 U.S.C. § 552(b)(3)], the Secretary of Energy (hereinafter in this section referred to as the "Secretary"), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to--
- (A) the design of production facilities or utilization facilities;
  - (B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or
  - (C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 [42 U.S.C. § 2162].

- (2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.
  - (3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.
  - (4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection (a) (1)--
    - (A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and
    - (B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.
  - (5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.
- (b)
- (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.
  - (2) The provisions of subsections (b) and (c) of section 234 of this Act [42 U.S.C. § 2282(b), (c)] shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection (a) of such section.
- (c) For the purposes of section 223 of this Act [42 U.S.C. § 2273], any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161(b) of this Act [42 U.S.C. § 2201(b)].

- (d) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code [5 U.S.C. § 552(a)(4)(B)].
- (e) The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall--
  - (1) identify any information protected from disclosure pursuant to such regulation or order;
  - (2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and
  - (3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

**42 U.S.C. § 2169 (Sec. 149). Fingerprinting for criminal history record checks**

- a. The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. [42 U.S.C. § 2133 or 2134b.] to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147 [42 U.S.C. § 2167]. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.
- b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.
- c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations--



- (1) to implement procedures for the taking of fingerprints;
  - (2) to establish the conditions for use of information received from the Attorney General, in order--
    - (A) to limit the redissemination of such information;
    - (B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147 [42 U.S.C. § 2167];
    - (C) to ensure that no final determination may be made solely on the basis of information provided under this section involving--
      - (i) an arrest more than 1 year old for which there is no information of the disposition of the case; or
      - (ii) an arrest that resulted in dismissal of the charge or an acquittal; and
    - (D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and
  - (3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.
- d.
- (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.
  - (2) Notwithstanding section 3302(b) of title 31, United States Code [31 U.S.C. § 3302(b)], and to the extent approved in appropriation Acts--
    - (A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and
    - (B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.
  - (3) Any amount made available for use under paragraph (2) shall remain available until expended.

### SUBCHAPTER XIII. GENERAL AUTHORITY OF COMMISSION

#### **42 U.S.C. § 2201 (Sec. 161). General provisions**

In the performance of its functions the Commission is authorized to--

- (a) **Advisory boards.** establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;
- (b) **Standards and instructions.** Establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;
- (c) **Studies and investigations.** make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;
- (d) **Officers and employees.** appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: Provided, however, That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended) whose position would be subject to the Classification Act of 1949, as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

- (e) Acquisition of property; facilities and services. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174 [42 U.S.C. § 2224]: Provided, however, That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising [and without advertising] and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;
- (f) Utilization or employment of services or personnel of other agencies or voluntary personnel. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;
- (g) Acquisition or disposition of real and personal property. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174 [42 U.S.C. § 2224], and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;
- (h) Consideration of license applications. consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;
- (i) Regulations or orders. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 [42 U.S.C. § 2073] or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the

Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

- (j) Disposition of radioactive materials and other property. without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act [40 U.S.C. § 488], or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: Provided, however, That the property furnished to licensees in accordance with the provisions of subsection 161(m) [subsec. (m) of this section] shall not be deemed to be property disposed of by the Commission pursuant to this subsection;
- (k) Carrying of firearms. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;
- (l) [Repealed]

- (m) **Agreements with licensees.** enter into agreements with persons licensed under section 103, 104, 53(a)(4), or 63(a)(4) [42 U.S.C. §§ 2133, 2134, 2073(a)(4), or 2093(a)(4)] for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: Provided, however, That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: And provided further, That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;
- (n) **Delegation of functions.** delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in section 51, 57(b), 61, 108, 123, 145(b) [42 U.S.C. §§ 2071, 2077(b), 2091, 2138, 2153, 2165(b)] (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145(f) [42 U.S.C. § 2165(f)], and 161(a) [subsec. (a) of this section].
- (o) **Reports and records.** require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 [42 U.S.C. § 2051] and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104 [42 U.S.C. §§ 2073, 2093, 2111, 2133, 2134], as may be necessary to effectuate the purposes of this Act, including section 105 [42 U.S.C. § 2135]; and
- (p) **Rules and regulations.** make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.
- (q) **Easements for rights-of-way.** The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: Provided, That such rights-of-way

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

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

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

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

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

- (t) Contracts for processing, fabricating, separating, or refining materials. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104 [42 U.S.C. § 2133 or 2134]: Provided, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161(m) [subsec. (m) of this section];
- (u) Contracts for purchase or acquisition of reactor services and supplies and equipment.
- (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;
- (2) (A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.
- (B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and
- (3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation

available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

- [(v)] v. provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d) [42 U.S.C. § 2297c-2(d)]) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992 [enacted Oct. 24, 1992] in performing such services;
  
- (w) Prescription and collection of fees, charges, and prices. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104(b) [42 U.S.C. §§ 2133, 2134(b)], or which operates any facility regulated or certified under section 1701 or 1702 [42 U.S.C. §§ 2297f or 2297f-1], any fee, charge, or price which it may require, in accordance with the provisions of section 483a of title 31 of the United States Code [31 U.S.C. § 483a] or any other law, of applicants for, or holders of, such licenses or certificates.
  
- (x) Authority to establish certain requirements Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act [42 U.S.C. § 2231], such standards and instructions as the Commission may deem necessary or desirable to ensure--
  - (1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2) [42 U.S.C. § 2014(e)(2)], by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and
  
  - (2) that--
    - (A) in the case of any such license issued or renewed after the date of the enactment of this subsection [enacted Nov. 8, 1978], the need for long term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and



- (B) in the case of each license for such material (whether in effect on the date of the enactment of this section [enacted Nov. 7, 1978] or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 11 e. (2) [42 U.S.C. § 2014(e)(2)], will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

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

#### **SUBCHAPTER XV. JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE**

##### ***42 U.S.C. § 2231 (Sec. 181). General***

The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms "agency" and "agency action" shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 147 [42 U.S.C. § 2167] or information protected from dissemination under the authority of section 148 [42 U.S.C. § 2168], the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 148 [42 U.S.C. § 2168] to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 148 [42 U.S.C. § 2168] were not involved.

##### ***42 U.S.C. § 2233 (Sec. 183). Terms of licenses***

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this Act including the following provisions:

- (a) [Repealed]

- (b) No right to the special nuclear material shall be conferred by the license except as defined by the license.
- (c) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act.
- (d) Every license issued under this Act shall be subject to the right of recapture or control reserved by section 108 [42 U.S.C. § 2138], and to all of the other provisions of this Act, now or hereafter in effect and to all valid rules and regulations of the Commission.

***42 U.S.C. § 2234 (Sec. 184). Inalienability of licenses***

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest in such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security.

***42 U.S.C. § 2235 (Sec. 185). Construction permits and operating licenses***

- a. All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a "license".
- b. After holding a public hearing under section 189 a. (1)(A) [42 U.S.C. § 2239a.(1)(A)], the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and

the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189 a.(1)(B) [42 U.S.C. § 2239a.(1)(B)].

**42 U.S.C. § 2236 (Sec. 186). Revocation**

- (a) Grounds. Any license may be revoked for any material false statement in the application or any statement of fact required under section 182 [42 U.S.C. § 2232], or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.
- (b) Procedure. The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act in revoking any license.
- (c) Repossession of special nuclear material. Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act. Just compensation shall be paid for the use of the facility.

**42 U.S.C. § 2237 (Sec. 187). Modification of license**

The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this Act or by reason of rules and regulations issued in accordance with the terms of this Act.

**42 U.S.C. § 2238 (Sec. 188). Continued operation of facilities**

Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 186 [42 U.S.C. § 2236], the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

**42 U.S.C. § 2239 (Sec. 189). Hearings and judicial review**

- (a) (1) (A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 153, 157, 186(c), or 188 [42 U.S.C. §§ 2183, 2187, 2236(c), 2238], the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104(b) [42 U.S.C. § 2133 or 2134(b)] for a construction permit for a facility, and on any application under section 104(c) [42 U.S.C. § 2134(c)] for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.
- (B) (i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185 b. [42 U.S.C. § 2235b.], the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.
- (ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

- (iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.
  - (iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.
  - (v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).
- (2) (A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.
- (B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

- (C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.
- (b) Any final order entered in any proceeding of the kind specified in subsection (a) above or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129), and to the provisions of section 10 of the Administrative Procedure Act, as amended.

**42 U.S.C. § 2240 (Sec. 190). Licensee incident reports**

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

**42 U.S.C. § 2241 (Sec. 191). Atomic safety and licensing board**

- (a) Notwithstanding the provisions of 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.
- (b) Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 163 [42 U.S.C. § 2203] shall be applicable to board members appointed from private life.

**42 U.S.C. § 2243 (Sec. 193). Licensing of uranium enrichment facilities**

- (a) Environmental impact statement.
  - (1) Major Federal action. The issuance of a license under sections 53 and 63 [42 U.S.C. §§ 2073 and 2093] for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
  - (2) Timing. An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.
- (b) Adjudicatory hearing.
  - (1) In general. The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 53 and 63 [42 U.S.C. §§ 2073 and 2093].
  - (2) Timing. Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.
  - (3) Single proceeding. No further Commission licensing action shall be required to authorize operation.
- (c) Inspection and operation. Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.
- (d) Insurance and decommissioning.
  - (1) The Commission shall require, as a condition of the issuance of a license under sections 53 and 63 [42 U.S.C. §§ 2073 and 2093] for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.
  - (2) The Commission shall require, as a condition for the issuance of a license under sections 53 and 63 [42 U.S.C. §§ 2073 and 2093] for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds

for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

- (A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).
  - (B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.
  - (C) External sinking fund in which deposits are made at least annually.
- (e) No Price-Anderson coverage. Section 170 of this Act [42 U.S.C. § 2210] shall not apply to any license under section 53 or 63 [42 U.S.C. §§ 2072 and 2092] for a uranium enrichment facility constructed after the date of enactment of this section [enacted Nov. 15, 1990].

#### **SUBCHAPTER XVII. ENFORCEMENT OF CHAPTER**

##### ***42 U.S.C. § 2271 (Sec. 221). General provisions***

- (a) To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.
- (b) The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.
- (c) No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: Provided, however, That nothing in this subsection shall be construed as applying to administrative action taken by the Commission.

##### ***42 U.S.C. § 2272 (Sec. 222). Violation of specific sections***

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 57, 92, or 101 [42 U.S.C. §§ 2077, 2122, 2131], or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108 [42 U.S.C. § 2138], shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.



**42 U.S.C. § 2273 (Sec. 223). Violation of sections generally**

- (a) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161(b), (i), or (o) [42 U.S.C. §§ 2095, 2201(b), (i), (o)] shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.
- (b) Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act [42 U.S.C. §§ 2133 or 2134(b)] who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term 'basic component' means a facility structure, system, component or part thereof necessary to assure--
- (1) the integrity of the reactor coolant pressure boundary,
  - (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
  - (3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act [42 U.S.C. §§ 2133 or 2134(b)] is under construction and on the premises of each plant where components for such a facility are fabricated.

- (c) Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. [42 U.S.C. § 2210(d)] (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in

subsection 11 q. [42 U.S.C. § 2014(q)] shall, upon conviction, notwithstanding section 3571 of title 18, United States Code, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, United States Code, punishment shall be a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

**42 U.S.C. § 2274 (Sec. 224). *Communication of Restricted Data***

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data--

- (a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both;
- (b) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both.

**42 U.S.C. § 2275 (Sec. 225). *Receipt of Restricted Data***

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

**42 U.S.C. § 2276 (Sec. 226). *Tampering with Restricted Data***

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

**42 U.S.C. § 2277 (Sec. 227). Disclosure of Restricted Data**

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data, pursuant to the provisions of this Act or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$2,500.

**42 U.S.C. § 2278 (Sec. 228). Statute of limitations**

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 224 to 226, inclusive, of this Act [42 U.S.C. §§ 2274--2276] unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

**42 U.S.C. § 2278a (Sec. 229). Trespass upon installations**

- (a) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission. Every such regulation of the Commission shall be posted conspicuously at the location involved.
- (b) Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.
- (c) Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection (a) with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

**42 U.S.C. § 2278b (Sec. 230). *Photographing of installations***

It shall be an offense, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both--

- (1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or
- (2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

**42 U.S.C. § 2279 (Sec. 231). *Other laws***

Sections 224 to 230 [42 U.S.C. §§ 2274--2278b] shall not exclude the applicable provisions of any other laws.

**42 U.S.C. § 2280 (Sec. 232). *Injunction proceedings***

Whenever in the judgment of the Commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this Act, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**42 U.S.C. § 2281 (Sec. 233). *Contempt proceedings***

In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161(c) [42 U.S.C. § 2201(c)], the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**42 U.S.C. § 2282 (Sec. 234). Civil monetary penalties for violations of licensing requirements**

- (a) Any person who (1) violates any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 [42 U.S.C. §§ 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, 2139] or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked under section 186 [42 U.S.C. § 2236], shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation.
- (b) Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.
- (c) On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

**42 U.S.C. § 2282a (Sec. 234a). Civil monetary penalties for violations of Department of Energy regulations.**

- (a) Any person who has entered into an agreement of indemnification under subsection 170 d. [42 U.S.C. § 2210(d)] (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed \$100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.
- (b) (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

- (2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.
- (c) (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.
- (2) (A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.
- (B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code [5 U.S.C. §§ 701 et seq.]. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.
- (3) (A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).
- (B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

- (C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.
- (4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.
- (d) The provisions of this section shall not apply to:
- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
  - (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
  - (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
  - (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
  - (5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;
  - (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and
  - (7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

**42 U.S.C. § 2283 (Sec. 235). Protection of nuclear inspectors**

- (a) Whoever kills any person who performs any inspections which--
- (1) are related to any activity or facility licensed by the Commission, and
  - (2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104 b., or the safety of radioactive materials,

shall be punished as provided under sections 1111 and 1112 of title 18, United States Code [18 U.S.C. §§ 1111, 1112]. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

- (b) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code [18 U.S.C. § 111].

**42 U.S.C. § 2284 (Sec. 236). Sabotage of nuclear facilities or fuel**

- a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to--

- (1) any production facility or utilization facility licensed under this Act;
- (2) any nuclear waste storage facility licensed under this Act;
- (3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; or
- (4) any uranium enrichment facility licensed by the Nuclear Regulatory Commission.

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

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



**APPENDIX I. ENERGY REORGANIZATION ACT OF 1974 AS AMENDED\***

\*Includes amendments made through the Summer of 1994



**APPENDIX I. TITLE 42. UNITED STATES CODE  
CHAPTER 73. DEVELOPMENT OF ENERGY SOURCES  
(ENERGY REORGANIZATION ACT OF 1974 AS AMENDED)**

***42 U.S.C. § 5801. Congressional declaration of policy and purpose***

- (a) Development and utilization of energy sources. The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.
- (b) Necessity of establishing Energy Research and Development Administration. The Congress finds that, to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission's military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistent with warranted priorities.
- (c) Separation of licensing and regulatory functions of the Atomic Energy Commission. The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner, pursuant to this Act, assuring adequacy of technical and other resources necessary for the performance of each.
- (d) Small business participation. The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and equitably in grants, contracts, purchases, and other Federal activities relating to research, development, and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out his policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.
- (e) Priorities. Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods of utilizing solar energy.

## ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

### **42 U.S.C. § 5811. Establishment of Energy Research and Development Administration**

There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this Act referred to as the "Administration").

### **42 U.S.C. § 5812. Officers of the Administration**

- (a) Administrator; appointment. There shall be at the head of the Administration an Administrator of Energy Research and Development (hereinafter in this Act referred to as the "Administrator"), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.
- (b) Deputy Administrator. There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.
- (c) Qualifications of Administrator and Deputy Administrator. The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.
- (d) Assistant Administrators; number; appointment; qualifications. There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage the energy technology area assigned to such Assistant Administrator.
- (e) General Counsel. There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator.
- (f) Additional officers. There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to subsection 161 d. of the Atomic Energy Act [42 U.S.C. § 2201(d)].

- (g) Director of Military Application; functions; qualifications; compensation. The Division of Military Application transferred to and established in the Administration by section 104(d) of this Act [42 U.S.C. § 5814(d)] shall be under the direction of a Director of Military Application, who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade. The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under the Atomic Energy Act of 1954, as amended, for the Assistant General Manager for Military Application.
- (h) Allocation of functions; responsibility for international cooperation. Officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time. The Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.
- (i) Order of succession. The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel or such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

**42 U.S.C. § 5813. Responsibilities of the Administrator**

The responsibilities of the Administrator shall include, but not be limited to--

- (1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;
- (2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion, storage, transmission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;
- (3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;
- (4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

- (5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;
- (6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;
- (7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;
- (8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;
- (9) encouraging and participating in international cooperation in energy and related environmental research and development;
- (10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs; by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;
- (11) encouraging and conducting research and development in clean and renewable energy sources.

**42 U.S.C. § 5814. Abolition and transfers**

- (a) Abolition of Atomic Energy Commission. The Atomic Energy Commission is hereby abolished. Sections 21 and 22 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2031 and 2032) are repealed.
- (b) Transfer or lapse of functions of Atomic Energy Commission. All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this Act.
- (c) Functions of Atomic Energy Commission transferred to Administrator. There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this Act.

- (d) Transfer of General Advisory Committee, Patent Compensation Board, and Divisions of Military Application and Naval Reactors to Administration. The General Advisory Committee established pursuant to section 26 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2036), the Patent Compensation Board established pursuant to section 157 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2187), and the Divisions of Military Application and Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2035), are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 27 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2037), are transferred to the Administrator.
- (e) Transfer to Administrator of certain functions of Secretary of the Interior and Department of the Interior; study of potential energy application of helium; report to President and Congress. There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department--
- (1) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960 (74 Stat. 336; 30 U.S.C. 661--668);
  - (2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the [United States] Bureau of Mines "energy centers" and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and
  - (3) as relate to or are utilized for underground electric power transmission research.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from the date of the enactment of this Act [Oct. 11, 1974], report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

- (f) Transfer to Administrator of certain functions of National Science Foundation. There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with--
- (1) solar heating and cooling development; and
  - (2) geothermal power development.

- (g) Transfer to Administrator of certain functions of Environmental Protection Agency. There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, of alternative automotive power systems.
- (h) Exercise of authority necessary or appropriate to perform transferred functions and carry out transferred programs. To the extent necessary or appropriate to perform functions and carry out programs transferred by this Act, the Administrator and Commission may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.
- (i) Utilization of technical and management capabilities of other executive agencies; assignment of specific programs or projects in energy research and development. In the exercise of his responsibilities under section 103 [42 U.S.C. § 5813], the Administrator shall utilize, with their consent, to the fullest extent he determines advisable the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that--
  - (1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and
  - (2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.

**42 U.S.C. § 5815. Administrative provisions**

- (a) Rules and regulations. The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.
- (b) Policy planning and evaluation. The Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.
- (c) Delegation of functions. Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.



- (d) **Organization.** Except as provided in section 102 [42 U.S.C. § 5812] and in section 104(d) [42 U.S.C. § 5814(d)], the Administrator may organize the Administration as he may deem to be necessary or appropriate.
- (e) **Field offices.** The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.
- (f) **Seal.** The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.
- (g) **Working capital fund.** The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.
- (h) **Information from other agencies.** Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this title.

***42 U.S.C. § 5816. Personnel and services***

- (a) **Appointment and compensation of officers and employees.** The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 161 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(d)) as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.
- (b) **Employment of experts and consultants.** The Administrator is authorized to obtain services as provided by section 3109 of title 5 of the United States Code.
- (c) **Participation of military personnel.** The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

- (d) Status of military personnel unaffected. Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section shall in no way affect the status, office, rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.
- (e) Transportation and per diem expenses. The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 of the United States Code [5 U.S.C. §§ 5701 et seq.] for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.
- (f) Personnel of other agencies. The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Government.
- (g) Advisory boards. The Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463) [5 U.S.C. Appx §§ 1 et seq.], to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.
- (h) Employment of noncitizens. The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

**42 U.S.C. § 5816a. Financial statements of Department officers and employees**

- (a) Annual filing requirement. Each officer or employee of the Department of Energy who--
  - (1) performs any functions or duty under this Act or any other Act amended by this Act; and
  - (2) has any known financial interest--
    - (A) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any other Act amended by this Act, or

(B) in property from which minerals are commercially produced,

shall, beginning on February 1, 1977, annually file with the Secretary of Energy a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statements shall be available to the public.

(b) Monitoring and enforcement; reports. The Secretary of Energy shall--

(1) act within ninety days after the date of enactment of this section [June 3, 1977]--

(A) to define the term "known financial interest" for purposes of paragraph (2) of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of Energy of such statements; and

(2) report annually to the Congress with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year[.]

(c) Exemption for occupants of non-policy making positions. In the rules prescribed in subsection (b) of this section, the Secretary of Energy may identify specific positions within the Department which are of a nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty. Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than \$ 2,500 or imprisoned not more than one year, or both.

#### ***42 U.S.C. § 5817. Powers of the Administrator***

(a) Research and development. The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the

Administrator under this Act as are applicable to the nuclear activities transferred pursuant to this title shall be subject to the provisions of the Atomic Energy Act of 1954, as amended, and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 103 and 104 of this Act [42 U.S.C. §§ 5813 and 5814] shall be carried out pursuant to the provisions of this Act, applicable authority existing immediately before the effective date of this Act [Jan. 19, 1975], or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051--2053).

- (b) Facilities and real property. Except for public buildings as defined in the Public Buildings Act of 1959, as amended, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950 [5 U.S.C. § 903 note], the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States.
- (c) Services for employees at remote locations.
  - (1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:
    - (A) Emergency medical services and supplies.
    - (B) Food and other subsistence supplies.
    - (C) Messing facilities.
    - (D) Audiovisual equipment, accessories, and supplies for recreation and training.
    - (E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.
    - (F) Living and working quarters and facilities.
    - (G) Transportation for school-age dependents of employees to the nearest appropriate educational facilities.

- (2) The furnishing of medical treatment under subparagraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.
  - (3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available for use by the Administrator for performing the work or services for which payment is received.
- (d) Acquisition of copyrights and patents. The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him:
- (1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.
  - (2) Licenses under copyrights, patents, and applications for patents.
  - (3) Releases, before suit is brought, for past infringement of patents or copyrights.
- (e) Dissemination of information. Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161--2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this title through information programs and other appropriate means, and shall encourage the dissemination of scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.
- (f) Gifts and bequests. The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to the United States.

**42 U.S.C. § 5817a. Employee-suggested research projects; approval; funding; reports**

- (a) Any Government-owned contractor operated laboratory, energy research center, or other laboratory performing functions under contract to the Administration may, with the approval of the Administrator, use a reasonable amount of its operating budget for the funding of employee-suggested research projects up to the pilot stage of development. It shall be a condition of any such approval that the director of the laboratory or center involved form an internal review mechanism for determining which employee-suggested projects merit funding in a given fiscal year; and any such project may be funded in one or more succeeding years if the review process indicates that it merits such funding.
- (b) Each director of a laboratory or center specified in subsection (a) of this section shall submit an annual report to the Administrator on projects being funded under this section; and on completion of each such project shall submit a report to the Technical Information Center of the Administration for inclusion in its data base.

**42 U.S.C. § 5818. [Repealed]**

**42 U.S.C. § 5819. Report to Congress on future reorganization**

- (a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a consolidation in whole or in part of regulatory functions concerning energy.
- (b) This report shall replace and serve the purposes of the report required by section 15(a)(4) of the Federal Energy Administration Act [15 U.S.C. § 774(a)(4)].

**42 U.S.C. § 5820. Coordination with environmental efforts**

The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.

**42 U.S.C. § 5821. Annual authorization Acts**

- (a) General requirements; applicability to appropriations. All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 261 of the Atomic Energy Act of 1954 [42 U.S.C. § 2017], section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. § 5915], and section 305 of this Act [42 U.S.C. § 5875]. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as "annual authorization Acts").
- (b) Requirements and limitations respecting funds appropriated for operating expenses.
  - (1) Funds appropriated pursuant to an annual authorization Act for "Operating expenses" may be used for--
    - (A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and
    - (B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

- (2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds \$ 5,000,000 in the case of such a facility or \$ 2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator--

- (A) transmit [transmits] to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and
  - (B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.
- (c) Additional requirements and limitations respecting funds appropriated for operating expenses.
- (1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.
  - (2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless--
    - (A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or
    - (B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed \$ 50,000.



(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated.

(1) Except as otherwise provided in the authorization Act involved--

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result of reprogramming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment. Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: Provided, That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses".

(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment. When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

- (g) Performance of construction design services by Administrator. The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.
- (h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions. When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484); except that--
  - (1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 or the Strategic and Critical Materials Stockpiling Act, as amended, or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (42 U.S.C. 2301; 50 U.S.C. 98h; 30 U.S.C. 7); and
  - (2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.
- (i) Requirements respecting transfers of sums appropriated for operating expenses to other Governmental agencies; merger of transferred sums. When so specified in an appropriation Act, transfers of sums from the "Operating expenses" appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which they are transferred.

## **NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION**

### ***42 U.S.C. § 5841. Establishment and transfers***

- (a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission.
  - (1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the

Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

- (2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in the Energy Reorganization Act of 1974, (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.
- (3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.
- (4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.
- (5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

(b) Appointment of members.

- (1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

- (c) Term of office. Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.
- (d) Submission of appointments to Senate. Such initial appointments shall be submitted to the Senate within sixty days of the signing of this Act [Oct. 11, 1974]. Any individual who is serving as a member of the Atomic Energy Commission at the time of the enactment of this Act [Oct. 11, 1974], and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.
- (e) Removal of members; prohibition against engagement in business or other employment. Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.
- (f) Transfer of licensing and regulatory functions of the Atomic Energy Commission. There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission--which functions officers, components, and personnel are excepted from the transfer to the Administrator by section 104(c) of this Act [42 U.S.C. § 5814(c)].
- (g) Additional transfers. In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission--
  - (1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;
  - (2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 205 [42 U.S.C. § 5845], relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation under the provisions of the Atomic Energy Act of 1954, as amended, and of this Act.
- (h) [Repealed]

**42 U.S.C. § 5842. Licensing and related regulatory functions respecting selected Administration facilities**

Notwithstanding the exclusions provided for in section 110 a. or any other provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(a)), the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended [42 U.S.C. §§ 2071 et seq., 2091 et seq., 2111 et seq., and 2131 et seq.], as to the following facilities of the Administration:

- (1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.
- (2) Other demonstration nuclear reactors--except those in existence on the effective date of this Act [Jan. 19, 1975]--when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.
- (3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act.
- (4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

**42 U.S.C. § 5843. Office of Nuclear Reactor Regulation**

- (a) Establishment; appointment of Director. There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Commission, who may report directly to the Commission, as provided in section 209 [42 U.S.C. § 5849], and who shall serve at the pleasure of and be removable by the Commission.
- (b) Functions of Director. Subject to the provisions of this Act, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:
  - (1) Principal licensing and regulation involving all facilities, and materials licensed under the Atomic Energy Act of 1954, as amended, associated with the construction and operation of nuclear reactors licensed under the Atomic Energy Act of 1954, as amended;
  - (2) Review the safety and safeguards of all such facilities, materials, and activities, and such review functions shall include, but not be limited to--

- (A) monitoring, testing and recommending upgrading of systems designed to prevent substantial health or safety hazards; and
  - (B) evaluating methods of transporting special nuclear and other nuclear materials and of transporting and storing high-level radioactive wastes to prevent radiation hazards to employees and the general public.
- (3) Recommend research necessary for the discharge of the functions of the Commission.
- (c) Responsibility for safe operation of facilities. Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safe operation of all facilities resulting from all activities within the jurisdiction of the Administration pursuant to this Act.

**42 U.S.C. § 5844. Office of Nuclear Safety and Safeguards**

- (a) Establishment; appointment of Director. There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 209 [42 U.S.C. § 5849], and who shall serve at the pleasure of and be removable by the Commission.
- (b) Functions of Director. Subject to the provisions of this Act, the Director of Nuclear Material Safety and Safeguards shall perform such functions as the Commission shall delegate including:
  - (1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended, associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.
  - (2) Review safety and safeguards of all such facilities and materials licensed under the Atomic Energy Act of 1954, as amended, and such review shall include, but not be limited to--
    - (A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;
    - (B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

- (C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this Act and promptly transmitted to the Congress by the Commission.
- (3) Recommending research to enable the Commission to more effectively perform its functions.
- (c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities. Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this Act.

**42 U.S.C. § 5845. Office of Nuclear Regulatory Research**

- (a) Establishment; appointment of Director. There is hereby established in the Commission an Office of Nuclear Regulatory Research under the direction of a Director of Nuclear Regulatory Research, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 209 [42 U.S.C. § 5849], and who shall serve at the pleasure of and be removable by the Commission.
- (b) Functions of Director. Subject to the provisions of this Act, the Director of Nuclear Regulatory Research shall perform such functions as the Commission shall delegate including:
  - (1) Developing recommendations for research deemed necessary for performance by the Commission of its licensing and related regulatory functions.
  - (2) Engaging in or contracting for research which the Commission deems necessary for the performance of its licensing and related regulatory functions.
- (c) Cooperation of Federal agencies. The Administrator of the Administration and the head of every other Federal agency shall--
  - (1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;
  - (2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and
  - (3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

- (d) Responsibility for safety of activities. Nothing in subsections (a) and (b) of this section or section 201 of this Act [42 U.S.C. § 5841] shall be construed to limit in any way the functions of the Administration relating to the safety of activities within the jurisdiction of the Administration.
- (e) Information and research services. Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and research services, on a reimbursable basis, as it may have or be reasonably able to acquire.
- (f) Improved safety systems research. The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear powerplants.

**42 U.S.C. § 5846. Compliance with safety regulations**

- (a) Notification to the Commission of noncompliance. Any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to this Act, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity--
  - (1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or
  - (2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate,shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.
- (b) Penalty for failure to notify. Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by section 234 of the Atomic Energy Act of 1954, as amended [42 U.S.C. § 2282].
- (c) Posting of requirements. The requirements of this section shall be prominently posted on the premises of any facility licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended.
- (d) Inspection and enforcement. The Commission is authorized to conduct such reasonable inspections and other enforcement activities as needed to insure compliance with the provisions of this section.



**42 U.S.C. § 5847. Nuclear energy center site survey**

- [(a)] (1)** The Commission is authorized and directed to make or cause to be made under its direction, a national survey, which shall include consideration of each of the existing or future electric reliability regions, or other appropriate regional areas, to locate and identify possible nuclear energy center sites. This survey shall be conducted in cooperation with other interested Federal, State, and local agencies, and the views of interested persons, including electric utilities, citizens' groups, and others, shall be solicited and considered.
- (2)** For purposes of this section, the term "nuclear energy center site" means any site, including a site not restricted to land, large enough to support utility operations or other elements of the total nuclear fuel cycle, or both including, if appropriate, nuclear fuel reprocessing facilities, nuclear fuel fabrication plants, retrievable nuclear waste storage facilities, and uranium [uranium] enrichment facilities.
- (3)** The survey shall include--
- (a)** a regional evaluation of natural resources, including land, air, and water resources, available for use in connection with nuclear energy center sites; estimates of future electric power requirements that can be served by each nuclear energy center site; an assessment of the economic impact of each nuclear energy site; and consideration of any other relevant factors, including but not limited to population distribution, proximity to electric load centers and to other elements of the fuel cycle, transmission line rights-of-way, and the availability of other fuel resources;
  - (b)** an evaluation of the environmental impact likely to result from construction and operation of such nuclear energy centers, including an evaluation whether such nuclear energy centers will result in greater or lesser environmental impact than separate siting of the reactors and/or fuel cycle facilities; and
  - (c)** consideration of the use of federally owned property and other property designated for public use, but excluding national parks, national forests, national wilderness areas, and national historic monuments.
- (4)** A report of the results of the survey shall be published and transmitted to the Congress and the Council on Environmental Quality not later than one year from the date of the enactment of this Act [enacted Oct. 11, 1974] and shall be made available to the public, and shall be updated from time to time thereafter as the Commission, in its discretion, deems advisable. The report shall include the Commission's evaluation of the results of the survey and any conclusions and recommendations, including recommendations for legislation, which the Commission may have concerning the feasibility and practicality of locating nuclear power reactors and/or other elements of the nuclear fuel cycle on

nuclear energy center sites. The Commission is authorized to adopt policies which will encourage the location of nuclear power reactors and related fuel cycle facilities on nuclear energy center sites insofar as practicable.

**42 U.S.C. § 5848. Abnormal occurrence reports**

The Commission shall submit to the Congress each quarter a report listing for that period any abnormal occurrences at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to this Act. For the purposes of this section an abnormal occurrence is an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. Nothing in the preceding sentence shall limit the authority of a court to review the determination of the Commission. Each such report shall contain--

- (1) the date and place of each occurrence;
- (2) the nature and probable consequence of each occurrence;
- (3) the cause or causes of each; and
- (4) any action taken to prevent reoccurrence;

the Commission shall also provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within fifteen days of its receiving information of each abnormal occurrence and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available to it.

**42 U.S.C. § 5849. Other officers**

- (a) Executive Director. The Commission shall appoint an Executive Director for Operations, who shall serve at the pleasure of and be removable by the Commission.
- (b) Functions of Executive Director. The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this Act to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.
- (c) Equal employment opportunity report. The Executive Director shall report to the Commission at semiannual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.

- (d) Annual status report. The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 307(c) of the Energy Reorganization Act of 1974 [42 U.S.C. § 5877(c)]) following the fiscal year to which such report applies.
- (e) Additional officers. There shall be in the Commission not more than five additional officers appointed by the Commission. The positions of such officers shall be considered career positions and be subject to subsection 161d of the Atomic Energy Act [42 U.S.C. § 2201(d)].

***42 U.S.C. § 5850. Unresolved safety issues plan***

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

***42 U.S.C. § 5851. Employee protection***

- (a) Discrimination against employee.
  - (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or person acting pursuant to a request of the employee)--
    - (A) notified his employer of an alleged violation of this Act or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
    - (B) refused to engage in any practice made unlawful by this Act or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
    - (C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this Act or the Atomic Energy Act of 1954;

- (D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;
- (E) testified or is about to testify in any such proceeding or;
- (F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

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

- (A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);
- (B) an applicant for a license from the Commission or such an agreement State;
- (C) a contractor or subcontractor of such a licensee or applicant; and
- (D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344.

(b) Complaint, filing and notification.

- (1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor ( in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.
- (2) (A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into

by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

- (B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.
- (3) (A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.
- (B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.
- (C) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.
- (D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(c) Review.

- (1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code [5 U.S.C. §§ 701 et seq.]. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.
- (2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction. Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action.

- (1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.
- (2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement. Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(g) Deliberate violations. Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this Act or of the Atomic Energy Act of 1954, as amended.

(h) Nonpreemption. This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

- (i) Posting requirement. The provisions of this section shall be prominently posted in any place of employment to which this section applies.
- (j) Investigation of allegations.
  - (1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of--
    - (A) the filing of a complaint under subsection (b)(1) arising from such allegation; or
    - (B) any investigation by the Secretary, or other action, under this section in response to such complaint.
  - (2) A determination by the Secretary under this section that a violation of subsection (a) has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

#### MISCELLANEOUS AND TRANSITIONAL PROVISIONS

##### ***42 U.S.C. § 5871. Transitional provisions***

- (a) Lapse of agency or other body from which functions or programs have been transferred and positions or offices therein. Except as otherwise provided in this Act, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this Act, have been transferred from that agency, or other body, or any component thereof by this Act, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313--5316), shall lapse.
- (b) Continuation of orders, determinations, rules, etc. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges--
  - (1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act, and
  - (2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

- (c) Effect of 42 U.S.C. §§ 5801 et seq. on proceedings pending before Atomic Energy Commission or other department or agency. The provisions of this Act shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.
- (d) Effect of 42 U.S.C. §§ 5801 et seq. on suits commenced prior to effective date. Except as provided in subsection (f)--
- (1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and
  - (2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.
- (e) Abatement of suits, actions, or other proceedings by or against officer, department, or agency. No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.
- (f) Continuation of suits; substitution of parties. If, before the date on which this Act takes effect [Jan. 19, 1975] any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this Act had not been enacted, with the Administrator or Commission, or other official, as the case may be, substituted.
- (g) Judicial review of orders and actions in performance of transferred functions; statutory requirements relating to notices, hearings, action upon record, or administrative review. Final orders and actions of any official or component in the performance of functions transferred by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions



immediately preceding the effective date of this Act [Jan. 19, 1975]. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

- (h) References in other laws to department, agency, officer, or office whose functions have been transferred deemed reference to Administration, Administrator, or Commission. With respect to any function transferred by this Act and performed after the effective date of this Act [Jan. 19, 1975], reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this Act vests such functions.
- (i) Limitation, curtailment, etc., of presidential functions or authority. Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this Act [Jan. 19, 1975]; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.
- (j) References in 42 U.S.C. §§ 5801 et seq. to provision of law deemed to include references thereto as amended or supplemented. Any reference in this Act to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.
- (k) Functions conferred by 42 U.S.C. §§ 5801 et seq. deemed in addition to and not in substitution for functions existing before effective date. Except as may be otherwise expressly provided in this Act, all functions expressly conferred by this Act shall be in addition to and not in substitution for functions existing immediately before the effective date of this Act [Jan. 19, 1975] and transferred by this Act.

***42 U.S.C. § 5872. Transfer of personnel***

- (a) Provisions of law applicable. Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this Act, are, subject to section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this Act [Jan. 19, 1975] and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313--5316) on the effective date of this Act [Jan. 19, 1975] shall be subject to the provisions of subsection (c) of this section and section 301 of this Act [42 U.S.C. § 5871].

- (b) Prohibition against separation or reduction in grade or compensation for one year after transfer. Except as provided in subsection (c), transfer of nontemporary personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.
- (c) Compensation in new position at not less than rate provided for previous position. Any person who, on the effective date of this Act [Jan. 19, 1975], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 of the United States Code [5 U.S.C. §§ 5301 et seq.], and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

**42 U.S.C. § 5873. Director of the Office of Management and Budget; power to make dispositions**

The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred by this Act, as he may deem necessary or appropriate to accomplish the intent and purpose of this Act.

**42 U.S.C. § 5874. Definitions**

As used in this Act--

- (1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and
- (2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

**42 U.S.C. § 5875. Authorization of appropriations**

- (a) Except as otherwise provided by law, appropriations made under this Act shall be subject to annual authorization.
- (b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.

**42 U.S.C. § 5876. Comptroller General audit**

- (a) Section 166. "Comptroller General Audit" of the Atomic Energy Act of 1954, as amended [42 U.S.C. § 2206], shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under title I [42 U.S.C. §§ 5811 et seq.], and to the activities under title II [42 U.S.C. §§ 5841 et seq.].
- (b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of title II of this Act [42 U.S.C. §§ 5841 et seq.] by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this Act [Jan. 19, 1975], the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to--
  - (1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;
  - (2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended are carried out;
  - (3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of title II [42 U.S.C. §§ 5841 et seq.].

**42 U.S.C. § 5877. Reports to President for submission to Congress**

- (a) Report by Administrator on activities of Administration. The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of those objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.
- (b) Review of desirability and feasibility of transferring functions of Administrator respecting military application and restricted data to Department of Defense or other Federal agencies; report by Administrator. During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office the Administrator shall make a report to the President, for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

- (c) Report by Commission on activities of Commission. The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas--
- (1) insuring the safe design of nuclear powerplants and other licensed facilities;
  - (2) investigating abnormal occurrences and defects in nuclear powerplants and other licensed facilities;
  - (3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;
  - (4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;
  - (5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;
  - (6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.

***42 U.S.C. § 5878. Information to Congressional committees***

The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

***42 U.S.C. § 5878a. Funding and encouragement of small business; information for inclusion in report***

The Secretary of Energy shall[,] include, in the report required by section 204(b) of the Department of Energy Act of 1978--Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information detailing the extent to which small business and nonprofit organizations are being funded by the nonnuclear research, development, and demonstration programs of the Secretary of Energy; and the extent to which small business involvement pursuant to section 2(d) of the Energy Reorganization Act of 1974 (42 U.S.C. 5801(d)) is being encouraged by the Administration.

***42 U.S.C. § 5879. Transfer of funds***

The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

## SEX DISCRIMINATION

### ***42 U.S.C. § 5891. Sex discrimination prohibited***

No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any title of this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.



**APPENDIX II. DEPARTMENT OF ENERGY  
ORGANIZATION ACT AS AMENDED\***

\*Includes amendments made through the Summer of 1994





**APPENDIX II. TITLE 42 UNITED STATES CODE  
CHAPTER 84. DEPARTMENT OF ENERGY (DEPARTMENT OF ENERGY  
ORGANIZATION ACT AS AMENDED)**

***42 U.S.C. § 7101. Definitions***

- (a) As used in this Act, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.
- (b) As used in this Act (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.
- (c) As used in this Act, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

**DECLARATION OF FINDINGS AND PURPOSES**

***42 U.S.C. § 7111. Congressional findings***

The Congress of the United States finds that--

- (1) the United States faces an increasing shortage of nonrenewable energy resources;
- (2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;
- (3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;
- (4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and
- (5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

**42 U.S.C. § 7112. Congressional declaration of purpose**

The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act:

- (1) To establish a Department of Energy in the executive branch.
- (2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.
- (3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.
- (4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.
- (5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including--
  - (a) assessing the requirements for energy research and development;
  - (b) developing priorities necessary to meet those requirements;
  - (c) undertaking programs for the optimal development of the various forms of energy production and conservation; and
  - (d) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.
- (6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.
- (7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.
- (8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

- (9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.
- (10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.
- (11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.
- (12) To foster and assure competition among parties engaged in the supply of energy and fuels.
- (13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.
- (14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act.
- (15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.
- (16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.
- (17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.
- (18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act.

- (19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

**42 U.S.C. § 7113. Relation with States**

Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction.

**ESTABLISHMENT OF THE DEPARTMENT**

**42 U.S.C. § 7131. Establishment**

There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary.

**42 U.S.C. § 7132. Principal officers**

- (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

- (b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**42 U.S.C. § 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities**

- (a) There shall be in the Department eight Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:
- (1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.
  - (2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of--
    - (A) solar energy resources;
    - (B) geothermal energy resources;
    - (C) recycling energy resources;
    - (D) the fuel cycle for fossil energy resources; and
    - (E) the fuel cycle for nuclear energy resources.
  - (3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.
  - (4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act [42 U.S.C. § 7112].

- (5) National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.
- (6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.
- (7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.
- (8) Nuclear waste management responsibilities, including--
  - (A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;
  - (B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;
  - (C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;
  - (D) the establishment of facilities for the treatment of nuclear wastes;
  - (E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;
  - (F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

- (G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

- (9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.
- (10) Power marketing functions, including responsibility for marketing and transmission of Federal power.
- (11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

- (b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

***42 U.S.C. § 7134. Federal Energy Regulatory Commission; compensation of Chairman and members***

There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

**42 U.S.C. § 7135. Energy Information Administration**

- (a) Establishment; appointment of Administrator; compensation; qualifications; duties.
- (1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.
  - (2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.
- (b) Delegation of functions. The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 11 of the Energy Supply and Environmental Coordination Act of 1974) [15 U.S.C. § 796] and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.
- (c) Functions of Director of the Office of Energy Information and Analysis. In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. §§ 790 et seq.], and the provisions of sections 53(d) and 59 [15 U.S.C. §§ 790b(d) and 790h] thereof shall be applicable to the Administrator in the performance of any function under this Act.
- (d) Collection or analysis of information and preparation of reports without approval. The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.



- (e) Annual audit. The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974 [15 U.S.C. § 790d].
- (f) Furnishing information or analysis to any other administration, commission, or office within the Department. The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.
- (g) Availability of information to public. Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5, United States Code. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. § 796(d)], and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. § 5916], shall continue to apply to any information obtained by the Administrator under such provisions.
- (h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality.
  - (1) (A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.
  - (B) In fulfilling the requirements of this subsection the Administrator shall--
    - (i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and
    - (ii) otherwise give priority to the minimization of the reporting of energy information by small business.

- (2) The Administrator shall develop and make effective for use during the second full calendar year following the date of enactment of this Act [enacted Aug. 4, 1977] the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies--
- (A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;
  - (B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;
  - (C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;
  - (D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and
  - (E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this Act.
- (3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this Act, is consistent with such accounting practices where applicable.
- (4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this Act.
- (5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a) of section 657 of this Act [42 U.S.C. § 7267].

- (6) As used in this subsection the term--
- (A) "energy-producing company" means a person engaged in:
    - (i) ownership or control of mineral fuel resources or nonmineral energy resources;
    - (ii) exploration for, or development of, mineral fuel resources;
    - (iii) extraction of mineral fuel or nonmineral energy resources;
    - (iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;
    - (v) storage of mineral fuels or nonmineral energy resources;
    - (vi) the generation, transmission, or storage of electrical energy;
    - (vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or
    - (viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;
  - (B) "energy industry" means all energy-producing companies; and
  - (C) "person" has the meaning as set forth in section 11 of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. § 796].
- (7) The provisions of section 1905 of title 18, United States Code shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.
- (i) Manufacturers energy consumption survey.
- (1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every two years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including--
    - (A) quantity of fuels consumed;
    - (B) energy expenditures;
    - (C) fuel switching capabilities; and

- (D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.
- (2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).
- (j) (1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.
- (2) In carrying out this subsection, the Administrator shall--
  - (A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and
  - (B) otherwise take into account the reporting burdens of energy information by small businesses.
- (3) As used in this subsection, the term "renewable energy resources" includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.
- (k) Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall--
  - (1) conduct surveys of residential and commercial energy use at least once every 3 years, and make such information available to the public;
  - (2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and
  - (3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.
- (l) In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k), consider--
  - (1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

- (2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and
- (3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

***42 U.S.C. § 7135a. Delegation by Secretary of Energy of energy research etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary***

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act, the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. §§ 5901 et seq.], the Geothermal Research, Development and Demonstration Act [30 U.S.C. § 1101 et seq.], the Electric and Hybrid Vehicle Research, Development and Demonstration Act, the Solar Heating and Cooling Demonstration Act, the Solar Energy Research, Development and Demonstration Act [42 U.S.C. §§ 5551 et seq.], and the Energy Reorganization Act. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

***42 U.S.C. § 7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions***

- (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.
- (b) Consistent with the provisions of title IV [42 U.S.C. §§ 7171 et seq.] the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

***42 U.S.C. § 7137. Functions of Comptroller General***

The functions of the Comptroller General of the United States under section 12 of the Federal Energy Administration Act of 1974 [15 U.S.C. § 771] shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this Act or any other Act administered by the Department.

***42 U.S.C. § 7138. [Repealed]***

**42 U.S.C. § 7139. Office of Energy Research; establishment; appointment of Director; compensation; duties**

- (a) There shall be within the Department an Office of Energy Research to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.
- (b) It shall be the duty and responsibility of the Director--
- (1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;
  - (2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;
  - (3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;
  - (4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;
  - (5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and
  - (6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act [42 U.S.C. § 7133], as the Secretary considers advantageous.

**42 U.S.C. § 7140. Leasing Liaison Committee; establishment; composition**

There is hereby established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

**42 U.S.C. § 7141. Office of Minority Economic Impact**

- (a) Establishment; appointment of Director; compensation. There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

- (b) Advice to Secretary on effect policies, regulations, and other actions of Department respecting minority participation in energy programs. The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.
- (c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities. The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable--
- (1) determine the average energy consumption and use patterns of minorities relative to other population categories;
  - (2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and
  - (3) determines [determine] how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.
- (d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department. The Director may provide the management any [and] technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act [42 U.S.C. § 7256] and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include--
- (1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;
  - (2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

- (3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and
  - (4) programs to assist minority business enterprises in the commercial application of energy-related technologies.
- (e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury.
- (1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.
  - (2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.
  - (3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.
- (f) Definitions. As used in this section, the term--
- (1) "minority" means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;
  - (2) "minority business enterprise" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and
  - (3) "minority educational institution" means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.
- (g) Authorization of appropriations. There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed \$ 3,000,000 for fiscal year 1979, not to exceed \$ 5,000,000 for fiscal year 1980, and not to exceed \$ 6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).



**42 U.S.C. § 7142. National Atomic Museum**

- (a) Recognition and status. The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico--
- (1) is recognized as the official atomic museum of the United States;
  - (2) shall be known as the "National Atomic Museum"; and
  - (3) shall have the sole right throughout the United States and its possessions to have and use the name "National Atomic Museum".
- (b) Volunteers.
- (1) In operating the National Atomic Museum, the Secretary of Energy may--
    - (a) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and
    - (b) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.
  - (2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.
  - (3) For purposes of chapter 171 of title 28 of the United States Code [28 U.S.C. §§ 2671 et seq.] (relating to tort claims), a volunteer under this subsection is considered a Federal employee.
  - (4) For the purposes of subchapter I of chapter 81 of title 5 of the United States Code [5 U.S.C. §§ 8101 et seq.] (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.
- (c) Authority.
- (1) In operating the National Atomic Museum, the Secretary of Energy may--

- (a) accept and use donations of money or gifts pursuant to section 652 of the Department of Energy Organization Act (42 U.S.C. 7262), if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;
  - (b) operate a retail outlet on the premises of the museum for the purpose of selling or distributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and
  - (c) exhibit, perform, display, and publish information and materials concerning museum mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.
- (2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

## **TRANSFERS OF FUNCTIONS**

### ***42 U.S.C. § 7151. General transfers***

- (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.
- (b) Except as provided in title IV [42 U.S.C. §§ 7171 et seq.], there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) [42 U.S.C. § 7171(a)(2)] to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

### ***42 U.S.C. § 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration***

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

**42 U.S.C. § 7152. Transfers from the Department of the Interior**

(a) Functions relating to electric power.

(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944 [16 U.S.C. § 825s], and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to--

(a) the Southeastern Power Administration;

(b) the Southwestern Power Administration;

(c) the Alaska Power Administration;

(d) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. § 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. §§ 838 et seq.];

(e) the power marketing functions of the Bureau of Reclamation [Water and Power Resources Service], including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(f) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, [unclassified], as amended by the Act of December 23, 1963 [unclassified].

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

- (3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b),(c) [Repealed]

- (d) Functions of Bureau of Mines. There are hereby transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to--

- (1) fuel supply and demand analysis and data gathering;
- (2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and
- (3) coal preparation and analysis.

**42 U.S.C. § 7153. Administration of leasing transfers**

- (a) Authority retained by Secretary of the Interior. The Secretary of the Interior shall retain any authorities not transferred under section 302(b) of this Act [42 U.S.C. § 7152(b)] and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 302(b) of this Act [42 U.S.C. § 7152(b)] with respect to the issuance or supervision of Federal leases. Nothing in section 302(b) of this Act [42 U.S.C. § 7152(b)] shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.
- (b) Consultation with Secretary of the Interior with respect to promulgation of regulations. In exercising the authority under section 302(b) of this Act [42 U.S.C. § 7152(b)] to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

- (c) [Repealed]
- (d) Preparation of environmental impact statement. The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. § 4332(2)(C)] for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

***42 U.S.C. § 7154. Transfers from the Department of Housing and Urban Development***

- (a) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. § 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. §§ 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.
- (b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 509 of the Housing and Urban Development Act of 1970 [12 U.S.C. § 1701z-8].

***42 U.S.C. § 7155. Transfer from the Interstate Commerce Commission***

Except as provided in title IV [42 U.S.C. §§ 7171 et seq.], there are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

***42 U.S.C. § 7156. Transfers from the Department of the Navy***

There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code [10 U.S.C. §§ 7421 et seq.] in the Secretary of the Navy as they relate to the administration of and jurisdiction over--

- (1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;
- (2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;
- (3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

- (4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;
- (5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and
- (6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

***42 U.S.C. § 7156a. Assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy; Director***

The Secretary of the Navy, in coordination with the Secretary of Energy, shall insure that commissioned officers of the Navy on active duty continue to be assigned to key management positions within the Office of Naval Petroleum and Oil Shale Reserves in the Department of Energy. The position of Director of such Office shall continue to be filled by a qualified officer of the Navy on active duty in the grade of captain.

***42 U.S.C. § 7157. Transfers from the Department of Commerce***

There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

***42 U.S.C. § 7158. Naval reactor and military application programs***

- (a) The Division of Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954 [42 U.S.C. § 2035], and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Assistant Secretary to whom the Secretary has assigned the function listed in section 203(a)(2)(E) [42 U.S.C. § 7133(a)(2)(E)], and such organizational unit shall be deemed to be an organizational unit established by this Act.
- (b) The Division of Military Application, established by section 25 of the Atomic Energy Act of 1954 [42 U.S.C. § 2035], and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 27 of the Atomic Energy Act of 1954 [42 U.S.C. § 2037], are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 203(a)(5) [42 U.S.C. § 7133(a)(5)] and such organizational units shall be deemed to be organizational units established by this Act.

**42 U.S.C. § 7159. Transfer to the Department of Transportation**

Notwithstanding section 301(a) [42 U.S.C. § 7151(a)], there are hereby transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act [42 U.S.C. § 6361(b)(1)(B)].

**FEDERAL ENERGY REGULATORY COMMISSION**

**42 U.S.C. § 7171. Appointment and administration**

- (a) Federal Energy Regulatory Commission; establishment. There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.
- (b) Composition; term of office; conflict of interest.
  - (1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation or employment while serving on the Commission.
  - (2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1990 [enacted April 11, 1990] shall expire as follows:
    - (A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.
    - (B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

- (c) Duties and responsibilities of Chairman. The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code [5 U.S.C. §§ 1 et seq.], (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.
- (d) Supervision and direction of members, employees, or other personnel of Commission. In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.
- (e) Designation of acting Chairman; quorum; seal. The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.
- (f) Rules. The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.
- (g) Powers of Commission. In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.



- (h) Principal office of Commission. The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.
- (i) Commission deemed agency; attorney for Commission. For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.
- (j) Annual authorization and appropriation request. In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

**42 U.S.C. § 7172. Jurisdiction of Commission**

- (a) Transfer of functions from Federal Power Commission.
  - (1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:
    - (A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. §§ 792 et seq.];
    - (B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. §§ 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. § 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

- (C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. §§ 717, 717c, 717d, 717e];
  - (D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. § 717f];
  - (E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. §§ 717 et seq.]; and
  - (F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. §§ 791a et seq.] and Natural Gas Act [15 U.S.C. §§ 717 et seq.].
- (2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:
- (A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. §§ 797, 825, 825a, 825e--825h, 825k--825o]; and
  - (B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. §§ 717g, 717h, 717 l--717p, 717s, 717t].
- (b) Transfer of functions from Interstate Commerce Commission. There are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.
- (c) Consideration of proposals made by Secretary to amend regulations issued under 15 U.S.C. § 753; exception.
- (1) Pursuant to the procedures specified in section 404 [42 U.S.C. § 7174] and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 753(a)] which is required by section 8 or 12 of such Act [15 U.S.C. § 757 or 760a] to be transmitted by the President to, and reviewed by, each House of Congress, under section 551 of the Energy Policy and Conservation Act [42 U.S.C. § 6421].

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 8 or 12 of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 757 or 760a], and section 551 of the Energy Policy and Conservation Act [42 U.S.C. § 6421].

(d) Matters involving agency determinations to be made on record after agency hearing. The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary--

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act [42 U.S.C. §§ 6213, 6214] shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under 42 U.S.C. § 7174. In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act [42 U.S.C. § 7174].

(f) Limitation. No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action. The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404 [42 U.S.C. § 7174], shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy. The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402 [this section].

**42 U.S.C. § 7173. Initiation of rulemaking proceedings before Commission**

- (a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission. The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act [42 U.S.C. § 7172].
- (b) Consideration and final action on proposals of Secretary. The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.
- (c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act [16 U.S.C. §§ 791a et seq.] and Natural Gas Act [15 U.S.C. §§ 717 et seq.]. Any function described in section 402 of this Act [42 U.S.C. § 7172] which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. §§ 791a et seq.] or the Natural Gas Act [15 U.S.C. §§ 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.
- (d) Submission of written questions by interested persons. With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. §§ 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

**42 U.S.C. § 7174. Referral of other rulemaking proceedings to Commission**

- (a) Notification of Commission of proposed action; public comment. Except as provided in section 403 [42 U.S.C. § 7173], whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act [42 U.S.C. § 7151 or 7155], he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402(a)(1), (b), and (c)(1) [42 U.S.C. § 7172(a)(1), (b), and (c)(1)], the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

- (b) Recommendations of Commission; publication. Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either--
- (1) concur in adoption of the rule or statement as proposed by the Secretary;
  - (2) concur in adoption of the rule or statement only with such changes as it may recommend; or
  - (3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

- (c) Options of Secretary; final agency action. Following publication of the Commission's recommendations the Secretary shall have the option of--
- (1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);
  - (2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or
  - (3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code.

***42 U.S.C. § 7175. Right of Secretary to intervene in Commission proceedings***

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

***42 U.S.C. § 7176. Reorganization***

For the purposes of chapter 9 of title 5, United States Code [5 U.S.C. §§ 901 et seq.], the Commission shall be deemed to be an independent regulatory agency.

**42 U.S.C. § 7177. Access to information**

- (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this Act.
- (b) The Secretary, in formulating the information to be requested in the reports or investigations under section 304 and section 311 of the Federal Power Act [16 U.S.C. §§ 825c, 825j] and section 10 and section 11 of the Natural Gas Act [15 U.S.C. §§ 717i, 717j], shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

**42 U.S.C. § 7178. Federal Energy Regulatory Commission fees and annual charges**

- (a) In general.
  - (1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle [42 U.S.C. § 7178] and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.
  - (2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act [16 U.S.C. §§ 803(e), 823a(e)].
- (b) Basis for assessments. The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.
- (c) Estimates. The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.
- (d) Time of payment. The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.
- (e) Adjustments. The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.
- (f) Use of funds. All moneys received under this section shall be credited to the general fund of the Treasury.

- (g) Waiver. The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

#### **ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW**

#### ***42 U.S.C. § 7191. Procedures for issuance of rules, regulations, or orders***

- (a) Applicability of 5 U.S.C. §§ 551 et seq.
- (1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code [5 U.S.C. §§ 551 et seq.], shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.
- (2) Notwithstanding paragraph (1), this title [42 U.S.C. §§ 7191 et seq.] shall apply to the Commission to the same extent this title [42 U.S.C. §§ 7191 et seq.] applies to the Secretary in the exercise of any of the Commission's functions under section 402(c)(1) [42 U.S.C. § 7172(c)(1)] or which the Secretary has assigned under section 402(e) [42 U.S.C. § 7172(e)].
- (b) Publication of proposed rules, regulations, or orders in Federal Register; statement; minimum comment period; additional notice requirement; availability of exception.
- (1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

- (2) Public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.
  - (3) For the purposes of this title [42 U.S.C. §§ 7191 et seq.], the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.
- (c) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation.
- (1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.
  - (2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.
  - (3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).
- (d) Promulgation of rule if accompanied by explanation. Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.
- (e) Waiver of requirements. The requirements of subsections (b), (c), and (d) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.



(f) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation.

(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to--

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection--

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(g) Prescription of procedures for State and local government agencies. Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

**42 U.S.C. § 7192. Judicial review**

- (a) Agency action. Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.
- (b) Review by district court of United States; removal. Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code [28 U.S.C. §§ 1441 et seq.]. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.
- (c) Litigation supervision by Attorney General. Subject to the provisions of section 401(i) of this Act [42 U.S.C. § 7171(i)], and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code [28 U.S.C. §§ 501 et seq.]. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

**42 U.S.C. § 7193. Remedial orders**

- (a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §§ 751 et seq.]. If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 501(a) [42 U.S.C. § 7191(a)] promulgated pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §§ 751 et seq.] he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section "person" includes any individual, association, company, corporation, partnership, or other entity however organized.

- (b) Notice of intent to contest; final order not subject to review. If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.
- (c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review. If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.
- (d) Time limits. The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.
- (e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order. Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in this section, but such procedures shall be reviewable in the hearing.
- (f) Savings provision. The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after the effective date of this Act.
- (g) Retroactive application; marketing of petroleum products. With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if--
  - (1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and
  - (2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

**42 U.S.C. § 7194. Requests for adjustments**

- (a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 501(a) [42 U.S.C. § 7191(a)] issued under the Federal Energy Administration Act [15 U.S.C. §§ 761 et seq.], the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §§ 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.
- (b) (1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this title [42 U.S.C. §§ 7191 et seq.] when such a denial becomes final.
- (2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code [5 U.S.C. § 704], and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

**42 U.S.C. § 7195. Report to Congress; contents**

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 501 [42 U.S.C. § 7191]. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

**ADMINISTRATIVE PROVISIONS  
CONFLICT OF INTEREST PROVISIONS**

**42 U.S.C. § 7211. Definitions**

- (a) Supervisory employees. For the purposes of this title [42 U.S.C. §§ 7211 et seq.], the following officers or employees of the Department are supervisory employees:
- (1) an individual holding a position in the Department at GS-16, GS-17, or GS-18 of the General Schedule [5 U.S.C. § 5332 note] or at level I, II, III, IV, or V of the Executive Schedule [5 U.S.C. §§ 5312--5316], or who is in a position at a comparable or higher level on any other Federal pay scale, or who holds a position pursuant to subsection (b) or (d) of section 621 [42 U.S.C. § 7321(b) or (d)], or who is an expert or consultant employed pursuant to section 3109 of title 5, United States Code, for more than ninety days in any calendar year and receives compensation at an annual rate equal to or in excess of the minimum rate prescribed for individuals at GS-16 of the General Schedule [5 U.S.C. § 5332 note];
  - (2) the Director or Deputy Director of any State, regional, district, local, or other field office maintained pursuant to section 650 of this Act [42 U.S.C. § 7260];
  - (3) an employee or officer who has primary responsibility for the award, review, modification, or termination of any grant, contract, award, or fund transfer within the authority of the Secretary; and
  - (4) any other employee or officer who, in the judgment of the Secretary, exercises sufficient decisionmaking or regulatory authority so that the provisions of this title [42 U.S.C. §§ 7211 et seq.] should apply to such individual.
- (b) Energy concern. For purposes of this title [42 U.S.C. §§ 7211 et seq.] the term "energy concern" includes--
- (1) any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;
  - (2) any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;
  - (3) any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;
  - (4) any person significantly engaged in development, production, processing, sale, or distribution of nuclear materials, facilities, or technology;

- (5) any person--
  - (A) significantly engaged in the business of conducting research, development, or demonstration related to an activity described in paragraph (1), (2), (3), or (4); or
  - (B) significantly engaged in conducting such research, development, or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Secretary or the Department.

(c) Publication of list of energy concerns.

- (1) The Secretary shall prepare and periodically publish a list of persons which the Secretary has determined to be energy concerns as defined by subsection (b). The absence of any particular energy concern from such list shall not exempt any officer or employee from the requirements of section 602 of this Act [42 U.S.C. § 7212].
- (2) At the request of any officer or employee of the Department the Secretary shall determine whether any person is an energy concern as defined by subsection (b).

(d) Knowledge of interest, status, or position. For the purposes of section 602(a) [42 U.S.C. §§ 7212(a)] an individual shall be deemed to have known of or knowingly committed a described act or to have known of or knowingly held a described interest, status, or position if the employee knew or should have known of such act, interest, status, or position. For the purposes of section 602(a) [42 U.S.C. § 7212(a)] an officer or employee shall be deemed to have known of or knowingly held an interest in an energy concern if such interest is sold or otherwise transferred to his spouse or dependent while such officer or employee is, or within six months prior to the date on which such officer or employee becomes, an officer or employee of the Department.

**42 U.S.C. § 7212. Divestiture of energy holdings by supervisory officials**

- (a) Prohibitions with respect to energy holdings. No supervisory employee shall knowingly receive compensation from, or hold any official relation with, any energy concern, or own stocks or bonds of any energy concern, or have any pecuniary interest therein.
- (b) Compliance by transferred personnel; notice. Personnel transferred to the Department pursuant to section 701 of this Act [42 U.S.C. § 7291] shall have six months to comply with the provisions of subsection (a) with respect to prohibited property holdings. Any person transferred pursuant to section 701 of this Act [42 U.S.C. § 7291] shall notify the Secretary or his designee of all known circumstances which would be violative of the restrictions set forth in subsection (a) not later than thirty days after the date of such transfer, as determined by the United States Civil Service Commission [Director of the Office of Personnel Management].

(c) Waiver requirements.

- (1) Where exceptional hardship would result, or where the interest is a pension, insurance or other similarly vested interest, the Secretary is authorized to waive the requirements of this section for such period as he may prescribe with respect to any supervisory employee covered. Such waiver shall:
    - (A) be published in the Federal Register;
    - (B) contain a finding by the Secretary that exceptional hardship would result or that there is such a vested interest; and
    - (C) state the period of the waiver and indicate the actions taken to minimize or eliminate the conflict of interest during such period.
  - (2)
    - (A) The Secretary may, on a case-by-case basis, waive the requirements of this section for a supervisory employee covered if the Secretary finds that the waiver is in the best interests of the Department. A waiver under this paragraph is effective for that supervisory employee only if that supervisory employee establishes a qualified trust as provided in subparts D and E of 5 Code of Federal Regulations part 2634, as in effect on the date of the enactment of this provision. The provisions of section 2634.403(b)(3) of such part shall not apply to this paragraph.
    - (B) A waiver under this paragraph shall be published in the Federal Register and shall contain the basis for the finding required by this paragraph. The waiver shall be for such period as the Secretary shall prescribe and may be renewed by the Secretary.
- (d) Disclosure. Any supervisory employee who continues to receive income from any energy concern, or continues to own property directly or indirectly in any such concern shall disclose such income or ownership to the extent known.

**42 U.S.C. §§ 7213--7217. [Repealed]**

**42 U.S.C. § 7218. Sanctions**

- (a) Civil penalty. Any individual who violates section 602 [42 U.S.C. § 7212] shall be subject to a civil penalty, assessed by the Secretary in accordance with applicable law or by any district court of the United States, not to exceed \$10,000 for each violation.
- (b) Effect on operation of 18 U.S.C. §§ 207 and 208. Nothing in this title [42 U.S.C. §§ 7211 et seq.] shall be deemed to limit the operation of section 207 or section 208 of title 18, United States Code. Nor shall any waiver issued pursuant to section 602(c) [42 U.S.C. § 7212(c)] constitute a waiver of the requirements of such provision.
- (c) [Deleted]
- (d) [Redesignated]

**ADMINISTRATIVE PROVISIONS  
PERSONNEL PROVISIONS**

**42 U.S.C. § 7231. Officers and employees**

- (a) Authority of Secretary to appoint and fix compensation. In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.
  
- (b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority.
  - (1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code [5 U.S.C. § 5332 note].
  
  - (2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease--
    - (A) when a person appointed, within four years after the effective date of this Act, to fill such position under paragraph (1) leaves such position,  
or
    - (B) on the day which is four years after such effective date, whichever is later.
  
- (c) Placement of GS-16, GS-17, and GS-18 [5 U.S.C. § 5332] positions without regard to 5 U.S.C. § 3324; termination of authority.
  - (1) Subject to the provisions of chapter 51 of title 5, United States Code [5 U.S.C. §§ 5101 et seq.], but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS-16, GS-17, and GS-18 [5 U.S.C. § 5332], not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.



- (2) Appointments under this subsection may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission [Director of the Office of Personnel Management] of appointments under GS-16, GS-17, and GS-18 [5 U.S.C. § 5332] if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this Act and who, immediately before the effective date of this Act, held a position and duties comparable to those of such position.
- (3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.
- (d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation. In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 [5 U.S.C. § 5332] under section 5108 of title 5, United States Code, under existing law, or under this Act and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code [5 U.S.C. § 5332 note].
- (e) Determination of maximum aggregate number of positions. For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 [5 U.S.C. § 5332] under section 5108(a) of title 5, United States Code, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.
- (f) Exemption from competitive service. All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of the date of enactment of this Act [enacted Aug. 14, 1991] while employed in such positions, be exempt from the competitive service.

***42 U.S.C. § 7232. Senior positions***

In addition to those positions created by title II of this Act [42 U.S.C. §§ 7131 et seq.], there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

**42 U.S.C. § 7233. Experts and consultants**

The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code [5 U.S.C. § 5332 note], for persons in Government service employed intermittently.

**42 U.S.C. § 7234. Advisory committees**

- (a) The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act [5 U.S.C. Appx. I] such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for individuals in the Government serving without pay.
- (b) Section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. § 776] shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this Act, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5, United States Code.

**42 U.S.C. § 7235. Armed services personnel**

- (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on the date of enactment of this Act [enacted Aug. 4, 1977], in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code [10 U.S.C. §§ 7421 et seq.]. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.
- (b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

**42 U.S.C. § 7236. 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.

**ADMINISTRATIVE PROVISIONS  
GENERAL ADMINISTRATIVE PROVISIONS**

**42 U.S.C. § 7251. General authority**

To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

**42 U.S.C. § 7252. Delegation**

Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

**42 U.S.C. § 7253. Reorganization**

The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component.

**42 U.S.C. § 7254. Rules and regulations**

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

**42 U.S.C. § 7255. Subpoena**

For the purpose of carrying out the provisions of this Act, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act [15 U.S.C. § 49] with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this Act. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section.

**42 U.S.C. § 7256. Contracts, leases, etc., with public agencies and private organizations and persons**

- (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.
- (b) Notwithstanding any other provision of this title [42 U.S.C. §§ 7211 et seq.], no authority to enter into contracts or to make payments under this title [42 U.S.C. §§ 7211 et seq.] shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.
- (c) The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that--
  - (1) is located at a facility of the Department of Energy to be closed or reconfigured;
  - (2) at the time the lease is entered into, is not needed by the Department of Energy; and
  - (3) is under the control of the Department of Energy.

- (d)
  - (1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.
  - (2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.
- (e)
  - (1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.
  - (2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.
- (f) To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

**42 U.S.C. § 7256a. 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) Regulations.
- (1) Not later than 150 days after the date of the enactment of this Act [enacted Nov. 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 advice 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.

***42 U.S.C. § 7256b. 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 the date of the enactment of this Act [enacted Nov. 29, 1989].

(b) Report on Rocky Flats bonuses. The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than 6 months after the date of the enactment of this Act [enacted Nov. 29, 1989], the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.

(c) 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).

- (d) Regulations. The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than 90 days after the date of the enactment of this Act [enacted Nov. 29, 1989].

**42 U.S.C. § 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.**

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

**42 U.S.C. § 7257a. 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.

**42 U.S.C. § 7258. Facilities construction**

- (a) Employees and dependents at remote locations. As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:
- (1) Emergency medical services and supplies;
  - (2) Food and other subsistence supplies;
  - (3) Messing facilities;
  - (4) Audio-visual equipment, accessories, and supplies for recreation and training;



- (5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;
  - (6) Living and working quarters and facilities; and
  - (7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.
- (b) Medical treatment at reasonable prices. The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.
- (c) Use of reimbursement proceeds. Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act [42 U.S.C. § 7263], and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

**42 U.S.C. § 7259. Use of facilities**

- (a) Facilities of United States and foreign governments. With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.
- (b) Facilities under custody of Secretary. In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. § 472(e)].

- (c) Use of reimbursement proceeds. Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act [42 U.S.C. § 7263], and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

**42 U.S.C. § 7260. Field offices**

The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

**42 U.S.C. § 7261. Acquisition of copyrights, patents, etc.**

The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

- (1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
- (2) licenses under copyrights, patents, and applications for patents; and
- (3) releases, before suit is brought, for past infringement of patents or copyrights.

**42 U.S.C. § 7261a. Protection of sensitive technical information**

- (a) Property rights in inventions and discoveries.
  - (1) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

- (2) Such decision shall be made within 150 days after the date on which a complete request for waiver of such rights has been submitted to the Secretary by the contractor. For purposes of this paragraph, a complete request includes such information, in such detail and form, as the Secretary by regulation prescribes as necessary to allow the Secretary to take into consideration the matters described in subsection (b) in making the decision.
  - (3) If the Secretary fails to make the decision within such 150-day period, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate, within 10 days after the end of the 150-day period, a report on the reasons for such failure. The submission of such report shall not relieve the Secretary of the requirement to make the decision under this section. The Secretary shall, at the end of each 30-day period after submission of the first report during which the Secretary continues to fail to make the decision required by this section, submit another report on the reasons for such failure to the committees listed in this paragraph.
- (b) Matters to be considered. In making a decision under this section, the Secretary shall consider, in addition to the applicable policies of section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or subsections (c) and (d) of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908)--
- (1) whether national security will be compromised;
  - (2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;
  - (3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and
  - (4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

**42 U.S.C. § 7261b. Technology transfer to small businesses**

- (1) The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993.
- (2) For the purposes of this subsection, the term "small business" means a business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

**42 U.S.C. § 7262. Gifts, bequests, and devises**

The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

**42 U.S.C. § 7263. Capital fund**

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

**42 U.S.C. § 7264. Seal of Department**

The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

**42 U.S.C. § 7265. Regional Energy Advisory Boards**

- (a) Establishment; membership. The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

- (b) **Observers.** Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42 U.S.C. §§ 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.
- (c) **Recommendations of Board.** Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.
- (d) **Notice of reasons not to adopt recommendations.** If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

***42 U.S.C. § 7266. Designation of conservation officers***

The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

***42 U.S.C. § 7267. Annual report***

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974 [15 U.S.C. § 774], section 307 of the Energy Reorganization Act of 1974 [42 U.S.C. § 5877], and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. § 5914], and shall include:

- (1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in--
  - (A) areas outside standard metropolitan statistical areas; and
  - (B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;
- (2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;
- (3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;
- (4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;
- (5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and nongovernmental entities to achieve the purposes of this Act;
- (6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;
- (7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

- (8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

***42 U.S.C. § 7268. Leasing report***

The Secretary of the Interior shall submit to the Congress not later than one year after the date of enactment of this Act [enacted Aug. 4, 1977], a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

***42 U.S.C. § 7269. Transfer of funds***

The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

***42 U.S.C. § 7269a. Transfer of funds; limitation***

Not to exceed 5 per centum of any appropriation made available for Department of Energy activities funded in this Act or subsequent Energy and Water Development Appropriations Acts may hereafter be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

***42 U.S.C. § 7269b. Transfers of unexpended balances***

The unexpended balances of prior appropriations provided for activities in this Act or subsequent Energy and Water Development Appropriations Acts may hereafter be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

***42 U.S.C. § 7270. Authorization of appropriations***

Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

**42 U.S.C. § 7270a. Guards for Strategic Petroleum Reserve facilities**

Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act [42 U.S.C. §§ 6231 et seq.] or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may--

- (1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and
- (2) arrest without warrant any person for an offense against the United States--
  - (A) in the case of a felony, if the employee has reasonable grounds to believe that the person--
    - (i) has committed or is committing a felony; and
    - (ii) is in or is fleeing from the immediate area of the felony; and
  - (B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

**42 U.S.C. § 7270b. Trespass on Strategic Petroleum Reserve facilities**

- (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.
- (b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$ 5,000, imprisonment for not more than one year, or both.



**42 U.S.C. § 7271. Common defense and security program requests of single authorization of appropriations**

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

**42 U.S.C. § 7271a. Major Department of Energy National Security Programs**

- (a) Major program defined. In this section, the term "major Department of Energy national security program" means a research and development program (which may include construction and production activities), a construction program, or a production program--
- (1) that is designated by the Secretary of Energy as a major Department of Energy national security program; or
  - (2) that is estimated by the Secretary of Energy to cost more than \$ 500,000,000 (based on fiscal year 1989 constant dollars).
- (b) Required reports.
- (1) Except as provided in paragraph (3), the Secretary of Energy shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives at the end of each calendar-year quarter a report on each major Department of Energy national security program.
  - (2) Each such report shall include, at a minimum, the following information:
    - (A) A description of the program, its purpose, and its relationship to the mission of the national security program of the Department of Energy.
    - (B) The program schedule, including estimated annual costs.
    - (C) A comparison of the current schedule and cost estimates with previous schedule and cost estimates, and an explanation of changes.
  - (3) A report under this section need not be submitted for the first, second, or third calendar-year quarter if the comparison between current schedule and cost estimates and schedule and cost estimates contained in the last submitted report shows that there has been--
    - (A) less than a 5 percent change in total program cost; and
    - (B) less than a 90-day delay in any significant schedule item of the program.

- (c) Submission of report. Each report under this section shall be submitted not later than 30 days after the end of each calendar-year quarter. The first report shall cover the fourth quarter of 1989 and shall be submitted not later than January 30, 1990.
- (d) Identification of programs. Not later than 60 days after the date of the enactment of this Act [enacted Nov. 29, 1989], the Secretary of Energy shall submit a report to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives that identifies all programs of the Department of Energy that are major Department of Energy national security programs, as defined in subsection (a).

***42 U.S.C. § 7271b. Five-year budget plan requirement***

- (a) Plan Requirement. The Secretary of Energy each year shall prepare a five-year budget plan for the national security programs of the Department of Energy. The plan shall contain the estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the national security programs and shall be at a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31, United States Code.
- (b) Submission of plan. The Secretary shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives the plan required under subsection (a) at the same time as the President submits to Congress the budget pursuant to section 1105 of title 31, United States Code.

***42 U.S.C. § 7272. Restriction on licensing requirement for certain defense activities and facilities***

None of the funds authorized to be appropriated by this 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.

***42 U.S.C. § 7273. Restriction on use of funds to pay penalties under Clean Air Act***

None of the funds authorized to be appropriated by this or any other Act may be used to pay and 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.

**42 U.S.C. § 7273a. 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 rescinded) and the Secretary of Energy fails to use the funds for such purpose.

**42 U.S.C. § 7273b. Funding for security investigations**

- (1) No funds appropriated to the Department of Energy may be obligated or expended for the conduct of an investigation by the Department of Energy or any other Federal department or agency for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary Energy determines both the following:
  - (a) That a current, complete investigation file is not available from any other department or agency of the Federal government with respect to that individual or facility.
  - (b) That no other department or agency of the Federal government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.
- (2) For purposes of paragraph (1)(A), a current investigation file is a file on an investigation that has been conducted within the past five years.

**42 U.S.C. § 7274. Environmental impact statements relating to defense facilities of Department of Energy**

- (1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of Energy if the estimated cost of preparing such statement exceeds \$ 250,000 unless--

- (A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or
  - (B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Secretary regarding the preparation of such statement.
- (2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before the date of the enactment of this Act [enacted Dec. 4, 1981].

***42 U.S.C. § 7274a. 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.

***42 U.S.C. § 7274b. 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.

**42 U.S.C. § 7274c. 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.

**42 U.S.C. § 7274d. 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), \$ 10,000,000 may be used for the purpose of carrying out this section.

***42 U.S.C. § 7274e. Scholarship and fellowship program for environmental restoration and waste management***

(a) Establishment. The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy.

(b) Eligibility. To be eligible to participate in the scholarship and fellowship program, an individual must--

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

- (2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;
  - (3) sign an agreement described in subsection (c);
  - (4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and
  - (5) meet such other requirements as the Secretary prescribes.
- (c) Agreement. An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:
- (1) The Secretary's agreement to provide the participant with educational assistance for a specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.
  - (2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.
- (d) Repayment.
- (1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person--
    - (A) does not complete the course of education as agreed to pursuant to subsection (c), or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c); or
    - (B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.



- (2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by--
  - (A) in the case of a person who is an employee, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and
  - (B) such other method as is provided by law for the recovery of amounts owing to the Government.
- (3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.
- (4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).
- (e) Preference for cooperative education students. In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.
- (f) Coordination of benefits. A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
- (g) Award of scholarships and fellowships.
  - (1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.
  - (2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.
- (h) Report to Congress. Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

- (i) Funding. Of the funds authorized to be appropriated pursuant to section 3101(9)(B), \$ 1,000,000 may be used for the purpose of carrying out this section.

**42 U.S.C. § 7274f. 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.

**42 U.S.C. § 7274g. Environmental restoration and waste management five-year plan and budget reports**

- (a) Five-year plan.
  - (1) Not later than September 1 of each year, the Secretary of Energy shall issue a plan for environmental restoration and waste management activities to be conducted, during the five-year period beginning on October 1 of the next calendar year, at (A) defense nuclear facilities and (B) all other facilities owned or operated by the Department of Energy. The plan also shall contain a description of environmental restoration and waste management activities conducted during the fiscal year in which the plan is submitted and of such activities to be conducted during the fiscal year beginning on October 1 of the same calendar year. Such five-year plan shall be designed to complete environmental restoration at all Department of Energy facilities not later than the year 2019.
  - (2) The Secretary shall prepare each annual five-year plan in a preliminary form at least four months before the date on which that plan is required to be issued under paragraph (1). The preliminary plan shall contain the matters referred to in paragraph (4) (other than the matters referred to in subparagraph (J) of that paragraph). The Secretary shall provide the preliminary plan to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public for coordination, review, and comment.
  - (3) At the same time the Secretary issues an annual five-year plan under paragraph (1), the Secretary shall submit the plan to the President and Congress, publish a notice of the issuance of the plan in the Federal Register, and make the plan available to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public.

- (4) The annual five-year plan, and the actions and other matters contained in the plan, shall be in accordance with all laws, regulations, permits, orders, and agreements. The plan shall contain the following matters:
- (A) A description of the actions, including identification of specific projects, necessary to maintain or achieve compliance with Federal, State, or local environmental laws, regulations, permits, orders, and agreements.
  - (B) A description of the actions, including identification of specific projects, to be taken at each Department of Energy facility in order to implement environmental restoration activities planned for each such facility.
  - (C) A description of research and development activities for the expeditious and efficient environmental restoration of such facilities.
  - (D) A description of the technologies and facilities necessary to carry out the environmental restoration activities.
  - (E) A description of the waste management activities, including identification of specific projects, necessary to continue to operate the Department of Energy facilities or to decontaminate and decommission the facilities, as the case may be.
  - (F) A description of research and development activities for waste management.
  - (G) A description of the technologies and facilities necessary to carry out the waste management activities.
  - (H) A description of activities and practices that the Secretary is undertaking or plans to undertake to minimize the generation of waste.
  - (I) The estimated costs of, and personnel required for, each project, action, or activity contained in the plan.
  - (J) A description of the respects in which the plan differs from the preliminary form of that plan issued pursuant to paragraph (2), together with the reasons for any differences.
  - (K) A discussion of the implementation of the preceding annual five-year plan.
  - (L) Such other matters as the Secretary finds appropriate and in the public interest.

- (5) The Secretary shall consult with the Administrator of the Environmental Protection Agency, Governors and Attorneys General of affected States, and appropriate representatives of affected Indian tribes in the preparation of the plan and the preliminary form of the plan pursuant to paragraphs (1) and (2). The Secretary shall include as an appendix to the plan (A) all comments submitted on the preliminary form of the plan by the Administrator, Governors and Attorneys General of affected States, and affected Indian tribes, and (B) a summary of comments submitted by the public.
- (6) The Secretary shall include in the annual five-year plan issued in 1992 a discussion of the feasibility and need, if any, for the establishment of a contingency fund in the Department of Energy to provide funds necessary to meet the requirements in environmental laws, to remove an immediate threat to worker or public health and safety, to prevent or improve a condition where postponement of activity would lead to deterioration of the environment, and to undertake additional environmental restoration activities at Department of Energy defense nuclear facilities that are not provided for in the budgets for fiscal years in which it is necessary to meet such requirements or undertake such activities.
- (7) The first annual five-year plan issued pursuant to this section shall be issued in 1992.
- (b) Treatment of plans under NEPA. The development and adoption of any part of any plan (including any preliminary form of any such plan) under subsection (a) shall not be considered a major Federal action for the purposes of subparagraph (C), (E), or (F) of section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)). Nothing in this subsection shall affect the Department of Energy's ongoing preparation of a programmatic environmental impact statement on environmental restoration and waste management.
- (c) Grants. The Secretary of Energy is authorized to award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to assist such States and tribes in participating in the development of the annual five-year plan (including the preliminary form of such plan).
- (d) Funding. Of the funds authorized to be appropriated pursuant to section 3103, \$ 20,000,000 may be used for the purpose of carrying out subsection (c).
- (e) Budget reports. 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 President shall submit to Congress a description of proposed activities and funding levels contained in the annual five-year plan (issued, pursuant to subsection (a)(1), in the year preceding the year in which the budget is submitted to Congress) that are not included in the budget or are included in the budget in a different form or at a different funding level, together with the reasons for such differences.

**42 U.S.C. § 7274h. Department of Energy defense nuclear facilities work force restructuring plan**

- (a) In general. Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy (hereinafter in this subtitle [42 U.S.C. §§ 7274h et seq.] referred to as the "Secretary") shall develop a plan for restructuring the work force 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) and any updates of the plan under subsection (e), 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 work force 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) [unclassified]).

- (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 Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.);
  - (B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (Part 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 IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 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, work force bargaining units, and States and local communities in carrying out a plan required under subsection (a).
  - (E) Plan updates. Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall--
    - (1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;
    - (2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) 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 [enacted Oct. 23, 1992], whichever is later.

(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

***42 U.S.C. § 7274i. 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 1 year after the date of the enactment of this Act [enacted Oct. 23, 1992].
- (c) Agreement with Secretary of Health and Human Services. Not later than 180 days after the date of the enactment of this Act [enacted Oct. 23, 1992], 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.



**42 U.S.C. § 7274j. Definitions**

For purposes of this subtitle [42 U.S.C. §§ 7274h et seq.]:

- (1) The term "Department of Energy defense nuclear facility" means--
  - (A) 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 [42 U.S.C. § 7158 note], pertaining to the naval nuclear propulsion program;
  - (B) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;
  - (C) 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 Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);
  - (D) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including the Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or
  - (E) any facility described in paragraphs (1) through (4) that--
    - (i) is no longer in operation;
    - (ii) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and
    - (iii) was operated for national security purposes.
- (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.

**42 U.S.C. § 7274k. 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) Annual 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, transition of operational facilities to safe shutdown status, and technology research and development related to such activities and projects 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 year after 1995, 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) Annual 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 activities and projects at Department of Energy defense nuclear facilities.
- (B) A report under subparagraph (A) shall be submitted in 1995 and in each 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 fiscal year 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 year, 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.

**42 U.S.C. § 7274I. Authority to transfer certain Department of Energy property**

- (a) Authority To transfer.
  - (1) Notwithstanding any other provision of law, the Secretary of Energy may transfer, for consideration, all right, title, and interest of the United States in and to the property referred to in subsection (b) to any person if the Secretary determines that such transfer will mitigate the adverse economic consequences that might otherwise arise from the closure of a Department of Energy facility.
  - (2) The amount of consideration received by the United States for a transfer under paragraph (1) may be less than the fair market value of the property transferred if the Secretary determines that the receipt of such lesser amount by the United States is in accordance with the purpose of such transfer under this section.
  - (3) The Secretary may require any additional terms and conditions with respect to a transfer of property under paragraph (1) that the Secretary determines appropriate to protect the interests of the United States.
- (b) Covered property. Property referred to in subsection (a) is the following property of the Department of Energy that is located at a Department of Energy facility to be closed or reconfigured:
  - (1) The personal property and equipment at the facility that the Secretary determines to be excess to the needs of the Department of Energy.

- (2) Any personal property and equipment at the facility (other than the property and equipment referred to in paragraph (1)) the replacement cost of which does not exceed an amount equal to 110 percent of the costs of relocating the property or equipment to another facility of the Department of Energy.

**42 U.S.C. § 7275. Definitions**

As used in this title [42 U.S.C. §§ 7275 et. seq.]:

- (1) The term "Administrator" means the Administrator of the Western Area Power Administration.
- (2) The term "integrated resource planning" means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.
- (3) The term "least cost option" means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.
- (4) The term "long-term firm power service contract" means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.
- (5) The terms "customer" or "customers" means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.
- (6) For any customer, the term "applicable integrated resource plan" means the integrated resource plan approved by the Administrator under this title [42 U.S.C. §§ 7275 et seq.] for that customer.

**42 U.S.C. § 7276. Regulations to require integrated resource planning**

- (a) Regulations. Within 1 year after the enactment of this section [enacted Oct. 24, 1992], the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after the enactment of this section [enacted Oct. 24, 1992], integrated resource planning in accordance with the requirements of this title [42 U.S.C. §§ 7275 et seq.].
- (b) Certain small customers. Notwithstanding subsection (a), for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations and apply such regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects.

**42 U.S.C. § 7276a. Technical assistance**

The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of this title [42 U.S.C. §§ 7275 et seq.]. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning.

**42 U.S.C. § 7276b. Integrated resource plans**

- (a) Review by Western Area Power Administration. Within 1 year after the enactment of this section [enacted Oct. 24, 1992], the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt

of the plan or revision and determine whether the customer has in the development of the plan or revision, complied with this title [42 U.S.C. §§ 7275 et seq.]. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with this title [42 U.S.C. §§ 7275 et seq.]. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of this title [42 U.S.C. §§ 7275 et seq.], the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with this title [42 U.S.C. §§ 7275 et seq.].

- (b) Criteria for approval of integrated resource plans. The Administrator shall approve an integrated resource plan submitted as required under subsection (a) if, in developing the plan, the customer has:
- (1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.
  - (2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.
  - (3) Designated "least-cost options" to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.
  - (4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.
  - (5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.
  - (6) Included load forecasting.
  - (7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.
  - (8) Met such other criteria as the Administrator shall require.

- (c) Use of other integrated resource plans. Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 111(d) of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. § 2621(d)], in evaluating that customer's integrated resource plan under this title [42 U.S.C. §§ 7275 et seq.], the Administrator shall accept such plan as fulfillment of the requirements of this title [42 U.S.C. §§ 7275 et seq.] to the extent such plan substantially complies with the requirements of this title [42 U.S.C. §§ 7275 et seq.].
- (d) Compliance with integrated resource plans. Within 1 year after the enactment of this section [enacted Oct. 24, 1992], the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on all electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.
- (e) Enforcement.
  - (1) No approved plan. If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.



- (2) Failure to comply with approved plan. After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.
- (3) Reduction in power allocation. In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.
- (f) Integrated resource planning cooperatives. With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with this title [42 U.S.C. §§ 7275 et seq.], and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.
- (g) Customers with more than 1 contract. If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under this title [42 U.S.C. §§ 7275 et seq.].
- (h) Program review. Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in section 204(b) [42 U.S.C. § 7276(b)] to reflect changes, if any, in technology, needs, or other developments.

**42 U.S.C. § 7276c. Miscellaneous provisions**

- (a) Environmental impact statement. The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. §§ 4321 et seq.] shall apply to actions of the Administrator implementing this title [42 U.S.C. §§ 7275 et seq.] in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

- (b) Annual reports. The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under this title [42 U.S.C. §§ 7275 et seq.] and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.
- (c) State regulated investor-owned utilities. Any State regulated electric utility (as defined in section 3(18) of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. § 2602(18)]) shall be exempt from the provisions of this title [42 U.S.C. §§ 7275 et seq.].
- (d) Rural Electrification Administration requirements. Nothing in this title [42 U.S.C. §§ 7275 et seq.] shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration.

**42 U.S.C. § 7277. Reports concerning review of United States coal imports**

- (a) In general. The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.
- (b) Contents. Each report required by this section shall--
  - (1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;
  - (2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;
  - (3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and
  - (4) specifically highlight and analyze any significant trends of unusual variations in coal imports.
- (c) Date of reports. The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.
- (d) Limitation. Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

***42 U.S.C. § 7278. Expenses relating to passenger motor vehicles, aircraft, uniforms, and security guard services***

Appropriations for the Department of Energy under this title in this and subsequent Energy and Water Development Appropriations Acts, hereafter shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may hereafter be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act or subsequent Energy and Water Development Appropriations Acts shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized hereafter to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

**TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS**

***42 U.S.C. § 7291. Transfer and allocations of appropriations and personnel***

- (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950 [31 U.S.C. § 581c], are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.
- (b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this Act, personnel occupying those positions on the effective date of this Act and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312--5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act [42 U.S.C. § 7293].

***42 U.S.C. § 7292. Effect on personnel***

- (a) Full-time and part-time personnel holding permanent positions. Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act [enacted Aug. 4, 1977], except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be

performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

- (b) Person who held position compensated in accordance with 5 U.S.C. §§ 5301 et seq. Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code [5 U.S.C. §§ 5301 et seq.], and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.
- (c) Employees holding reemployment rights acquired under former 15 U.S.C. § 786: Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from the effective date of this Act or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

***42 U.S.C. § 7293. Agency terminations***

Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313--5316), shall terminate.

***42 U.S.C. § 7294. Incidental transfers***

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

**42 U.S.C. § 7295. Savings provisions**

- (a) Orders, determinations, rules, etc., in effect prior to the effective date of 42 U.S.C. §§ 7101 et seq. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges--
- (1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act [enacted Aug. 4, 1977], and
  - (2) which are in effect at the time this Act takes effect,
- shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.
- (b) Proceedings or applications for licenses, permits, etc., pending at the effective date of 42 U.S.C. §§ 7101 et seq.; regulations.
- (1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.
  - (2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.
- (c) Suits commenced prior to effective date of 42 U.S.C. §§ 7101 et seq. Except as provided in subsection (e)--
- (1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

- (2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.
- (d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency. No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.
- (e) Suits with officers, departments, or agencies as parties. If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

**42 U.S.C. § 7296. Separability of provisions**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

**42 U.S.C. § 7297. Cross references**

With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

**42 U.S.C. § 7298. Presidential authority**

Except as provided in title IV [42 U.S.C. §§ 7191 et seq.], nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

**42 U.S.C. § 7299. Transition**

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

**42 U.S.C. § 7300. Report to Congress; effect on personnel**

The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this Act which shall include--

- (1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;
- (2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;
- (3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;
- (4) an estimate of the personnel costs associated with such reorganization;
- (5) the effects of such reorganization on labor management relations; and
- (6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

**42 U.S.C. § 7301. Environmental impact statements**

The transfer of functions under titles III and IV of this Act [42 U.S.C. §§ 7151 et seq. and 7171 et seq.] shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

**ENERGY PLANNING**

**42 U.S.C. § 7321. National Energy Policy Plan**

- (a) Preparation by President and submission to Congress; formulation and review. The President shall--
  - (1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this title [42 U.S.C. §§ 7321 et seq.] referred to as a "proposed Plan") as provided in subsection (b);
  - (2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

- (3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in--
  - (A) areas outside standard metropolitan statistical areas; and
  - (B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.
- (b) Biennial transmittal to Congress; contents. Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall--
  - (1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;
  - (2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and
  - (3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.
- (c) Submission of report to Congress; contents. The President shall submit to the Congress with the proposed Plan a report which shall include--
  - (1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;
  - (2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;



- (3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;
  - (4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and
  - (5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.
- (d) Consultation with consumers; small businesses, etc. The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

**42 U.S.C. § 7322. Congressional review**

- (a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.
- (b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

**EFFECTIVE DATE AND INTERIM APPOINTMENTS**

**42 U.S.C. § 7341. Effective date**

The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act [enacted Aug. 4, 1977], (1) any of the officers provided for in title II and title IV of this Act [42 U.S.C. §§ 7131 et seq. and 7191 et seq.] may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b)(2) of this Act [42 U.S.C. § 7295(b)(2)] at any time after the date of enactment of this Act [enacted Aug. 4, 1977]. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

**42 U.S.C. § 7342. Interim appointments**

In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

**SUNSET PROVISIONS**

**42 U.S.C. § 7351. Submission of comprehensive review**

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 660 [42 U.S.C. § 7270], for such programs for the fiscal year beginning October 1, 1982.

**42 U.S.C. § 7352. Contents of review**

Each comprehensive review prepared for submission under section 1001 [42 U.S.C. § 7351] shall include--

- (1) the name of the component of the Department responsible for administering the program;
- (2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;
- (3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;
- (4) an assessment of alternative methods of achieving the purposes of the program;
- (5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;
- (6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;
- (7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

- (8) a statement of the number and types of beneficiaries or persons served by the program;
- (9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;
- (10) an assessment of the impact of the program on the Nation's health and safety;
- (11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;
- (12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;
- (13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and
- (14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

***42 U.S.C. § 7361. [Repealed]***

***42 U.S.C. § 7362. [Repealed]***

***42 U.S.C. § 7363. [Repealed]***

***42 U.S.C. § 7364. [Repealed]***



**APPENDIX III. NUCLEAR NON-PROLIFERATION ACT OF 1978 AS AMENDED\***

\*Includes amendments made through the Summer of 1994



**APPENDIX III. TITLE 22. UNITED STATES CODE  
CHAPTER 47. NUCLEAR NON-PROLIFERATION (NUCLEAR  
NON-PROLIFERATION ACT OF 1978 AS AMENDED)**

***22 U.S.C. § 3201. Congressional declaration of policy***

The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continued international progress toward world peace and development. Recent events emphasize the urgency of this threat and the imperative need to increase the effectiveness of international safeguards and controls on peaceful nuclear activities to prevent proliferation. Accordingly, it is the policy of the United States to--

- (a) actively pursue through international initiatives mechanisms for fuel supply assurances and the establishment of more effective international controls over the transfer and use of nuclear materials and equipment and nuclear technology for peaceful purposes in order to prevent proliferation, including the establishment of common international sanctions;
- (b) take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses;
- (c) strongly encourage nations which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons to do so at the earliest possible date; and
- (d) cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

***22 U.S.C. § 3202. Congressional statement of purpose***

It is the purpose of this Act to promote the policies set forth above by--

- (a) establishing a more effective framework for international cooperation to meet the energy needs of all nations and to ensure that the worldwide development of peaceful nuclear activities and the export by any nation of nuclear materials and equipment and nuclear technology intended for use in peaceful nuclear activities do not contribute to proliferation;
- (b) authorizing the United States to take such actions as are required to ensure that it will act reliably in meeting its commitment to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

- (c) providing incentives to the other nations of the world to join in such international cooperative efforts and to ratify the Treaty; and
- (d) ensuring effective controls by the United States over its exports of nuclear materials and equipment and of nuclear technology.

**22 U.S.C. § 3203. Definitions**

- (a) As used in this Act, the term--
  - (1) "Commission" means the Nuclear Regulatory Commission;
  - (2) "Director" means the Director of the Arms Control and Disarmament Agency;
  - (3) "IAEA" means International Atomic Energy Agency;
  - (4) "nuclear materials and equipment" means source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to subsection [section] 109 b. of the 1954 Act;
  - (5) "physical security measures" means measures to reasonably ensure that source or special nuclear material will only be used for authorized purposes and to prevent theft and sabotage;
  - (6) "sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the 1954 Act [42 U.S.C. §§ 2161 et seq.];
  - (7) "1954 Act" means the Atomic Energy Act of 1954, as amended; and
  - (8) "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons.
- (b) All other terms used in this Act not defined in this section shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974, and the Treaty.



## UNITED STATES INITIATIVES TO PROVIDE ADEQUATE NUCLEAR FUEL SUPPLY

### **22 U.S.C. § 3221. Congressional declaration of policy**

The United States, as a matter of national policy, shall take such actions and institute such measures as may be necessary and feasible to assure other nations and groups of nations that may seek to utilize the benefits of atomic energy for peaceful purposes that it will provide a reliable supply of nuclear fuel to those nations and groups of nations which adhere to policies designed to prevent proliferation. Such nuclear fuel shall be provided under agreements entered into pursuant to section 16.1 of the 1954 Act [42 U.S.C. § 2201] or as otherwise authorized by law. The United States shall ensure that it will have available the capacity on a long-term basis to enter into new fuel supply commitments consistent with its non-proliferation policies and domestic energy needs. The Commission shall, on a timely basis, authorize the export of nuclear materials and equipment when all the applicable statutory requirements are met.

### **22 U.S.C. § 3222. Uranium enrichment capacity**

The Secretary of Energy is directed to initiate construction planning and design, construction, and operation activities for expansion of uranium enrichment capacity, as elsewhere provided by law. Further the Secretary as well as the Nuclear Regulatory Commission, the Secretary of State, and the Director of the Arms Control and Disarmament Agency are directed to establish and implement procedures which will ensure to the maximum extent feasible, consistent with this Act, orderly processing of subsequent arrangements and export licenses with minimum time delay.

### **22 U.S.C. § 3223. International undertakings**

- (a) Development of international approaches for meeting future worldwide nuclear fuel needs; international nuclear fuel authority. Consistent with section 105 of this Act [22 U.S.C. § 3224], the President shall institute prompt discussions with other nations and groups of nations, including both supplier and recipient nations, to develop international approaches for meeting future worldwide nuclear fuel needs. In particular, the President is authorized and urged to seek to negotiate as soon as practicable with nations possessing nuclear fuel production facilities or source material, and such other nations and groups of nations, such as the IAEA, as may be deemed appropriate, with a view toward the timely establishment of binding international undertakings providing for--
- (1) the establishment of an international nuclear fuel authority (INFA) with responsibility for providing agreed upon fuel services and allocating agreed upon quantities of fuel resources to ensure fuel supply on reasonable terms in accordance with agreements between INFA and supplier and recipient nations;
  - (2) a set of conditions consistent with subsection (d) under which international fuel assurances under INFA auspices will be provided to recipient nations, including conditions which will ensure that the transferred materials will not be used for nuclear explosive devices;

- (3) devising, consistent with the policy goals set forth in section 403 of this Act [42 U.S.C. § 2153b], feasible and environmentally sound approaches for the siting, development, and management under effective international auspices and inspection of facilities for the provision of nuclear fuel services, including the storage of special nuclear material;
- (4) the establishment of repositories for the storage of spent nuclear reactor fuel under effective international auspices and inspection;
- (5) the establishment of arrangements under which nations placing spent fuel in such repositories would receive appropriate compensation for the energy content of such spent fuel if recovery of such energy content is deemed necessary or desirable; and
- (6) sanctions for violation of the provisions of or for abrogation of such binding international undertakings.

(b),(c) [Omitted]

- (d) Adherence of nations to policies to prevent proliferation. The fuel assurances contemplated by this section shall be for the benefit of nations that adhere to policies designed to prevent proliferation. In negotiating the binding international undertakings called for in this section, the President shall, in particular, seek to ensure that the benefits of such undertakings are available to non-nuclear-weapons states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device, do not establish any new enrichment or reprocessing facilities under their de facto or de jure control, and place any such existing facilities under effective international auspices and inspection.
- (e) Report on progress of negotiations. The report required by section 601 [22 U.S.C. § 3281] shall include information on the progress made in any negotiations pursuant to this section.
- (f) Congressional approval of non-treaty international undertakings; submission of proposals.
  - (1) The President may not enter into any binding international undertaking negotiated pursuant to subsection (a) which is not a treaty until such time as such proposed undertaking has been submitted to the Congress and has been approved by concurrent resolution.
  - (2) The proposals prepared pursuant to subsection (b) shall be submitted to the Congress as part of an annual authorization Act for the Department of Energy.

**22 U.S.C. § 3224. Reevaluation of nuclear fuel cycle**

The President shall take immediate initiatives to invite all nuclear supplier and recipient nations to reevaluate all aspects of the nuclear fuel cycle, with emphasis on alternatives to an economy based on the separation of pure plutonium or the presence of high enriched uranium, methods to deal with spent fuel storage, and methods to improve the safeguards for existing nuclear technology. The President shall, in the first report required by section 601 [22 U.S.C. § 3281], detail the progress of such international reevaluation.

**UNITED STATES INITIATIVES TO STRENGTHEN THE  
INTERNATIONAL SAFEGUARDS SYSTEM**

**22 U.S.C. § 3241. Congressional declaration of policy**

The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to--

- (a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;
- (b) ensure that the IAEA has the resources to carry out the provisions of Article XII of the Statute of the IAEA;
- (c) improve the IAEA safeguards system (including accountability) to ensure--
  - (1) the timely detection of a possible diversion of source or special nuclear materials which could be used for nuclear explosive devices;
  - (2) the timely dissemination of information regarding such diversion; and
  - (3) the timely implementation of internationally agreed procedures in the event of such diversion;
- (d) ensure that the IAEA receives on a timely basis the data needed for it to administer an effective and comprehensive international safeguards program and that the IAEA provides timely notice to the world community of any evidence of a violation of any safeguards agreement to which it is a party; and
- (e) encourage the IAEA, to the maximum degree consistent with the Statute, to provide nations which supply nuclear materials and equipment with the data needed to assure such nations of adherence to bilateral commitments applicable to such supply.

**22 U.S.C. § 3242. Training program**

The Department of Energy, in consultation with the Commission, shall establish and operate a safeguards and physical security training program to be made available to persons from nations and groups of nations which have developed or acquired, or may be expected to develop or acquire, nuclear materials and equipment for use for peaceful purposes. Any such program shall include training in the most advanced safeguards and physical security techniques and technology, consistent with the national security interests of the United States.

**22 U.S.C. § 3243. Negotiations**

The United States shall seek to negotiate with other nations and groups of nations to--

- (1) adopt general principles and procedures, including common international sanctions, to be followed in the event that a nation violates any material obligation with respect to the peaceful use of nuclear materials and equipment or nuclear technology, or in the event that any nation violates the principles of the Treaty, including the detonation by a non-nuclear-weapon state of a nuclear explosive device; and
- (2) establish international procedures to be followed in the event of diversion, theft, or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen, or obtained or used by a nation or by any person or group in contravention of the principles of the Treaty.

**UNITED STATES ASSISTANCE TO DEVELOPING COUNTRIES**

**22 U.S.C. § 3261. Congressional declaration of policy; Presidential report to Congress**

The United States shall endeavor to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources, to cooperate with both developing and industrialized nations in protecting the international environment from contamination arising from both nuclear and non-nuclear energy activities, and shall seek to cooperate with and aid developing countries in meeting their energy needs through the development of such resources and the application of non-nuclear technologies consistent with the economic factors, the material resources of those countries, and environmental protection. The United States shall additionally seek to encourage other industrialized nations and groups of nations to make commitments for similar cooperation and aid to developing countries. The President shall report annually to Congress on the level of other nations' and groups of nations' commitments under such program and the relation of any such commitments to United States efforts under this title. In cooperating with and providing such assistance to developing countries, the United States shall give priority to parties to the Treaty.

**22 U.S.C. § 3262. Programs**

- (a) Energy development programs. The United States shall initiate a program, consistent with the aims of section 501 [22 U.S.C. § 3261], to cooperate with developing countries for the purpose of--

- (1) meeting the energy needs required for the development of such countries;
  - (2) reducing the dependence of such countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources; and
  - (3) expanding the energy alternatives available to such countries.
- (b) Energy assessments and cooperative projects. Such program shall include cooperation in evaluating the energy alternatives of developing countries, facilitating international trade in energy commodities, developing energy resources, and applying suitable energy technologies. The program shall include both general and country-specific energy assessments and cooperative projects in resource exploration and production, training, research and development.
- (c) Exchange of scientists, technicians, and energy experts. As an integral part of such program, the Department of Energy, under the general policy guidance of the Department of State and in cooperation with the Agency for International Development and other Federal agencies as appropriate, shall initiate, as soon as practicable, a program for the exchange of United States scientists, technicians, and energy experts with those of developing countries to implement the purposes of this section.
- (d) Authorization of appropriations. For the purposes of carrying out this section, there is authorized to be appropriated such sums as are contained in annual authorization Acts for the Department of Energy, including such sums which have been authorized for such purposes under previous legislation.
- (e) Coordination with related United States activities abroad. Under the direction of the President, the Secretary of State shall ensure the coordination of the activities authorized by this title with other related activities of the United States conducted abroad, including the programs authorized by sections 103(c), 106(a)(2), and 119 of the Foreign Assistance Act of 1961.

#### EXECUTIVE REPORTING

***22 U.S.C. § 3281. Annual Presidential report to Congress on governmental efforts to prevent proliferation***

- (a) Review of Government activities; description of progress; assessment of impact of progress; determinations regarding non-nuclear-weapon states; counterproductiveness of policies. The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to--
- (1) a description of the progress made toward--
    - (A) negotiating the initiatives contemplated in sections 104 and 105 of this Act [22 U.S.C. §§ 3223 and 3224];

- (B) negotiating the international arrangements or other mutual undertakings contemplated in section 403 of this Act [42 U.S.C. § 2153b];
  - (C) encouraging non-nuclear-weapon states that are not party to the Treaty to adhere to the Treaty or, pending such adherence, to enter into comparable agreements with respect to safeguards and to forswear the development of any nuclear explosive devices, and discouraging nuclear exports to non-nuclear-weapon states which have not taken such steps;
  - (D) strengthening the safeguards of the IAEA as contemplated in section 201 of this Act [22 U.S.C. § 3241]; and
  - (E) renegotiating agreements for cooperation as contemplated in section 404(a) of this Act [42 U.S.C. § 2153c(a)];
- (2) an assessment of the impact of the progress described in paragraph (1) on the non-proliferation policy of the United States; an explanation of the precise reasons why progress has not been made on any particular point and recommendations with respect to appropriate measures to encourage progress; and a statement of what legislative modifications, if any, are necessary in his judgment to achieve the non-proliferation policy of the United States;
- (3) a determination as to which non-nuclear-weapon states with which the United States has an agreement for cooperation in effect or under negotiation, if any, have--
- (A) detonated a nuclear device; or
  - (B) refused to accept the safeguards of the IAEA on all of their peaceful nuclear activities; or
  - (C) refused to give specific assurances that they will not manufacture or otherwise acquire any nuclear explosive device; or
  - (D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices;
- (4) an assessment of whether any of the policies set forth in this Act have, on balance, been counterproductive from the standpoint of preventing proliferation;
- (5) a description of the progress made toward establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses in order to enhance the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

- (6) a description of the implementation of nuclear and nuclear-related dual-use export controls in the preceding calendar year, including a summary by type of commodity and destination of--
- (A) all transactions for which--
- (i) an export license was issued for any good controlled under section 309(c) of this Act [22 U.S.C. § 6208(c)];
  - (ii) an export license was issued under section 109 b. of the 1954 Act [42 U.S.C. § 2139 b.];
  - (iii) approvals were issued under the Export Administration Act of 1979, or section 109 b.(3) of the 1954 Act [42 U.S.C. § 2139 b.(3)], for the retransfer of any item, technical data, component, or substance; or
  - (iv) authorizations were made as required by section 57 b.(2) of the 1954 Act [42 U.S.C. § 2077 b.(2)] to engage, directly or indirectly, in the production of special nuclear material;
- (B) each instance in which--
- (i) a sanction has been imposed under section 821(a) or section 824 of the Nuclear Proliferation Prevention Act of 1994 [22 U.S.C. § 3201 note] or section 102(b)(1) of the Arms Export Control Act [22 U.S.C. § 2799aa-1(b)(1)];
  - (ii) sales or leases have been denied under section 3(f) of the Arms Export Control Act [former 22 U.S.C. § 2753(f)] or transactions prohibited by reason of acts relating to proliferation of nuclear explosive devices as described in section 40(d) of that Act [22 U.S.C. § 2780(d)];
  - (iii) a sanction has not been imposed by reason of section 821(c)(2) of the Nuclear Proliferation Prevention Act of 1994 [22 U.S.C. § 3201 note] or the imposition of a sanction has been delayed under section 102(b)(4) of the Arms Export Control Act [22 U.S.C. § 2799aa-1(b)(4)]; or
  - (iv) a waiver of a sanction has been made under--
    - (I) section 821(f) or section 824 of the Nuclear Proliferation Prevention Act of 1994 [22 U.S.C. § 3201 note],

- (II) section 620E(d) of the Foreign Assistance Act of 1961 [22 U.S.C. § 2375(d)], or paragraph (5) or (6)(B) of section 102(b) of the Arms Export Control Act [22 U.S.C. § 2799aa-1(b)(5) or (6)(B)],
  - (III) section 40(g) of the Arms Export Control Act [22 U.S.C. § 2780(g)] with respect to the last sentence of section 40(d) of that Act [22 U.S.C. § 2780(d)], or
  - (IV) section 614 of the Foreign Assistance Act of 1961 [22 U.S.C. § 2364] with respect to section 620E of that Act [22 U.S.C. § 2375] or section 3(f) [former 22 U.S.C. § 2753(f)], the last sentence of section 40(d) [22 U.S.C. § 2780(d)], or 102(b)(1) of the Arms Export Control Act [22 U.S.C. § 2799aa-1(b)(1)]; and
- (C) the progress of those independent states of the former Soviet Union that are non-nuclear-weapon states and of the Baltic states towards achieving the objective of applying full scope safeguards to all their peaceful nuclear activities.

Portions of the information required by paragraph (6) may be submitted in classified form, as necessary. Any such information that may not be published or disclosed under section 12(c)(1) of the Export Administration Act of 1979 [50 U.S.C. Appx. § 2411(c)(1)] shall be submitted as confidential.

- (b) Analysis of civil agreements for cooperation. In the first report required by this section, the President shall analyze each civil agreement for cooperation negotiated pursuant to section 123 of the 1954 Act [42 U.S.C. § 2153], and shall discuss the scope and adequacy of the requirements and obligations relating to safeguards and other controls therein.

**22 U.S.C. § 3282. Reports by departments and agencies**

- (a) Reports by Nuclear Regulatory Commission and Department of Energy. The annual reports to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications of advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.
- (b) Additional reporting requirements. The reporting requirements of this title are in addition to and not in lieu of any other reporting requirements under applicable law.



- (c) Committees on Foreign Relations and Governmental Affairs of Senate and Committee on Foreign Affairs of House of Representatives to be kept informed. The Department of Commerce, the Department of Energy, and the Commission shall keep the Committees on Foreign Relations and Governmental Affairs of the Senate and the Committee on International Relations of the House of Representatives [Committee on Foreign Affairs] fully and currently informed with respect to their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, and with respect to the current activities of foreign nations which are of significance from the proliferation standpoint.
- (d) Classified portions of reports. Any classified portions of the reports required by this Act shall be submitted to the Senate Foreign Relations Committee and the House International Relations Committee [House Foreign Affairs Committee].
- (e) [Omitted]
- (f) Access by Secretary of Defense to information regarding nuclear proliferation matters; applicability.
  - (1) The Secretary of Defense shall have access, on a timely basis, to all information regarding nuclear proliferation matters which the Secretary of State or the Secretary of Energy has or is entitled to have. Such access shall include access to all communications, materials, documents, and records relating to nuclear proliferation matters.
  - (2) This subsection does not apply to any intradepartmental document of the Department of State or the Department of Energy, or any portion of such document, that is solely concerned with internal, confidential advice on policy concerning the conduct of interagency deliberations on nuclear proliferation matters.



## **APPENDIX IV. EXECUTIVE ORDERS**



## **APPENDIX IV. EXECUTIVE ORDERS**

**Executive Order No. 10104**

**February 1, 1950, 15 FR 597**

### **DEFINING CERTAIN VITAL MILITARY AND NAVAL INSTALLATIONS AND EQUIPMENT AS REQUIRING PROTECTION AGAINST THE GENERAL DISSEMINATION OF INFORMATION RELATIVE THERETO**

Source: The provision of Executive Order 10104 of Feb. 1, 1950, appear at 15 FR 597, 3 CFR, 1949-1953 Comp., p. 298, unless otherwise noted.

WHEREAS section 795 of title 18 of the United States Code provides:

- "(a) Whenever, in the interest of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installation or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.
- "(b) Whoever violates this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.";

AND WHEREAS section 797 of title 18 of the United States Code provides:

"On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.";

NOW THEREFORE, by virtue of the authority vested in me by the foregoing statutory provisions, and in the interest of national defense, I hereby define the following as vital military and naval installations or equipment requiring protection against the general dissemination of information relative thereto:

1. All military, naval, or air-force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all military, naval, or air-force installations and equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President, and located within:
  - (a) Any military, naval, or air-force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.
  - (b) Any defensive sea area heretofore established by Executive order and not subsequently discontinued by Executive order, and any defensive sea area hereafter established under authority of section 2152 of title 18 of the United States Code.
  - (c) Any airspace reservation heretofore or hereafter established under authority of section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174) except the airspace reservation established by Executive Order No. 10092 of December 17, 1949.
  - (d) Any naval harbor closed to foreign vessels.
  - (e) Any area required for fleet purposes.
  - (f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, design, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.
2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.
3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled "Defining Certain Vital Military and Naval Installations and Equipment".

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**Executive Order 10450**

**April 27, 1953, 18 F.R. 2489**

**SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT**

**As amended by E.O. 10491, Oct. 16, 1953, 18 F.R. 583; by E.O. 10531, May 27, 1954, 19 F.R. 3069; by E.O. 10548, Aug. 2, 1954, 19 F.R. 4871; by E.O. 10550, Aug. 5, 1954, 19 F.R. 4981; by E.O. 11605, July 8, 1971, 36 F.R. 12831; by E.O. 11785, June 4, 1974, 39 F.R. 20053, which revokes E.O. 11605; and by E.O. 12107, Dec. 28, 1978, 44 F.R. 1055.**

Source: The provisions of Executive Order 10450 of Apr. 27, 1953, appear at 18 FR 2489, 3 CFR, 1949-1953 Comp., p. 936, unless otherwise noted.

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632 et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et seq.), and as President of the United States, and deeming such action necessary in the best interest of the national security, it is hereby ordered as follows:

Section 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Sec. 3.(a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check in the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: *Provided*, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens, employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: *Provided*, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: *And provided further*, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

[Sec. 3 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]



- Sec. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.
- Sec. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.
- Sec. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.
- Sec. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: *Provided*, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

[Sec. 7 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

Sec. 8.(a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

- (1) Depending on the relation of the Government employment to the national security:
  - (i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.
  - (ii) Any deliberate misrepresentation, falsifications, or omissions of materials facts.
  - (iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, sexual perversion.
  - (iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.
  - (v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.
- (2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.
- (3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.
- (4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

- (5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.
  - (6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.
  - (7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interest of another government in preference to the interests of the United States.
  - (8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.
- (b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.
  - (c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Department and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.
  - (d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

[Sec. 8 amended by EO 10491 of Oct. 13, 1953, 18 FR 6583, 3 CFR, 1949-1953 Comp., p. 973; EO 10531 of May 27, 1954, 19 FR 3069, 3 CFR, 1954-1958 Comp., p. 193; EO 10548 of Aug. 2, 1954, 19 FR 4871, 3 CFR, 1954-1958 Comp., p. 200; EO 11785 of June 4, 1974, 39 FR 20053, 3 CFR, 1971-1975 Comp., p. 874; EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

- Sec. 9.(a)** There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.
- (b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.
- (c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

[Sec. 9 amended by EO 12107 of Dec. 2, 1978, 44 FR 1055, 3 CFR, 197 Comp., p. 264]

- Sec. 10.** Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.
- Sec. 11.** On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the

department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion and the determination of the board shall be forwarded to the head of the department or agency concerned: *Provided*, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of the Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

[Sec. 11 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

[Sec. 12 amended by EO 11785 of June 4, 1974, 39 FR 20053, 3 CFR, 1971-1975 Comp., p. 874]

Sec. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

Sec. 14.(a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

- (1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.
- (2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

- (b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

- (c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

[Sec. 14 amended by EO 10550 of Aug. 5, 1954, 19 FR 4981, 3 CFR, 1954-1958 Comp., p. 200; EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

Sec. 15. This order shall become effective thirty days after the date hereof.

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**Executive Order No. 10491**

**October 16, 1953, 18 F.R. 6583**

**See Executive Order No. 10450**

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**Executive Order No. 10531**

**May 27, 1954, 19 F.R. 3069**

**See Executive Order No. 10450**

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**Executive Order No. 10548**

**August 2, 1954, 19 F.R. 4871**

**See Executive Order No. 10450**  
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**Executive Order No. 10550**

**August 5, 1954, 36 F.R. 12831**

**See Executive Order No. 10450**

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**Executive Order No. 10865**

**February 20, 1960, 25 F.R. 1583**

**As amended by E.O. 10909, Jan. 17, 1961, 26 F.R. 508; by E.O. 11382, Nov. 28, 1967  
32 F.R. 16247; by E.O. 12829, Jan. 6, 1993, 58 F.R. 3479;  
and modified by E.O. 12038, Feb. 3, 1978, 43 F.R. 4957.**

**SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY**

Source: The provisions of Executive Order 10865 of Feb. 20, 1960, appear at 25 F.R. 1583, 3 CFR, 1959-1963 Comp., p. 398, unless otherwise noted.

WHEREAS it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosures of classified information relating to the national defense; and

WHEREAS it is a fundamental principle of our Government to protect the interests of individuals against reasonable or unwarranted encroachment; and

WHEREAS I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of classified defense information and to protect the national interest; and

WHEREAS I find that those provisions and procedures recognize the interest of individuals affected thereby and provide maximum possible safeguards to protect such interests:

NOW, THEREFORE, under and by virtue of the authority vested in me by the Constitution and statues of the United States, and as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

Section 1.(a) The Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, and the Secretary of Transportation, respectively, shall, by regulation, prescribe such specific requirements, restrictions, and other safeguards as they consider necessary to protect (1) releases of classified information to or within United States industry that relate to bidding on, or the negotiations, award, performance, or termination of, contracts with their respective agencies, and (2) other releases of classified information to or within industry that such agencies have responsibility for safeguarding. So far as

possible, regulations prescribed by them under this order shall be uniform and provide for full cooperation among the agencies concerned.

- (b) Under agreement between the Department of Defense and any other department or agency of the United States, including, but not limited to, those referred to in subsection (c) of this section, regulations prescribed by the Secretary of Defense under subsection (a) of this section may be extended to apply to protect releases (1) of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with such other department or agency, and (2) other release of classified information to or within industry which such other department or agency has responsibility for safeguarding.
- (c) When used in this order, the term "head of a department" means the Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, and the Secretary of Transportation, the head of any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Attorney General. The term "department" means the Department of State, Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Department of Transportation, any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Department of Justice.

[Sec. 1 amended by EO 10909 of Jan. 17, 1961, 26 F.R. 508, 3 CFR, 1959-1963 Comp., p. 437, EO 11382 of Nov. 28, 1967, 32 F.R. 16247, 3 CFR, 1966-1970 Comp., p. 691]

**Sec. 2.** An authorization for access to classified information may be granted by the head of a department or his designee, including but not limited to those officials named in section 8 of this order, to an individual, hereinafter termed an "applicant", for a specific classification category only upon a finding that it is clearly consistent with the national interest to do so.

**Sec. 3.** Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

- (1) A written statement of the reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.
- (2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.



- (3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of which may be prescribed by regulation issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee, including, but not limited to, those officials named in section 8 of this order, for the purpose of supporting his eligibility for access authorization and to present evidence on this behalf.
- (4) A reasonable time to prepare for that appearance.
- (5) An opportunity to be represented by counsel.
- (6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant.
- (7) A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

Sec. 4.(a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

- (1) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of this identify would be substantially harmful to the national interest.
- (2) The head of the department concerned or his designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

- (b) Whenever procedures under paragraphs (1) or (2) of subsection (a) of this section are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have any opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

Sec. 5.(a) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned to safeguard classified information within industry pursuant to this order.

- (b) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the applicant, may be received and considered provided that: (1) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (2) the head of the department concerned or his such designee has made a determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (3) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

Sec. 6. The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section 1(b), or his representative, may issue, in appropriate cases, invitations and requests to appear and testify in order that the applicant may have the opportunity to cross-examine as provided by this order. Whenever a witness is so invited or requested to appear and testify at a proceeding and the witness is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standardized Government Travel Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing

sentence), transportation in kind and reimbursement for actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An office or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, or the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination.

[Sec. 6 amended by EO 10909 of Jan. 17, 1961, 26 F.R. 508, 3 CFR, 1959-1963 Comp., p. 437, EO 11382 of Nov. 28, 1967, 32 F.R. 16247, 3 CFR, 1966-1970 Comp., p. 691]

**Sec. 7.** Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

**Sec. 8.** Except as otherwise specified in the preceding provisions of this order, any authority vested in the head of a department by this order may be delegated to the

- (1) Under Secretary of State or a Deputy Under Secretary of State, in the case of authority vested in the Secretary of State;
- (2) Deputy Secretary of Defense or an Assistant Secretary of Defense, in the case of authority vested in the Secretary of Defense;
- (3) General Manager of the Atomic Energy Commission, in the case of authority vested in the Commissioners of the Atomic Energy Commission;
- (4) Deputy Administrator of the National Aeronautics and Space Administration, in the case of authority vested in the Administrator of the National Aeronautics and Space Administration;
- (5) Under Secretary of Transportation, in the case of authority vested in the Secretary of Transportation;
- (6) Deputy Attorney General or an Assistant Attorney General, in the case of authority vested in the Attorney General; or

- (7) the deputy of that department, or the principal assistant to the head of that department, as the case may be, in the case of authority vested in the head of the department or agency of the United States with which the Department of Defense makes an agreement under section 1 (b).

[Sec. 8 amended by EO 10909 of Jan. 17, 1961, 26 F.R. 508, 3 CFR, 1959-1963 Comp., p. 437, EO 11382 of Nov. 28, 1967, 32 F.R. 16247, 3 CFR, 1966-1970 Comp., p. 691]

**Sec. 9.** Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of the department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of the department determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

Editorial Note: Executive Order 10865, insofar as it refers to functions of the Atomic Energy Commission, was modified by E.O. 12038 of Feb. 3, 1978, to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974.

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**Executive Order 10899**

**December 9, 1960, 25 F.R. 12729**

**Modified by E.O. 12038, Feb. 3, 1978, 43 F.R. 4957.**

**AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE CENTRAL INTELLIGENCE AGENCY**

Source: The provisions of Executive Order 10899 of Dec. 9, 1960, appear at 25 FR 12729, 3 CFR, 1959-1963 Comp., p. 427, unless otherwise noted.

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011, *et seq.*), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144 a, b, or c of the Act (42 U.S.C. 2162 (a), (b), or (c)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162 (d)) as is determined

- (i) by the President, pursuant to the provisions of the Act, or

- (ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

Editorial Note Executive Order 10899, insofar as it refers to functions of the Atomic Energy Commission, was modified by EO 12038 of Feb. 3, 1978, to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974.

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**Executive Order No. 10909**

**Jan. 7, 1961, 26 F.R. 508**

**See Executive Order No. 10865**

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**Executive Order No. 11057**

**October 18, 1962, 27 F.R. 10289**

**Modified by Executive Order 12038, Feb. 3, 1978, 43 F.R. 4957.**

**AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE  
DEPARTMENT OF STATE**

Source: The provisions of Executive Order 11057 of Oct. 18, 1962, appear at 27 FR 10289, 3 CFR, 1959-1963 Comp., p. 648, unless otherwise noted.

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011, *et seq.*), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the Act (42 U.S.C. 2164(b)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162 (d)) as is determined

- (i) by the President, pursuant to the provisions of the Act, or
- (ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

Editorial Note Executive Order 11057, insofar as it refers to functions of the Atomic Energy Commission, was modified by EO 12038 of Feb. 3, 1978, to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233).

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**Executive Order No. 11382**

**Nov. 28, 1967, 32 F.R. 16247**

**See Executive Order No. 10865**

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**Executive Order No. 11490**

**October 28, 1969, 34 F.R. 17567**

**ASSIGNING EMERGENCY PREPAREDNESS FUNCTIONS TO  
FEDERAL DEPARTMENTS AND AGENCIES**

**As amended by Executive Order No. 11522, (F.R. citation not available); Executive Order No. 11556, (F.R. citation not available) Executive Order No. 11746, (F.R. citation not available) Executive Order No. 11921, June 22, 1976, (F.R. citation not available); Executive Order No. 11953, Jan 7, 1977, 42 F.R. 2492; Executive Order No. 12038, Feb. 3, 1978, 43 F.R. 4957; Executive Order No. 12107, Dec. 28, 1978, 44 F.R. 1055; Executive Order No. 12148, July 20, 1979, 44 F.R. 43239; Executive Order No. 12608, Sept. 9, 1987, 52 F.R. 34617; and revoked by Executive Order No. 12656, Nov. 23, 1988, 53 F.R. 47491.**

**Executive Order No. 11522**

**Superseded by E.O. 11921**

**See Executive Order No. 11490**

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**Executive Order No. 11556**

**Revoked by Executive Order No. 12046**

**See Executive Order No. 11490**

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**Executive Order No. 11605**

**July 8, 1971, 36 F.R. 12831**

**AMENDMENT OF EXECUTIVE ORDER NO. 10450 OF APRIL 27, 1953, RELATING TO  
SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEMENT**

**Revoked by E.O. 11785, June 6, 1974, 39 F.R. 20053**

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**Executive Order No. 11652**

**March 8, 1972, 37 F.R. 5209**

**CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION  
AND MATERIAL**

**E.O. 11652, effective June 1, 1972; as amended by E.O. 11714, April 26, 1973,  
38 F.R. 10245; by E.O. 11862, June 11, 1975, 40 F.R. 25197;  
and by E.O. 12038, February 3, 1978, 43 F.R. 4957**

**Revoked by E.O. 12065, July 3, 1978**

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**Executive Order No. 11714**

**See Executive Order No. 11652**

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**Executive Order No. 11746**

**Superseded by E.O. 11921**

**See Executive Order No. 11490**

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**Executive Order No. 11785**

**June 6, 1974, 39 F.R. 20053**

**AMENDING EXECUTIVE ORDER NO. 10450, AS AMENDED, RELATING TO SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT, AND FOR OTHER PURPOSES**

**Revokes E.O. 11605 of July 2, 1971.**

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

**Section 1.** Section 12 of Executive Order No. 10450 of April 27, 1953, as amended, is revised to read in its entirety as follows:

"Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked."

**Sec. 2.** Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

**Sec. 3.** Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

"Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State, or subdivision thereof by unlawful means."



Sec. 4 Executive Order No. 11605 of July 2, 1971, is revoked.

Richard Nixon

The White House  
June 4, 1974

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Executive Order No. 11834

January 15, 1975, 40 F.R. 2971

**ACTIVATION OF ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AND THE  
NUCLEAR REGULATORY COMMISSION**

Revoked by E.O. 12553, February 25, 1986, 51 F.R. 72371

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Executive Order No. 11862

See Executive Order No. 11652

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Executive Order No. 11902

February 2, 1976, 41 F.R. 4877

**PROCEDURES FOR AN EXPORT LICENSING POLICY AS TO NUCLEAR MATERIAL AND  
EQUIPMENT**

Amended by E.O. 12038, February 3, 1978, 43 F.R. 4957

Revoked by E.O. 12058, May 11, 1978

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Executive Order No. 11921

See Executive Order No. 11490

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Executive Order No. 11953

See Executive Order No. 11490

**Executive Order No. 12038**

**See Executive Order No. 11490**

**See Executive Order No. 10865**

**See Executive Order No. 10899**

**See Executive Order No. 11057**

**See Executive Order No. 11652**

**See Exhibitive Order No. 11902**

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**Executive Order No. 12058**

**May 11, 1978, 43 F.R. 20947**

**FUNCTIONS RELATING TO NUCLEAR NON-PROLIFERATION**

**Revokes E.O. 11902, Feb. 2, 1976**

Source: The provisions of Executive Order 12058 of May 11, 1978, appear at 43 F.R. 20947, 3 CFR, 1978 Comp., p. 179, unless otherwise noted.

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. *Department of Energy.* The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), herein after referred to as the Act, and by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy:

- (a) That function vested by Section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).
- (b) Those functions vested by Sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).
- (c) That function vested by Section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

**Sec. 2.**        *Department of State.* The Secretary of State shall be responsible for performing the following functions vested in the President:

- (a)        Those functions vested by Sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 123, 146, 147, 148, and 148, 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S. C. 2153b, 2153c, 2153e, and 22 U.S.C. 3261).
- (b)        That function vested by Section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).
- (c)        That function vested by Section 601 of the Act to the extent it relates to the preparation of an annual report.
- (d)        The preparation of timely information and recommendations related to the President's functions vested by Sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138, 42 U.S.C. 2155, 2157, and 2158).
- (e)        That function vested by Section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c)); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

**Sec. 3.**        *Department of Commerce.* The Secretary of Commerce shall be responsible for performing the function vested in the President by Section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

**Sec. 4.**        *Coordination.* In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

**Sec. 5.**        *General Provisions.*

- (a)        Executive Order No. 11902 of February 2, 1976, entitled "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.
- (b)        The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.

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**Executive Order No. 12065**

**June 28, 1979, 43 F.R. 28949**

**NATIONAL SECURITY INFORMATION**

**As amended by E.O. 12148, July 20, 1979, 44 F.R. 43239 and E.O. 12163, Sept. 29,  
1979, 44 F.R. 56673**

**Revoked by E.O. 12356, April 2, 1982**

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**Executive Order No. 12107**

**Dec. 28, 1978, 44 F.R. 1055**

**See Executive Order No. 10450**

**See Executive Order No. 11490**

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**Executive Order No. 12148**

**July 20, 1979, 44 F.R. 43239**

**See Executive Order No. 11490**

**See Executive Order No. 12065**

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**Executive Order No. 12163**

**Sept. 9, 1979, 44 F.R. 56673**

**See Executive Order No. 12065**

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**Executive Order 12241**

**September 29, 1980, 45 F.R. 64879**

**NATIONAL CONTINGENCY PLAN**

**Partially superseded by E.O. 12657, Nov. 23, 1988, 53 F.R. 47513**

TEXT: By the authority vested in me as President of the United States of America under Section 304 of Public Law 96-295 (94 Stat. 790) and Section 301 of Title 3 of the United States Code, and in order to provide for the publication of a plan to protect the public health and safety in case of accidents at nuclear power facilities, it is hereby ordered as follows:

1-101. The functions vested in the President by Section 304 of Public Law 96-295 (94 Stat. 790) are delegated to the Director, Federal Emergency Management Agency.

1-102. A copy of the National Contingency Plan shall, from time to time, be published in the Federal Register.

Jimmy Carter

The White House  
September 29, 1980.

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**Executive Order 12333**

**December 4, 1981, 46 F.R. 59941**

**UNITED STATES INTELLIGENCE ACTIVITIES**

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

**Part 1 Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort**

1.1 Goals. The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

- (a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.
- (b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.
- (c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.
- (d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

## 1.2 The National Security Council.

- (a) **Purpose.** The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.
- (b) **Committees.** The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

## 1.3 National Foreign Intelligence Advisory Groups.

- (a) **Establishment and Duties.** The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:
  - (1) Production, review and coordination of national foreign intelligence;
  - (2) Priorities for the National Foreign Intelligence Program budget;
  - (3) Interagency exchanges of foreign intelligence information;
  - (4) Arrangements with foreign governments on intelligence matters;
  - (5) Protection of intelligence sources and methods;

- (6) Activities of common concern; and
  - (7) Such other matters as may be referred by the Director of Central Intelligence.
- (b) Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.
- 1.4 The Intelligence Community. The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:
- (a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;
  - (b) Production and dissemination of intelligence;
  - (c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;
  - (d) Special activities;
  - (e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and
  - (f) Such other intelligence activities as the President may direct from time to time.
- 1.5 Director of Central Intelligence. In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:
- (a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;
  - (b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

- (c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;
- (d) Ensure implementation of special activities;
- (e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;
- (f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;
- (g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;
- (h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;
- (i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;
- (j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;
- (k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;
- (l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;
- (m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having



information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

- (n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;
- (o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;
- (p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;
- (q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;
- (r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and
- (s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

- (a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.
- (b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

- (c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.
- 1.7 Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:
- (a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;
  - (b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;
  - (c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;
  - (d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;
  - (e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;
  - (f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;
  - (g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;
  - (h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and
  - (i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.
- 1.8 The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

- (a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;
- (b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;
- (c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;
- (d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;
- (e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;
- (f) Conduct services of common concern for the Intelligence Community as directed by the NSC;
- (g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;
- (h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and
- (i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 The Department of State. The Secretary of State shall:

- (a) Overtly collect information relevant to United States foreign policy concerns;
- (b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

- (c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;
- (d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and
- (e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 The Department of the Treasury. The Secretary of the Treasury shall:

- (a) Overtly collect foreign financial and monetary information;
- (b) Participate with the Department of State in the overt collection of general foreign economic information;
- (c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and
- (d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 The Department of Defense. The Secretary of Defense shall:

- (a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;
- (b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;
- (c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;
- (d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;
- (e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

- (f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;
- (g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;
- (h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;
- (i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;
- (j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and
- (k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 Intelligence Components Utilized by the Secretary of Defense. In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

- (a) Defense Intelligence Agency, whose responsibilities shall include:
  - (1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;
  - (2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;
  - (3) Coordination of all Department of Defense intelligence collection requirements;
  - (4) Management of the Defense Attache system; and
  - (5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) National Security Agency, whose responsibilities shall include:

- (1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;
- (2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;
- (3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;
- (4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;
- (5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;
- (6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;
- (7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;
- (8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;
- (9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;
- (10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;
- (11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

- (12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and
  - (13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.
- (c) Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:
- (1) Carrying out consolidated reconnaissance programs for specialized intelligence;
  - (2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and
  - (3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.
- (d) The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include:
- (1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;
  - (2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and
  - (3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.
- (e) Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 The Department of Energy. The Secretary of Energy shall:

- (a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;
- (b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;
- (c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and
- (d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 The Federal Bureau of Investigation. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

- (a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;
- (b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;
- (c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;
- (d) Produce and disseminate foreign intelligence and counterintelligence; and
- (e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

## **Part 2 - Conduct of Intelligence Activities**

2.1 **Need.** Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.



- 2.2 Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.
- 2.3 Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:
- (a) Information that is publicly available or collected with the consent of the person concerned;
  - (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;
  - (c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;
  - (d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;
  - (e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;
  - (f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;
  - (g) Information arising out of a lawful personnel, physical or communications security investigation;

- (h) Information acquired by overhead reconnaissance not directed at specific United States persons;
- (i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and
- (j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

**2.4 Collection Techniques.** Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

- (a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;
- (b) Unconsented physical searches in the United States by agencies other than the FBI, except for:
  - (1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and
  - (2) Searches by CIA of personal property of non-United States persons lawfully in its possession.
- (c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:
  - (1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and
  - (2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

- (d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.
- 2.5 Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.
- 2.6 Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community are authorized to:
  - (a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;
  - (b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;
  - (c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and
  - (d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.
- 2.7 Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.
- 2.8 Consistency With Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.
- 2.9 Undisclosed Participation in Organizations Within the United States. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the

agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

- (a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or
  - (b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.
- 2.10 Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.
- 2.11 Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.
- 2.12 Indirect Participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

### **Part 3 - General Provisions**

- 3.1 Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.
- 3.2 Implementation. The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.
- 3.3 Procedures. Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No.

12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

**3.4 Definitions.** For the purposes of this Order, the following terms shall have these meanings:

- (a) Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.
- (b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.
- (c) Employee means a person employed by, assigned to or acting for an agency within the Intelligence Community.
- (d) Foreign intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.
- (e) Intelligence activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.
- (f) Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:
  - (1) The Central Intelligence Agency (CIA);
  - (2) The National Security Agency (NSA);
  - (3) The Defense Intelligence Agency (DIA);
  - (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
  - (5) The Bureau of Intelligence and Research of the Department of State;
  - (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
  - (7) The staff elements of the Director of Central Intelligence.

(g) The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

- (1) The programs of the CIA;
- (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
- (3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;
- (4) Activities of the staff elements of the Director of Central Intelligence;
- (5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) United States person means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 Purpose and Effect. This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 Revocation. Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

The White House,  
December 4, 1981.

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**Executive Order 12356**

**April 2, 1982, 47 F.R. 14874**

**NATIONAL SECURITY INFORMATION**

**Revokes E.O. 12065, June 28, 1979, 43 F.R. 28949.**

**Revoked by E.O. 12958, April 17, 1995, 60 F.R. 19825,  
effective 180 days from date of this order.**

This Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of its Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under this Order unless its disclosure reasonably could be expected to cause damage to the national security.

NOW, by the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

**Part 1 - Original Classification**

**Section 1.1 Classification Levels.**

- (a) National security information (hereinafter "classified information") shall be classified at one of the following three levels:
  - (1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.
  - (2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.
  - (3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.
- (b) Except as otherwise provided by statute, no other terms shall be used to identify classified information.
- (c) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days.

**Sec. 1.2 Classification Authority.**

- (a) **Top Secret.** The authority to classify information originally as Top Secret may be exercised only by:
  - (1) the President;
  - (2) agency heads and officials designated by the President in the Federal Register; and
  - (3) officials delegated this authority pursuant to Section 1.2(d).
- (b) **Secret.** The authority to classify information originally as Secret may be exercised only by:
  - (1) agency heads and officials designated by the President in the Federal Register;
  - (2) officials with original Top Secret classification authority; and
  - (3) officials delegated such authority pursuant to Section 1.2(d).
- (c) **Confidential.** The authority to classify information originally as Confidential may be exercised only by:
  - (1) agency heads and officials designated by the President in the Federal Register;
  - (2) officials with original Top Secret or Secret classification authority; and
  - (3) officials delegated such authority pursuant to Section 1.2(d).
- (d) **Delegation of Original Classification Authority.**
  - (1) Delegations of original classification authority shall be limited to the minimum required to administer this Order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.
  - (2) Original Top Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Section 1.2(a)(2); and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Top Secret classification authority by the agency head.
  - (3) Original Secret classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2) and 1.2(b)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original Secret classification authority by the agency head.



- (4) Original Confidential classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1.2(a)(2), 1.2(b)(1) and 1.2(c)(1); an official with original Top Secret classification authority; and the senior official designated under Section 5.3(a)(1), provided that official has been delegated original classification authority by the agency head.
  - (5) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this Order. It shall identify the official delegated the authority by name or position title. Delegated classification authority includes the authority to classify information at the level granted and lower levels of classification.
- (e) Exceptional Cases. When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this Order and its implementing directives. The information shall be transmitted promptly as provided under this Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

**Sec. 1.3 Classification Categories.**

- (a) Information shall be considered for classification if it concerns:
  - (1) military plans, weapons, or operations;
  - (2) the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
  - (3) foreign government information;
  - (4) intelligence activities (including special activities), or intelligence sources or methods;
  - (5) foreign relations or foreign activities of the United States;
  - (6) scientific, technological, or economic matters relating to the national security;
  - (7) United States Government programs for safeguarding nuclear materials or facilities;
  - (8) cryptology;

- (9) a confidential source; or
  - (10) other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of the Information Security Oversight Office.
- (b) Information that is determined to concern one or more of the categories in Section 1.3(a) shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.
  - (c) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.
  - (d) Information classified in accordance with Section 1.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

**Sec. 1.4 Duration of Classification.**

- (a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.
- (b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The agency shall be responsible for notifying holders of the information of such extensions.
- (c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this Order.

**Sec. 1.5 Identification and Markings.**

- (a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:
  - (1) one of the three classification levels defined in Section 1.1;

- (2) the identity of the original classification authority if other than the person whose name appears as the approving or signing official;
  - (3) the agency and office of origin; and
  - (4) the date or event for declassification, or the notation "Originating Agency's Determination Required."
- (b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. Agency heads may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.
  - (c) Marking designations implementing the provisions of this Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.
  - (d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.
  - (e) Information assigned a level of classification under predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in Section 3.1(b).

**Sec. 1.6 Limitations on Classification.**

- (a) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.
- (b) Basic scientific research information not clearly related to the national security may not be classified.
- (c) The President or an agency head or official designated under Sections 1.2(a)(2), 1.2(b)(1), or 1.2(c)(1) may reclassify information previously declassified and disclosed if it is determined in writing that (1) the information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office.

- (d) Information may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of this Order (Section 3.4) if such classification meets the requirements of this Order and is accomplished personally and on a document-by-document basis by the agency head, the deputy agency head, the senior agency official designated under Section 5.3(a)(1), or an official with original Top Secret classification authority.

## **Part 2 - Derivative Classification**

### **Sec. 2.1 Use of Derivative Classification.**

- (a) Derivative classification is (1) the determination that information is in substance the same as information currently classified, and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.
- (b) Persons who apply derivative classification markings shall:
  - (1) observe and respect original classification decisions; and
  - (2) carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

### **Sec. 2.2 Classification Guides.**

- (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information.
- (b) Each guide shall be approved personally and in writing by an official who:
  - (1) has program or supervisory responsibility over the information or is the senior agency official designated under Section 5.3(a)(1); and
  - (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.
- (c) Agency heads may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

### **Part 3 - Declassification and Downgrading**

#### **Sec. 3.1 Declassification Authority.**

- (a) Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with this Order.
- (b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the agency head or the senior agency official designated pursuant to Section 5.3(a)(1).
- (c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.
- (d) The provisions of this Section shall also apply to agencies that, under the terms of this Order, do not have original classification authority, but that had such authority under predecessor orders.

#### **Sec. 3.2 Transferred Information.**

- (a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this Order.
- (b) In the case of classified information that is not officially transferred as described in Section 3.2(a), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this Order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.
- (c) Classified information accessioned into the National Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and agency guidelines.

### Sec. 3.3 Systematic Review for Declassification.

- (a) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office's directives implementing this Order, systematically review for declassification or downgrading (1) classified records accessioned into the National Archives of the United States, and (2) classified presidential papers or records under the Archivist's control. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of the Information Security Oversight Office in consultation with interested agency heads.
- (b) Agency heads may conduct internal systematic review programs for classified information originated by their agencies contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.
- (c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

### Sec. 3.4. Mandatory Review for Declassification.

- (a) Except as provided in Section 3.4(b), all information classified under this Order or predecessor orders shall be subject to a review for declassification by the originating agency, if:
  - (1) the request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and
  - (2) the request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.
- (b) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of Section 3.4(a). The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight

Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

- (c) Agencies conducting a mandatory review for declassification shall declassify information no longer requiring protection under this Order. They shall release this information unless withholding is otherwise authorized under applicable law.
- (d) Agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They shall also provide a means for administratively appealing a denial of a mandatory review request.
- (e) The Secretary of Defense shall develop special procedures for the review of cryptologic information, and the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, after consultation with affected agencies. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States.
- (f) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order:
  - (1) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under this Order.
  - (2) When an agency receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response under Section 3.4(f)(1) is required, the referring agency shall respond to the requester in accordance with that Section.

#### **Part 4 - Safeguarding**

##### **Sec. 4.1 General Restrictions on Access.**

- (a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes.
- (b) Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons.

- (c) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.
- (d) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.

**Sec. 4.2 Special Access Programs.**

- (a) Agency heads designated pursuant to Section 1.2(a) may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence.
- (b) Each agency head shall establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office, consistent with the provisions of Section 5.2(b)(4), shall have non-delegable access to all such accountings.

**Sec. 4.3 Access by Historical Researchers and Former Presidential Appointees.**

- (a) The requirement in Section 4.1(a) that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in Section 4.3(b) for persons who:
  - (1) are engaged in historical research projects, or
  - (2) previously have occupied policy-making positions to which they were appointed by the President.
- (b) Waivers under Section 4.3(a) may be granted only if the originating agency:
  - (1) determines in writing that access is consistent with the interest of national security;
  - (2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and



- (3) limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

## **Part 5 - Implementation and Review**

### **Sec. 5.1 Policy Direction.**

- (a) The National Security Council shall provide overall policy direction for the information security program.
- (b) The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. The Administrator shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.

### **Sec. 5.2 Information Security Oversight Office.**

- (a) The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Director shall have the authority to appoint a staff for the Office.
- (b) The Director shall:
  - (1) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order, which shall be binding on the agencies;
  - (2) oversee agency actions to ensure compliance with this Order and implementing directives;
  - (3) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation or guideline shall remain in effect pending a prompt decision on the appeal;
  - (4) have the authority to conduct on-site reviews of the information security program of each agency that generates or handles classified information and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior official designated under Section 5.3(a)(1) may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect pending a prompt decision on the appeal;

- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend presidential approval;
- (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program;
- (7) have the authority to prescribe, after consultation with affected agencies, standard forms that will promote the implementation of the information security program;
- (8) report at least annually to the President through the National Security Council on the implementation of this Order; and
- (9) have the authority to convene and chair interagency meetings to discuss matters pertaining to the information security program.

#### Sec. 5.3 General Responsibilities.

Agencies that originate or handle classified information shall:

- (a) designate a senior agency official to direct and administer its information security program, which shall include an active oversight and security education program to ensure effective implementation of this Order;
- (b) promulgate implementing regulations. Any unclassified regulations that establish agency information security policy shall be published in the Federal Register to the extent that these regulations affect members of the public;
- (c) establish procedures to prevent unnecessary access to classified information, including procedures that (i) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs; and
- (d) develop special contingency plans for the protection of classified information used in or near hostile or potentially hostile areas.

#### Sec. 5.4 Sanctions.

- (a) If the Director of the Information Security Oversight Office finds that a violation of this Order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior official designated under Section 5.3(a)(1) so that corrective steps, if appropriate, may be taken.
- (b) Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they:

- (1) knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under this Order or predecessor orders;
  - (2) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive; or
  - (3) knowingly and willfully violate any other provision of this Order or implementing directive.
- (c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.
- (d) Each agency head or the senior official designated under Section 5.3(a)(1) shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5.4(b) occurs. Either shall ensure that the Director of the Information Security Oversight Office is promptly notified whenever a violation under Section 5.4(b) (1) or (2) occurs.

## **Part 6 - General Provisions**

### **Sec. 6.1 Definitions.**

- (a) "Agency" has the meaning provided at 5 U.S.C. 552(e).
- (b) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.
- (c) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.
- (d) "Foreign government information" means:
- (1) information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or
  - (2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.
- (e) "National security" means the national defense or foreign relations of the United States.

- (f) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.
- (g) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

**Sec. 6.2 General.**

- (a) Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.
- (b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this Order with respect to any question arising in the course of its administration.
- (c) Nothing in this Order limits the protection afforded any information by other provisions of law.
- (d) Executive Order No. 12065 of June 28, 1978, as amended, is revoked as of the effective date of this Order.
- (e) This Order shall become effective on August 1, 1982.

Ronald Reagan

The White House  
April 2, 1982.

**Executive Order 12356**

**April 2, 1982, 47 F.R. 15557**

**NATIONAL SECURITY INFORMATION**

**TEXT: Correction**

In the April 6, 1982 issue of the Federal Register, there appear on pages 14875, 14876, 14878, 14882 and 14883 incorrect references to "Section 5.3(a)(1)" of Executive Order 12356 of April 2, 1982. All references on these pages to "Section 5.3(a)(1)" should read "Section 5.3(a)."

54Richard A. Hauser  
Deputy Counsel to the President  
April 8, 1982.

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**Order of May 7, 1982**

**47 F.R. 20105**

**NATIONAL SECURITY INFORMATION**

**TEXT:** Pursuant to the provisions of Section 1.2 of Executive Order No. 12356 of April 2, 1982, entitled "National Security Information," I hereby designate the following officials to classify information originally as "Top Secret", "Secret", or "Confidential":

**TOP SECRET**

**EXECUTIVE OFFICE OF THE PRESIDENT:**

The Vice President  
The Counsellor to the President  
The Chief of Staff and Assistant to the President  
The Deputy Chief of Staff and Assistant to the President  
The Director, Office of Management and Budget  
The United States Trade Representative  
The Assistant to the President for National Security Affairs  
The Director, Office of Science and Technology Policy  
The Chairman, The President's Foreign Intelligence Advisory Board  
The Chairman, The President's Intelligence Oversight Board  
The Secretary of State  
The Secretary of the Treasury  
The Secretary of Defense  
The Secretary of the Army  
The Secretary of the Navy

The Secretary of the Air Force  
The Attorney General  
The Secretary of Energy  
The Chairman, Nuclear Regulatory Commission  
The Director, United States Arms Control and Disarmament Agency  
The Director of Central Intelligence  
The Administrator, National Aeronautics and Space Administration  
The Administrator of General Services  
The Director, Federal Emergency Management Agency

**TOP SECRET**

**EXECUTIVE OFFICE OF THE PRESIDENT:**

The Chairman, Council of Economic Advisers  
The President's Personal Representative for Micronesian Status Negotiations  
The Secretary of Commerce  
The Secretary of Transportation  
The Administrator, Agency for International Development  
The Director, International Communication Agency

**CONFIDENTIAL**

The President, Export-Import Bank of the United States  
The President, Overseas Private Investment Corporation  
The Administrator, Environmental Protection Agency  
Any delegation of this authority shall be in accordance with Section 1.2(d) of the Order.

This Order shall be published in the Federal Register.

Ronald Reagan

The White House,  
May 7, 1982.

**INFORMATION SECURITY OVERSIGHT OFFICE AGENCY:  
Information Security Oversight Office (ISOO).  
32 CFR Part 2001  
National Security Information**

**[Directive No. 1]**

**47 F.R. 27836**

**June 25, 1982**

**ACTION:** Implementing Directive; final rule.

**SUMMARY:** The Information Security Oversight Office is publishing this Directive (final rule) pursuant to section 5.2(b)(1) of Executive Order 12356, relating to national security information. The National Security Council approved this Directive on June 22, 1982. The Executive order prescribes a uniform information security system; it also establishes a monitoring system to enhance its effectiveness. This Directive sets forth guidance to agencies on original and derivative classification, downgrading, declassification, and safeguarding of national security information.

**EFFECTIVE DATE:** August 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** Steven Garfinkel, Director, ISOO,  
Telephone: 202-535-7251.

**TEXT: SUPPLEMENTARY INFORMATION:** This Directive is issued pursuant to the provisions of section 5.2(b)(1) of Executive Order 12356. The purpose of the Directive is to assist in implementing the Order; users of the Directive shall refer concurrently to that Order for guidance.

**List of Subjects in 32 CFR Part 2001**

Archives and records, Authority delegations, Classified information, Executive orders, Freedom of information, Information, Intelligence, National defense, National security information, Presidential documents, Security information, Security measures.

Title 32 of the Code of Federal Regulations, Part 2001, is revised to read as follows:

## **PART 2001 -- NATIONAL SECURITY INFORMATION**

### **Subpart A -- Original Classification**

Sec.

- 2001.1 Classification levels.
- 2001.2 Classification authority.
- 2001.3 Classification categories.
- 2001.4 Duration of classification.
- 2001.5 Identification and markings.
- 2001.6 Limitations on classification.

### **Subpart B -- Derivative Classification**

- 2001.20 Use of derivative classification.
- 2001.21 Classification guides.
- 2001.22 Derivative identification and markings.

### **Subpart C -- Declassification and Downgrading**

- 2001.30 Listing declassification and downgrading authorities.
- 2001.31 Systematic review for declassification.
- 2001.32 Mandatory review for declassification.
- 2001.33 Assistance to the Department of State.
- 2001.34 FOIA and Privacy Act requests.

### **Subpart D -- Safeguarding**

- 2001.40 General.
- 2001.41 Standards for security equipment.
- 2001.42 Accountability.
- 2001.43 Storage.
- 2001.44 Transmittal.
- 2001.45 Special access programs.
- 2001.46 Reproduction controls.
- 2001.47 Loss or possible compromise.
- 2001.48 Disposition and destruction.
- 2001.49 Responsibilities of holders.
- 2001.50 Emergency planning.
- 2001.51 Emergency authority.

### **Subpart E -- Implementation and Review**

- 2001.60 Agency regulations.
- 2001.61 Security education.
- 2001.62 Oversight.



## **Subpart F -- General Provisions**

2001.70 Definitions.

2001.71 Publication and effective date.

**Authority: Section 5.2(b)(1), E.O. 12356. 47 F.R. 14874, April 6, 1982.**

## **Subpart A -- Original Classification**

### **§ 2001.1 Classification levels.**

- (a) Limitations [1.1(b)]. n1 Markings other than "Top Secret," "Secret," and "Confidential," such as "For Official Use Only" or "Limited Official Use," shall not be used to identify national security information. No other term or phrase shall be used in conjunction with these markings, such as "Secret Sensitive" or "Agency Confidential," to identify national security information. The terms "Top Secret," "Secret," and "Confidential" should not be used to identify nonclassified executive branch information.

n1 Bracketed references pertain to related sections of Executive Order 12356.

- (b) Reasonable doubt [1.1(c)]. (1) When there is reasonable doubt about the need to classify information, the information shall be safeguarded as if it were "Confidential" information in accordance with Subpart D, pending the determination about its classification. Upon the determination of a need for classification, the information that is classified shall be marked as provided in § 2001.5.
- (2) When there is reasonable doubt about the appropriate classification level, the information shall be safeguarded at the higher level in accordance with Subpart D, pending the determination about its classification level. Upon the determination of its classification level, the information shall be marked as provided in § 2001.5.

### **§ 2001.2 Classification authority.**

- (a) Requests for original classification authority [1.2 and 5.2(b)(5)]. A request for original classification authority pursuant to section 1.2 of Executive Order 12356 (hereinafter "the Order") shall include a complete justification for the level of classification authority sought, a description of the information that will require original classification, and the anticipated frequency of original classification actions.
- (b) Listing classification authorities [1.2]. Agencies shall maintain a current listing of officials delegated original classification authority by name, position, or other identifier. If possible, this listing shall be unclassified.
- (c) Exceptional cases [1.2(e)]. Information described in section 1.2(e) of the Order shall be protected as provided in § 2001.1(b).

§ 2001.3 Classification categories.

- (a) Classification in context of related information [1.3(b)]. Certain information which would otherwise be unclassified may require classification when combined or associated with other unclassified or classified information. Classification on this basis shall be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the record copy of the information.
- (b) Unofficial publication or disclosure [1.3(d)]. Following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Order or predecessor orders, the agency of primary interest shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences.

§ 2001.4 Duration of classification.

- (a) Information not marked for declassification [1.4]. Information classified under predecessor orders that is not subject to automatic declassification shall remain classified until reviewed for declassification.
- (b) Authority to extend automatic declassification determinations [1.4(b)]. The authority to extend the classification of information subject to automatic declassification under predecessor orders is limited to those officials who have classification authority over the information and are designated in writing to have original classification authority at the level of the information to remain classified. Any decision to extend this classification on other than a document-by-document basis shall be reported to the Director of the Information Security Oversight Office.

§ 2001.5 Identification and markings [1.5(a), 1.5(b) and 1.5(c)].

A uniform information security system requires that standard markings be applied to national security information. Except in extraordinary circumstances as provided in section 1.5(a) of the Order, or as indicated herein, the marking of paper documents created after the effective date of the Order shall not deviate from the following prescribed formats. These markings shall also be affixed to material other than paper documents, or the originator shall provide holders or recipients of the information with written instructions for protecting the information.

- (a) Classification level. The markings "Top Secret," "Secret," and "Confidential" are used to indicate: that information requires protection as national security information under the Order; the highest level of classification contained in a document; and the classification level of each page and, in abbreviated form, each portion of a document.

- (1) Overall marking. The highest level of classification of information in a document shall be marked in such a way as to distinguish it clearly from the informational text. These markings shall appear at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any).
  - (2) Page marking. Each interior page of a classified document shall be marked at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when it is applicable, or with the highest overall classification of the document.
  - (3) Portion marking. Agency heads may waive the portion marking requirement for specified classes of documents or information only upon a written determination that: (i) There will be minimal circulation of the specified documents or information and minimal potential usage of these documents or information as a source for derivative classification determinations; or (ii) there is some other basis to conclude that the potential benefits of portion marking are clearly outweighed by the increased administrative burdens. Unless the portion marking requirement has been waived as authorized, each portion of a document, including subjects and titles, shall be marked by placing a parenthetical designation immediately preceding or following the text to which it applies. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified shall be used for this purpose. If the application of parenthetical designations is not practicable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification, and the information that is not classified. If all portions of a document are classified at the same level, this fact may be indicated by a statement to that effect. If a subject or title requires classification, an unclassified identifier may be applied to facilitate reference.
- (b) Classification authority. If the original classifier is other than the signer or approver of the document, the identity shall be shown as follows:
- "CLASSIFIED BY (identification of original classification authority)"
- (c) Agency and office of origin. If the identity of the originating agency and office is not apparent on the face of a document, it shall be placed below the "CLASSIFIED BY" line.
- (d) Declassification and downgrading instructions. Declassification and, as applicable, downgrading instructions shall be shown as follows:
- (1) For information to be declassified automatically on a specific date:  
"DECLASSIFY ON: (date)"

- (2) For information to be declassified automatically upon occurrence of a specific event:  
"DECLASSIFY ON: (description of event)"
- (3) For information not to be declassified automatically:  
"DECLASSIFY ON: ORIGINATING AGENCY'S DETERMINATION REQUIRED or 'OADR' "
- (4) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:  
"DOWNGRADE TO (classification level) ON (date or description of event)"
- (e) Special markings. -- (1) Transmittal documents [1.5(c)]. A transmittal document shall indicate on its face the highest classification of any information transmitted by it. It shall also include the following or similar instruction:
- (i) For an unclassified transmittal document:  
"UNCLASSIFIED WHEN CLASSIFIED ENCLOSURE IS REMOVED"
- (ii) For a classified transmittal document:  
"UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS (classification level of the transmittal document standing alone)"
- (2) "Restricted Data" and "Formerly Restricted Data" [6.2(a)]. "Restricted Data" and "Formerly Restricted Data" shall be marked in accordance with regulations issued under the Atomic Energy Act of 1954, as amended.
- (3) Intelligence sources or methods [1.5(c)]. Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise proscribed by the Director of Central Intelligence:  
"WARNING NOTICE -- INTELLIGENCE SOURCES OR METHODS INVOLVED"
- (4) Foreign government information [1.5(c)]. Documents that contain foreign government information shall include either the marking "FOREIGN GOVERNMENT INFORMATION," or a marking that otherwise indicates that the information is foreign government information. If the fact that information is foreign government information must be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin.
- (5) Computer output [1.5(c)]. Documents that are generated as computer output may be marked automatically by systems software. If automatic marking is not practicable, such documents must be marked manually.

- (6) Agency prescribed markings [1.5(c), 4.2(a), and 5.3(c)]. Officials delegated original classification authority by the President may prescribe additional markings to control reproduction and dissemination, including markings required for special access programs authorized by section 4.2(a) of the Order.
- (f) Electrically transmitted information (messages) [1.5(c)]. National security information that is transmitted electrically shall be marked as follows:
- (1) The highest level of classification shall appear before the first line of text;
  - (2) A "CLASSIFIED BY" line is not required;
  - (3) The duration of classification shall appear as follows:
    - (i) For information to be declassified automatically on a specific date:  
"DECL: (date)"
    - (ii) For information to be declassified upon occurrence of a specific event:  
"DECL: (description of event)"
    - (iii) For information not to be automatically declassified which requires the originating agency's determination (see also § 2001.5(d)(3)):  
"DECL: OADR"
    - (iv) For information to be automatically downgraded:  
"DNG (abbreviation of classification level to which the information is to be downgraded and date or description of event on which downgrading is to occur)"
  - (4) Portion marking shall be as prescribed in § 2001.5(a)(3);
  - (5) Special markings as prescribed in § 2001.5(e) (2), (3), and (4) shall appear after the marking for the highest level of classification. These include:
    - (i) "Restricted Data" and "Formerly Restricted Data" shall be marked in accordance with regulations issued under the Atomic Energy Act of 1954, as amended;
    - (ii) Information concerning intelligence sources or methods: "WNINTEL," unless proscribed by the Director of Central Intelligence;

- (iii) Foreign government information: "FGI," or a marking that otherwise indicates that the information is foreign government information. If the fact that information is foreign government information must be concealed, the marking shall not be used and the message shall be marked as if it were wholly of U.S. origin.
- (6) Paper copies of electrically transmitted messages shall be marked as provided in § 2001.5(a) (1) and (2).
- (g) Changes in classification markings [1.4(b) and 4.1(b)]. When a change is made in the duration of classified information, all holders of record shall be promptly notified. If practicable, holders of record shall also be notified of a change in the level of classification. Holders shall alter the markings to conform to the change, citing the authority for it. If the remarking of large quantities of information is unduly burdensome, the holder may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Items withdrawn from the collection for purposes other than transfer for storage shall be marked promptly in accordance with the change notice.

§ 2001.6 Limitations on classification [1.6(c)].

Before reclassifying information as provided in section 1.6(c) of the Order, the authorized official shall consider the following factors, which shall be addressed in the report to the Director of the Information Security Oversight Office:

- (a) The elapsed time following disclosure;
- (b) The nature and extent of disclosure;
- (c) The ability to bring the fact of reclassification to the attention of persons to whom the information was disclosed;
- (d) The ability to prevent further disclosure; and
- (e) The ability to retrieve the information voluntarily from persons not authorized access in its reclassified state.

**Subpart B -- Derivative Classification**

§ 2001.20 Use of derivative classification [2.1].

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an authorized classification guide. If a person who applies derivative classification markings believes that the paraphrasing, restating, or summarizing of

classified information has changed the level of or removed the basis for classification, that person must consult for a determination an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

§ 2001.21 Classification guides.

- (a) General [2.2(a)]. Classification guides shall, at a minimum:
  - (1) Identify or categorize the elements of information to be protected;
  - (2) State which classification level applies to each element or category of information; and
  - (3) Prescribe declassification instructions for each element or category of information in terms of (i) a period of time, (ii) the occurrence of an event, or (iii) a notation that the information shall not be declassified automatically without the approval of the originating agency.
- (b) Requirement for review [2.2(a)]. Classification guides shall be reviewed at least every two years and updated as necessary. Each agency shall maintain a list of its classification guides in current use.
- (c) Waivers [2.2(c)]. An authorized official's decision to waive the requirement to issue classification guides for specific classes of documents or information should be based, at a minimum, on an evaluation of the following factors:
  - (1) The ability to segregate and describe the elements of information;
  - (2) The practicality of producing or disseminating the guide because of the nature of the information;
  - (3) The anticipated usage of the guide as a basis for derivative classification; and
  - (4) The availability of alternative sources for derivatively classifying the information in a uniform manner.

§ 2001.22 Derivative identification and markings [1.5(c) and 2.1(b)].

Documents classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2001.5(a) through (e) as are applicable. Information for these markings shall be taken from the source document or instructions in the appropriate classification guide.

- (a) Classification authority. The authority for classification shall be shown as follows:

"CLASSIFIED BY (description of source document or classification guide)"

If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown as follows:

"CLASSIFIED BY MULTIPLE SOURCES"

In these cases the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "CLASSIFIED BY MULTIPLE SOURCES" shall cite the source document in its "CLASSIFIED BY" line rather than the term "MULTIPLE SOURCES."

- (b) Declassification and downgrading instructions. Dates or events for automatic declassification or downgrading, or the notation "ORIGINATING AGENCY'S DETERMINATION REQUIRED" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on a "DECLASSIFY ON" line as follows:

"DECLASSIFY ON: (date; description of event; or 'ORIGINATING AGENCY'S DETERMINATION REQUIRED' (OADR))"

### **Subpart C -- Declassification and Downgrading**

§ 2001.30 Listing declassification and downgrading authorities [3.1(b)].

Agencies shall maintain a current listing of officials delegated declassification or downgrading authority by name, position, or other identifier. If possible, this listing shall be unclassified.

§ 2001.31 Systematic review for declassification [3.3].

- (a) Permanent records. Systematic review is applicable only to those classified records and presidential papers or records that the Archivist of the United States, acting under the Federal Records Act, has determined to be of sufficient historical or other value to warrant permanent retention.
- (b) Non-permanent records. Non-permanent classified records shall be disposed of in accordance with schedules approved by the Administrator of General Services under the Records Disposal Act. These schedules shall provide for the continued retention of records subject to an ongoing mandatory review for declassification request.
- (c) Responsibilities. (1) In meeting responsibilities assigned by section 3.3(a) of the Order, the Archivist shall:



- (i) Establish procedures, in consultation with the Director of the Information Security Oversight Office, for the systematic declassification review of permanent classified records accessioned into the National Archives and classified presidential papers or records under the Archivist's control;
  - (ii) Conduct systematic declassification reviews in accordance with guidelines provided by the head of the agency that originated the information; or, with respect to foreign government information, in accordance with guidelines provided by the head of the agency having declassification jurisdiction over the information, or, if no guidelines have been provided, in accordance with the general guidelines provided by the Director of the Information Security Oversight Office after coordination with the agencies having declassification authority over the information; or, with respect to presidential papers or records, in accordance with guidelines developed by the Archivist and approved by the National Security Council;
  - (iii) Conduct systematic declassification reviews of accessioned records and presidential papers or records as they become 30 years old, except for file series concerning intelligence activities (including special activities), or intelligence sources or methods created after 1945, and information concerning cryptology created after 1945;
  - (iv) Conduct systematic declassification reviews of accessioned records and presidential papers or records in file series concerning intelligence activities (including special activities), or intelligence sources or methods created after 1945 and cryptology records created after 1945 as they become fifty years old;
  - (v) Establish systematic review priorities for accessioned records and presidential papers or records based on the degree of researcher interest and the potential for declassifying a significant portion of the information;
  - (vi) Re-review for declassification accessioned records and presidential papers or records upon the determination that the followup review will be productive, both in terms of researcher interest and the potential for declassifying a significant portion of the information.
- (2) The Archivist may review for declassification, with the concurrence of the originating agency, accessioned records and presidential papers or records, prior to the timeframes established in paragraphs (c)(1) (iii) and (iv) of this section.
  - (3) Officials delegated original classification authority by the President under the Order or predecessor orders shall:
    - (i) Within six months of the effective date of the Order issue guidelines for systematic declassification review and, if applicable, for downgrading. These guidelines shall be developed in consultation with the Archivist and the Director of the Information Security Oversight Office and be designed to assist the Archivist in the conduct of systematic reviews;

- (ii) Designate experienced personnel to provide timely assistance to the Archivist in the systematic review process;
  - (iii) Review and update guidelines for systematic declassification review and downgrading at least every five years unless earlier review is requested by the Archivist.
- (4) Within six months of the effective date of the Order the Director of the Information Security Oversight Office shall issue, in consultation with the Archivist and the agencies having declassification authority over the information, general guidelines for the systematic declassification review of foreign government information. Also within six months, agency heads may issue, in consultation with the Archivist and the Director of the Information Security Oversight Office, specific systematic declassification review guidelines for foreign government information over which the agency head has declassification authority. These guidelines shall be reviewed and updated every five years unless earlier review is requested by the Archivist.
- (d) Special procedures. All agency heads shall be bound by the special procedures for systematic review of classified cryptologic records and classified records pertaining to intelligence activities (including special activities), or intelligence sources or methods issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

§ 2001.32 Mandatory review for declassification [3.4].

(a) U.S. originated information.

- (1) Each agency head shall publish in the Federal Register the identity of the person(s) or office(s) to which mandatory declassification review requests may be addressed.
- (2) Processing.
  - (i) Requests for classified records in the custody of the originating agency. A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient particularity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. Agency responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. In responding to mandatory declassification review requests, agencies shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Agencies shall make a final determination within one year from the date of receipt except in unusual circumstances. When information cannot be declassified in its entirety, agencies will make reasonable

efforts to release, consistent with other applicable law, those declassified portions of the requested information that constitute a coherent segment. Upon the denial of an initial request, the agency shall also notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial.

- (ii) Requests for classified records in the custody of an agency other than the originating agency. When an agency receives a mandatory declassification review request for records in its possession that were originated by another agency, it shall forward the request to that agency. The forwarding agency shall include a copy of the records requested together with its recommendations for action. Upon receipt, the originating agency shall process the request in accordance with § 2001.32(a)(2)(i). Upon request, the originating agency shall communicate its declassification determination to the referring agency.
  - (iii) Appeals of denials of mandatory declassification review requests. The agency appellate authority shall normally make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial.
- (b) Foreign government information. Except as provided in this paragraph, agency heads shall process mandatory declassification review requests for classified records containing foreign government information in accordance with § 2001.32(a). The agency that initially received or classified the foreign government information shall be responsible for making a declassification determination after consultation with concerned agencies. If the agency receiving the request is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency for action. Consultation with the foreign originator through appropriate channels may be necessary prior to final action on the request.
  - (c) Cryptologic and intelligence information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.
  - (d) Fees. In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with section 483a of title 31, United States Code. The schedules of fees published in the Federal Register by agencies in implementation of Executive Order 12065 shall remain in effect until they are revised.

§ 2001.33 Assistance to the Department of State [3.3(b)].

Heads of agencies should assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified material in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS.

§ 2001.34 FOIA and Privacy Act requests [3.4].

Agency heads shall process requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

**Subpart D -- Safeguarding**

§ 2001.40 General [4.1].

Information classified pursuant to this Order or predecessor orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification. For information in special access programs established under the provisions of section 4.2 of the Order, the safeguarding requirements of Subpart D may be modified by the agency head responsible for creating the special access program as long as the modified requirements provide appropriate protection for the information.

§ 2001.41 Standards for security equipment [4.1(b) and 5.1(b)].

The Administrator of General Services shall, in coordination with agencies originating classified information, establish and publish uniform standards, specifications, and supply schedules for security equipment designed to provide secure storage for and to destroy classified information. Any agency may establish more stringent standards for its own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type available through the Federal Supply System.

§ 2001.42 Accountability [4.1(b)].

- (a) **Top Secret.** Top Secret control officials shall be designated to receive, transmit, and maintain current access and accountability records for Top Secret information. An inventory of Top Secret documents shall be made at least annually. Agency heads may waive the requirement for an annual inventory of storage systems containing large volumes of Top Secret information upon a determination that the safeguarding of this information is not jeopardized by the inventory waiver. Waivers shall be in writing and be available for review by the Information Security Oversight Office.
- (b) **Secret and Confidential.** Agency heads shall prescribe accountability or control requirements for Secret and Confidential information.

§ 2001.43 Storage [4.1(b)].

Classified information shall be stored only in facilities or under conditions designed to prevent unauthorized persons from gaining access to it.

(a) Minimum requirements for physical barriers.

- (1) **Top Secret.** Top Secret information shall be stored in a GSA-approved security container with an approved, built-in, three-position, dial-type changeable combination lock; in a vault protected by an alarm system and response force; or in other types of storage facilities that meet the standards for Top Secret established under the provisions of § 2001.41. In addition, heads of agencies shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored.
- (2) **Secret and Confidential.** Secret and Confidential information shall be stored in a manner and under the conditions prescribed for Top Secret information, or in a container, vault, or alarmed area that meets the standards for Secret or Confidential information established under the provisions of § 2001.41. Secret and Confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type changeable combination lock, or a steel filing cabinet equipped with a steel lock bar secured by a GSA-approved three-position changeable combination padlock. Heads of agencies shall prescribe supplementary controls for storage of Secret information in cabinets equipped with a steel lock bar. Access to bulky Secret and Confidential material in weapons storage areas, strong rooms, closed areas or similar facilities shall be controlled in accordance with requirements established by the appropriate agency head. At a minimum, such requirements shall prescribe the use of key-operated, high-security padlocks approved by the General Services Administration.

(b) Combinations.

- (1) **Equipment in service.** Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to it; whenever a combination has been subjected to possible compromise; whenever the equipment is taken out of service; or at least once every year. Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information that is protected by the lock.
- (2) **Equipment out of service.** When security equipment is taken out of service it shall be inspected to ensure that no classified information remains, and the built-in combination lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30.

- (c) Keys. Heads of agencies shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected by the padlock.

§ 2001.44 Transmittal [4.1(b)].

- (a) Preparation and receipting. Classified information to be transmitted outside of a facility shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover, except that Confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, the addressee, and the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Any of these wrapping and receipting requirements may be waived by agency heads if conditions provide at least equivalent protection to prevent access by unauthorized persons.
- (b) Transmittal of Top Secret. The transmittal of Top Secret information outside of a facility shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system authorized for the purpose, or over authorized secure communications circuits.
- (c) Transmittal of Secret. The transmittal of Secret information shall be effected in the following manner:
  - (1) The 50 States, the District of Columbia, and Puerto Rico. Secret information may be transmitted within and between the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the head of the agency concerned.
  - (2) Other areas. Secret information may be transmitted from, to, or within areas other than those specified in § 2001.44(c)(1) by one of the means established for Top Secret information, or by U.S. registered mail through Military Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government contract vehicles or aircraft, ships of the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts.

- (d) **Transmittal of Confidential.** Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by the U.S. Postal Service certified, first class, or express mail service when prescribed by an agency head. Outside these areas, Confidential information shall be transmitted only as is authorized for higher classifications.
- (e) **Hand carrying of classified information.** Agency regulations shall prescribe procedures and appropriate restrictions concerning the escort or hand carrying of classified information, including the hand carrying of classified information on commercial carriers.

§ 2001.45 Special access programs [1.2(a) and 4.2(a)].

Agency heads designated pursuant to section 1.2(a) of the Order may create or continue a special access program if:

- (a) Normal management and safeguarding procedures do not limit access sufficiently; and
- (b) the number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information.

§ 2001.46 Reproduction controls [4.1(b)].

- (a) Top Secret documents, except for the controlled initial distribution of information processed or received electrically, shall not be reproduced without the consent of the originator.
- (b) Unless restricted by the originating agency, Secret and Confidential documents may be reproduced to the extent required by operational needs.
- (c) Reproduced copies of classified documents shall be subject to the same accountability and controls as the original documents.
- (d) Paragraphs (a) and (b) of this section shall not restrict the reproduction of documents to facilitate review for declassification.

§ 2001.47 Loss or possible compromise [4.1(b)].

Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to an official designated for this purpose by the person's agency or organization. The agency that originated the information shall be notified of the loss or possible compromise so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise. The agency under whose cognizance the loss or possible compromise occurred shall initiate an inquiry to (a) determine cause, (b) place responsibility, and (c) take corrective measures and appropriate administrative, disciplinary, or legal action.

§ 2001.48 Disposition and destruction [4.1(b)].

Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of chapters 21 and 33 of title 44, United States Code, which govern disposition of Federal records. Classified information approved for destruction shall be destroyed in accordance with procedures and methods prescribed by the head of the agency. The method of destruction must preclude recognition or reconstruction of the classified information or material.

§ 2001.49 Responsibilities of holders [4.1(b)].

Any person having access to and possession of classified information is responsible for:

- (a) Protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities whenever it is not under the direct supervision of authorized persons; and
- (b) meeting accountability requirements prescribed by the head of the agency.

§ 2001.50 Emergency planning [4.1(b)].

Agencies shall develop plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, or enemy action. These plans shall include the disposition of classified information located in foreign countries.

§ 2001.51 Emergency authority [4.1(b)].

Those officials delegated original classification authority by the President may prescribe by regulation special provisions for the dissemination, transmittal, destruction, and safeguarding of national security information during combat or other emergency situations which pose an imminent threat to national security information.

**Subpart E -- Implementation and Review**

§ 2001.60 Agency regulations [5.3(b)].

Each head of an agency shall issue regulations in accordance with 5 U.S.C. 552(a) to implement the Order and 32 CFR Part 2001 no later than December 31, 1982. Those portions that affect members of the public shall include, at a minimum, information relating to the agency's mandatory declassification review program and instructions for submitting suggestions or complaints regarding the agency's information security program.



§ 2001.61 Security education [5.3(a)].

Each agency that creates or handles national security information is required under the Order to establish a security education program. The program established shall be sufficient to familiarize all necessary personnel with the provisions of the Order and its implementing directives and regulations and to impress upon them their individual security responsibilities. The program shall also provide for initial, refresher, and termination briefings.

§ 2001.62 Oversight [5.3(a)].

Agency heads shall require that periodic formal reviews be made to ensure compliance with the provisions of the Order and ISOO directives.

**Subpart F -- General Provisions**

§ 2001.70 Definitions [6.1].

- (a) Original classification authority. The authority vested in an executive branch official to make an initial determination that information requires protection against unauthorized disclosure in the interest of national security.
- (b) Classification guide. A document issued by an authorized original classifier that prescribes the level of classification and appropriate declassification instructions for specified information to be classified on a derivative basis.
- (c) Originating agency. The agency responsible for the initial determination that particular information is classified.
- (d) Multiple sources. The term used to indicate that a document is derivatively classified when it contains classified information derived from more than one source.
- (e) Portion. A segment of a document for purposes of expressing a unified theme; ordinarily a paragraph.
- (f) Special access program. Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine "need-to-know," or special lists of persons determined to have a "need-to-know."
- (g) Intelligence activity. An activity that an agency within the Intelligence Community is authorized to conduct pursuant to Executive Order 12333.

- (h) **Special activity.** An activity conducted in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activity, but which is not intended to influence United States political processes, public opinion, policies, or media and does not include diplomatic activities or the collection and production of intelligence or related support functions.
- (i) **Unauthorized disclosure.** A communication or physical transfer of classified information to an unauthorized recipient.

§ 2001.71 Publication and effective date [6.2(e)].

Part 2001 shall be published in the Federal Register. It shall become effective August 1, 1982.

Steven Garfinkel,

Director, Information Security Oversight Office.

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**Executive Order No. 12553**

**Feb. 25, 1986, 51 F.R. 72371**

**Revokes Executive Order No. 11834**

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**Executive Order No. 12608**

**Sept. 9, 1987, 52 F.R. 34617**

**See Executive Order No. 11490**

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**Executive Order No. 12656**

**Nov. 18, 1988, 53 F.R. 47491**

**Revokes Executive Order No. 11490**  
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**Executive Order 12657**

**November 18, 1988, 53 F.R. 47513**

**FEDERAL EMERGENCY MANAGEMENT AGENCY ASSISTANCE IN EMERGENCY  
PREPAREDNESS PLANNING AT COMMERCIAL NUCLEAR POWER PLANTS**

**Amends E.O. 12241, Sept. 29, 1980, 95 F.R. 64879**

**TEXT:** By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, and Section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

**Section 1. Scope.**

- (a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.
- (b) In order to request the assistance of the Federal Emergency Management Agency ("FEMA") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to FEMA that the situation described in Subsection (a) exists.

**Sec. 2 Generally Applicable Principles and Directives.**

- (a) Subject to the principles articulated in this Section, the Director of FEMA is hereby authorized and directed to take the actions specified in Sections 3 through 6 of this Order.
- (b) In carrying out any of its responsibilities under this Order, FEMA:
  - (1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive branch, shall make maximum feasible use of the licensee's resources;

- (2) shall take care not to supplant State and local resources. FEMA shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;
  - (3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to FEMA under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the Federal Register; and
  - (4) shall assume for purposes of Sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.
- (c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:
- (1) that FEMA has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;
  - (2) that FEMA shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;
  - (3) that implementation of this Order is accomplished with an economy of resources; and
  - (4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

**Sec. 3. FEMA Participation in Emergency Preparedness Planning.**

- (a) FEMA assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended, and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.
- (b) FEMA shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,
  - (1) FEMA shall focus planning of Federal response activities to ensure that::
    - (A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and
    - (B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;
  - (2) FEMA's planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veterans' Administration; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

**Sec. 4. Evaluation of Plans.**

- (a) FEMA shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

- (b) FEMA shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participating in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

#### Sec. 5. Response to a Radiological Emergency.

- (a) In the event of an actual radiological emergency or disaster, FEMA shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.
- (b) FEMA shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. FEMA shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.
- (c) FEMA shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.
- (d) In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, FEMA or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

#### Sec. 6. Implementation of Order.

- (a) FEMA shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order.
- (b) Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary revisions of, all FEMA regulations, directives, and guidance to conform them to the terms and policies of this Order.

- (c) Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary renegotiations of, all interagency agreements to which FEMA is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 Fed. Reg. 46542 (November 8, 1985)).
- (d) To the extent permitted by law, FEMA is directed to obtain full reimbursement, either jointly or severally, for services performed by FEMA or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

Sec. 7. Amendments. This Executive Order amends Executive Order Nos. 11490 (34 Fed. Reg. 17567 (October 28, 1969)), 12148 (44 Fed. Reg. 43239 (July 20, 1979)), and 12241 (45 Fed. Reg. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

Sec. 8. Judicial Review. This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 9. Effective Date. This Order shall be effective November 18, 1988.

Ronald Reagan

The White House  
November 18, 1988.

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**Executive Order 12829**

**January 6, 1993, 58 F.R. 3479**

**Amends Executive Order No. 10865 of Dec. 9, 1960.**

**NATIONAL INDUSTRIAL SECURITY PROGRAM**

This order establishes a National Industrial Security Program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. To promote our national interests, the United States Government issues contracts, licenses, and grants to nongovernment organizations. When these arrangements require access to classified information, the national security requires that this information be safeguarded in a manner equivalent to its protection within the executive branch of Government. The national security also requires that our industrial security program promote the economic and technological interests of the United States. Redundant, overlapping, or unnecessary requirements impede those interests. Therefore, the National Industrial Security Program shall serve as a single, integrated, cohesive industrial security program to protect classified information and to preserve our Nation's economic and technological interests.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011-2286), the National Security Act of 1947, as amended (codified as amended in scattered sections of the United States Code), and the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), it is hereby ordered as follows:

## PART 1. ESTABLISHMENT AND POLICY

### Section 101. Establishment.

- (a) There is established a National Industrial Security Program. The purpose of this program is to safeguard classified information that may be released or has been released to current, prospective, or former contractors, licensees, or grantees of United States agencies. For the purposes of this order, the terms "contractor, licensee, or grantee" means current, prospective, or former contractors, licensees, or grantees of United States agencies. The National Industrial Security Program shall be applicable to all executive branch departments and agencies.
- (b) The National Industrial Security Program shall provide for the protection of information classified pursuant to Executive Order No. 12356 of April 2, 1982, or its successor, and the Atomic Energy Act of 1954, as amended.
- (c) For the purposes of this order, the term "contractor" does not include individuals engaged under personal services contracts.

### Sec. 102. Policy Direction.

- (a) The National Security Council shall provide overall policy direction for the National Industrial Security Program.
- (b) The Director of the Information Security Oversight Office, established under Executive Order No. 12356 of April 2, 1982, shall be responsible for implementing and monitoring the National Industrial Security Program and shall:
  - (1) develop, in consultation with the agencies, and promulgate subject to the approval of the National Security Council, directives for the implementation of this order, which shall be binding on the agencies;
  - (2) oversee agency, contractor, licensee, and grantee actions to ensure compliance with this order and implementing directives;
  - (3) review all agency implementing regulations, internal rules, or guidelines. The Director shall require any regulation, rule, or guideline to be changed if it is not consistent with this order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation, rule, or guideline shall remain in effect pending a prompt decision on the appeal;



- (4) have the authority, pursuant to terms of applicable contracts, licenses, grants, or regulations, to conduct on-site reviews of the implementation of the National Industrial Security Program by each agency, contractor, licensee, and grantee that has access to or stores classified information and to require of each agency, contractor, licensee, and grantee those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific classified information, or other forms of cooperation, would pose an exceptional national security risk, the affected agency head or the senior official designated under section 203(a) of this order may request the National Security Council to deny access to the Director. The Director shall not have access pending a prompt decision by the National Security Council;
  - (5) report any violations of this order or its implementing directives to the head of the agency or to the senior official designated under section 203(a) of this order so that corrective action, if appropriate, may be taken. Any such report pertaining to the implementation of the National Industrial Security Program by a contractor, licensee, or grantee shall be directed to the agency that is exercising operational oversight over the contractor, licensee, or grantee under section 202 of this order;
  - (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the National Industrial Security Program;
  - (7) consider, in consultation with the advisory committee established by this order, affected agencies, contractors, licensees, and grantees, and recommend to the President through the National Security Council changes to this order; and
  - (8) report at least annually to the President through the National Security Council on the implementation of the National Industrial Security Program.
- (c) Nothing in this order shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, or the authority of the Director of Central Intelligence under the National Security Act of 1947, as amended, or Executive Order No. 12333 of December 8, 1981.

Sec. 103. National Industrial Security Program Policy Advisory Committee.

- (a) **Establishment.** There is established the National Industrial Security Program Policy Advisory Committee ("Committee"). The Director of the Information Security Oversight Office shall serve as Chairman of the Committee and appoint the members of the Committee. The members of the Committee shall be the representatives of those departments and agencies most affected by the National Industrial Security Program and nongovernment representatives of contractors, licensees, or grantees involved with classified contracts, licenses, or grants, as determined by the Chairman.

(b) **Functions.**

- (1) The Committee members shall advise the Chairman of the Committee on all matters concerning the policies of the National Industrial Security Program, including recommended changes to those policies as reflected in this order, its implementing directives, or the operating manual established under this order, and serve as a forum to discuss policy issues in dispute.
- (2) The Committee shall meet at the request of the Chairman, but at least twice during the calendar year.

(c) **Administration.**

- (1) Members of the Committee shall serve without compensation for their work on the Committee. However, nongovernment members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).
- (2) To the extent permitted by law and subject to the availability of funds, the Administrator of General Services shall provide the Committee with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

- (d) **General.** Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Administrator of General Services in accordance with the guidelines and procedures established by the General Services Administration.

## **PART 2. OPERATIONS**

### **Sec. 201. National Industrial Security Program Operating Manual.**

- (a) The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence, shall issue and maintain a National Industrial Security Program Operating Manual ("Manual"). The Secretary of Energy and the Nuclear Regulatory Commission shall prescribe and issue that portion of the Manual that pertains to information classified under the Atomic Energy Act of 1954, as amended. The Director of Central Intelligence shall prescribe and issue that portion of the Manual that pertains to intelligence sources and methods, including Sensitive Compartmented Information.

- (b) The Manual shall prescribe specific requirements, restrictions, and other safeguards that are necessary to preclude unauthorized disclosure and control authorized disclosure of classified information to contractors, licensees, or grantees. The Manual shall apply to the release of classified information during all phases of the contracting process including bidding, negotiation, award, performance, and termination of contracts, the licensing process, or the grant process, with or under the control of departments or agencies.
- (c) The Manual shall also prescribe requirements, restrictions, and other safeguards that are necessary to protect special classes of classified information, including Restricted Data, Formerly Restricted Data, intelligence sources and methods information, Sensitive Compartmented Information, and Special Access Program information.
- (d) In establishing particular requirements, restrictions, and other safeguards within the Manual, the Secretary of Defense, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence shall take into account these factors: (i) the damage to the national security that reasonably could be expected to result from an unauthorized disclosure; (ii) the existing or anticipated threat to the disclosure of information; and (iii) the short- and long-term costs of the requirements, restrictions, and other safeguards.
- (e) To the extent that is practicable and reasonable, the requirements, restrictions, and safeguards that the Manual establishes for the protection of classified information by contractors, licensees, and grantees shall be consistent with the requirements, restrictions, and safeguards that directives implementing Executive Order No. 12356 of April 2, 1982, or the Atomic Energy Act of 1954, as amended, establish for the protection of classified information by agencies. Upon request by the Chairman of the Committee, the Secretary of Defense shall provide an explanation and justification for any requirement, restriction, or safeguard that results in a standard for the protection of classified information by contractors, licensees, and grantees that differs from the standard that applies to agencies.
- (f) The Manual shall be issued no later than 1 year from the issuance of this order.

#### Sec. 202. Operational Oversight.

- (a) The Secretary of Defense shall serve as Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The heads of agencies shall enter into agreements with the Secretary of Defense that establish the terms of the Secretary's responsibilities on behalf of these agency heads.

- (b) The Director of Central Intelligence retains authority over access to intelligence sources and methods, including Sensitive Compartmented Information. The Director of Central Intelligence may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on the Director's behalf.
- (c) The Secretary of Energy and the Nuclear Regulatory Commission retain authority over access to information under their respective programs classified under the Atomic Energy Act of 1954, as amended. The Secretary or the Commission may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on behalf of the Secretary or the Commission, respectively.
- (d) The Executive Agent shall have the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the National Industrial Security Program.

Sec. 203. Implementation.

- (a) The head of each agency that enters into classified contracts, licenses, or grants shall designate a senior agency official to direct and administer the agency's implementation and compliance with the National Industrial Security Program.
- (b) Agency implementing regulations, internal rules, or guidelines shall be consistent with this order, its implementing directives, and the Manual. Agencies shall issue these regulations, rules, or guidelines no later than 180 days from the issuance of the Manual. They may incorporate all or portions of the Manual by reference.
- (c) Each agency head or the senior official designated under paragraph (a) above shall take appropriate and prompt corrective action whenever a violation of this order, its implementing directives, or the Manual occurs.
- (d) The senior agency official designated under paragraph (a) above shall account each year for the costs within the agency associated with the implementation of the National Industrial Security Program. These costs shall be reported to the Director of the Information Security Oversight Office, who shall include them in the reports to the President prescribed by this order.
- (e) The Secretary of Defense, with the concurrence of the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and such other agency heads or officials who may be responsible, shall amend the Federal Acquisition Regulation to be consistent with the implementation of the National Industrial Security Program.

- (f) All contracts, licenses, or grants that involve access to classified information and that are advertised or proposed following the issuance of agency regulations, rules, or guidelines described in paragraph (b) above shall comply with the National Industrial Security Program. To the extent that is feasible, economical, and permitted by law, agencies shall amend, modify, or convert preexisting contracts, licenses, or grants, or previously advertised or proposed contracts, licenses, or grants, that involve access to classified information for operation under the National Industrial Security Program. Any direct inspection or monitoring of contractors, licensees, or grantees specified by this order shall be carried out pursuant to the terms of a contract, license, grant, or regulation.
- (g) Executive Order No. 10865 of February 20, 1960, as amended by Executive Order No. 10909 of January 17, 1961, and Executive Order No. 11382 of November 27, 1967, is hereby amended as follows:
- (1) Section 1(a) and (b) are revoked as of the effective date of this order.
  - (2) Section 1(c) is renumbered as Section 1 and is amended to read as follows:

"Section 1. When used in this order, the term 'head of a department' means the Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Secretary of Energy, the Nuclear Regulatory Commission, the Administrator of the National Aeronautics and Space Administration, and, in section 4, the Attorney General. The term 'head of a department' also means the head of any department or agency, including but not limited to those referenced above with whom the Department of Defense makes an agreement to extend regulations prescribed by the Secretary of Defense concerning authorizations for access to classified information pursuant to Executive Order No. 12829."
  - (3) Section 2 is amended by inserting the words "pursuant to Executive Order No. 12829" after the word "information."
  - (4) Section 3 is amended by inserting the words "pursuant to Executive Order No. 12829" between the words "revoked" and "by" in the second clause of that section.
  - (5) Section 6 is amended by striking out the words "The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section (1)(b)," at the beginning of the first sentence, and inserting in their place "The head of a department of the United States . . . ."
  - (6) Section 8 is amended by striking out paragraphs (1) through (7) and inserting in their place ". . . the deputy of that department, or the principal assistant to the head of that department, as the case may be."

- (h) All delegations, rules, regulations, orders, directives, agreements, contracts, licenses, and grants issued under preexisting authorities, including section 1(a) and (b) of Executive Order No. 10865 of February 20, 1960, as amended, by Executive Order No. 10909 of January 17, 1961, and Executive Order No. 11382 of November 27, 1967, shall remain in full force and effect until amended, modified, or terminated pursuant to authority of this order.
- (i) This order shall be effective immediately.

George Bush

The White House  
January 6, 1993

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**Executive Order 12885**

**DECEMBER 14, 1993, 58 F.R. 65863**

**AMENDMENT TO EXECUTIVE ORDER NO. 12829**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the time to issue the National Industrial Security Program Operating Manual, it is hereby ordered that Executive Order No. 12829, which is entitled "National Industrial Security Program," is amended as follows:

- Section 1. Section 201(f) of Executive Order No. 12829 is amended to read: "The Manual shall be issued to correspond as closely as possible to pertinent decisions of the Secretary of Defense and the Director of Central Intelligence made pursuant to the recommendations of the Joint Security Review Commission and to revisions to the security classification system that result from Presidential Review Directive 29, but in any event no later than June 30, 1994."
- Sec. 2. This order shall be effective immediately.

William J. Clinton

The White House,  
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**Executive Order 12958**

**April 17, 1995, 60 F.R. 19825**

**CLASSIFIED NATIONAL SECURITY INFORMATION**

**This order shall become effective 180 days from the date of this order.**

**Revokes Executive Order No. 12356, April 2, 1982, 47 F.R. 14874  
as of the effective date of this order.**

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, and our participation within the community of nations. Protecting information critical to our Nation's security remains a priority. In recent years, however, dramatic changes have altered, although not eliminated, the national security threats that we confront. These changes provide a greater opportunity to emphasize our commitment to open Government.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**PART 1 - ORIGINAL CLASSIFICATION**

Section 1.1. Definitions. For purposes of this order:

- (a) "National security" means the national defense or foreign relations of the United States.
- (b) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.
- (c) "Classified national security information" (hereafter "classified information") means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.
- (d) "Foreign Government Information" means:
  - (1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

- (2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or
  - (3) information received and treated as "Foreign Government Information" under the terms of a predecessor order.
- (e) "Classification" means the act or process by which information is determined to be classified information.
  - (f) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.
  - (g) "Original classification authority" means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.
  - (h) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.
  - (i) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.
  - (j) "Senior agency official" means the official designated by the agency head under section 5.6(c) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.
  - (k) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.
  - (l) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

Sec. 1.2. Classification Standards.

- (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:
  - (1) an original classification authority is classifying the information;
  - (2) the information is owned by, produced by or for, or is under the control of the United States Government;



- (3) the information falls within one or more of the categories of information listed in section 1.5 of this order; and
  - (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority is able to identify or describe the damage.
- (b) If there is significant doubt about the need to classify information, it shall not be classified. This provision does not:
- (1) amplify or modify the substantive criteria or procedures for classification; or
  - (2) create any substantive or procedural rights subject to judicial review.
- (c) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

**Sec. 1.3. Classification Levels.**

- (a) Information may be classified at one of the following three levels:
- (1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.
  - (2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.
  - (3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.
- (b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.
- (c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

**Sec. 1.4. Classification Authority.**

- (a) The authority to classify information originally may be exercised only by:
- (1) the President;

- (2) agency heads and officials designated by the President in the Federal Register;  
or
  - (3) United States Government officials delegated this authority pursuant to paragraph (c), below.
- (b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.
- (c) Delegation of original classification authority.
- (1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.
  - (2) "Top Secret" original classification authority may be delegated only by the President or by an agency head or official designated pursuant to paragraph (a)(2), above.
  - (3) "Secret" or "Confidential" original classification authority may be delegated only by the President; an agency head or official designated pursuant to paragraph (a)(2), above; or the senior agency official, provided that official has been delegated "Top Secret" original classification authority by the agency head.
  - (4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.
- (d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives.
- (e) Exceptional cases. When an employee, contractor, licensee, certificate holder, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

### Sec. 1.5. Classification Categories.

Information may not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States Government programs for safeguarding nuclear materials or facilities; or
- (g) vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

### Sec. 1.6. Duration of Classification.

- (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. The date or event shall not exceed the time frame in paragraph (b), below.
- (b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, except as provided in paragraph (d), below.
- (c) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time if such action is consistent with the standards and procedures established under this order. This provision does not apply to information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.
- (d) At the time of original classification, the original classification authority may exempt from declassification within 10 years specific information, the unauthorized disclosure of which could reasonably be expected to cause damage to the national security for a period greater than that provided in paragraph (b), above, and the release of which could reasonably be expected to:
  - (1) reveal an intelligence source, method, or activity, or a cryptologic system or activity;

- (2) reveal information that would assist in the development or use of weapons of mass destruction;
  - (3) reveal information that would impair the development or use of technology within a United States weapons system;
  - (4) reveal United States military plans, or national security emergency preparedness plans;
  - (5) reveal foreign government information;
  - (6) damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b), above;
  - (7) impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of national security, are authorized; or
  - (8) violate a statute, treaty, or international agreement.
- (e) Information marked for an indefinite duration of classification under predecessor orders, for example, "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

#### Sec. 1.7. Identification and Markings.

- (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:
- (1) one of the three classification levels defined in section 1.3 of this order;
  - (2) the identity, by name or personal identifier and position, of the original classification authority;
  - (3) the agency and office of origin, if not otherwise evident;
  - (4) declassification instructions, which shall indicate one of the following:
    - (A) the date or event for declassification, as prescribed in section 1.6(a) or section 1.6(c); or
    - (B) the date that is 10 years from the date of original classification, as prescribed in section 1.6(b); or

- (C) the exemption category from declassification, as prescribed in section 1.6(d); and
- (5) a concise reason for classification which, at a minimum, cites the applicable classification categories in section 1.5 of this order.
- (b) Specific information contained in paragraph (a), above, may be excluded if it would reveal additional classified information.
- (c) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, which portions are exempt from declassification under section 1.6(d) of this order, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement for specified classes of documents or information. The Director shall revoke any waiver upon a finding of abuse.
- (d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.
- (e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information.
- (f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.
- (g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

**Sec. 1.8. Classification Prohibitions and Limitations.**

- (a) In no case shall information be classified in order to:
  - (1) conceal violations of law, inefficiency, or administrative error;
  - (2) prevent embarrassment to a person, organization, or agency;
  - (3) restrain competition; or
  - (4) prevent or delay the release of information that does not require protection in the interest of national security.

- (b) Basic scientific research information not clearly related to the national security may not be classified.
- (c) Information may not be reclassified after it has been declassified and released to the public under proper authority.
- (d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.6 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.6 of this order. This provision does not apply to classified information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.
- (e) Compilations of items of information which are individually unclassified may be classified if the compiled information reveals an additional association or relationship that:
  - (1) meets the standards for classification under this order; and
  - (2) is not otherwise revealed in the individual items of information.

As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

#### Sec. 1.9. Classification Challenges.

- (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b), below.
- (b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall assure that:
  - (1) individuals are not subject to retribution for bringing such actions;
  - (2) an opportunity is provided for review by an impartial official or panel; and
  - (3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel established by section 5.4 of this order.

## **PART 2 - DERIVATIVE CLASSIFICATION**

### **Sec. 2.1. Definitions. For purposes of this order:**

- (a) "Derivative classification" means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.
- (b) "Classification guidance" means any instruction or source that prescribes the classification of specific information.
- (c) "Classification guide" means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.
- (d) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.
- (e) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

### **Sec. 2.2. Use of Derivative Classification.**

- (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.
- (b) Persons who apply derivative classification markings shall:
  - (1) observe and respect original classification decisions; and
  - (2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:
    - (A) the date or event for declassification that corresponds to the longest period of classification among the sources; and
    - (B) a listing of these sources on or attached to the official file or record copy.

**Sec. 2.3. Classification Guides.**

- (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.
- (b) Each guide shall be approved personally and in writing by an official who:
  - (1) has program or supervisory responsibility over the information or is the senior agency official; and
  - (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.
- (c) Agencies shall establish procedures to assure that classification guides are reviewed and updated as provided in directives issued under this order.

**PART 3 - DECLASSIFICATION AND DOWNGRADING**

**Sec. 3.1. Definitions. For purposes of this order:**

- (a) "Declassification" means the authorized change in the status of information from classified information to unclassified information.
- (b) "Automatic declassification" means the declassification of information based solely upon:
  - (1) the occurrence of a specific date or event as determined by the original classification authority; or
  - (2) the expiration of a maximum time frame for duration of classification established under this order.
- (c) "Declassification authority" means:
  - (1) the official who authorized the original classification, if that official is still serving in the same position;
  - (2) the originator's current successor in function;
  - (3) a supervisory official of either; or
  - (4) officials delegated declassification authority in writing by the agency head or the senior agency official.
- (d) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.6 of this order.



- (e) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist of the United States ("Archivist") to have permanent historical value in accordance with chapter 33 of title 44, United States Code.
- (f) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.
- (g) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.
- (h) "File series" means documentary material, regardless of its physical form or characteristics, that is arranged in accordance with a filing system or maintained as a unit because it pertains to the same function or activity.

### Sec. 3.2. Authority for Declassification.

- (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.
- (b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. This provision does not:
  - (1) amplify or modify the substantive criteria or procedures for classification; or
  - (2) create any substantive or procedural rights subject to judicial review.
- (c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.
- (d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

### Sec. 3.3. Transferred Information.

- (a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.
- (b) In the case of classified information that is not officially transferred as described in paragraph (a), above, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this order. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.
- (c) Classified information accessioned into the National Archives and Records Administration ("National Archives") as of the effective date of this order shall be declassified or downgraded by the Archivist in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.
- (d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that records containing classified information be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to information being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that goes out of existence.
- (e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in sections 1.6 and 3.4 of this order.

### Sec. 3.4. Automatic Declassification.

- (a) Subject to paragraph (b), below, within 5 years from the date of this order, all classified information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in paragraph (b), below.
- (b) An agency head may exempt from automatic declassification under paragraph (a), above, specific information, the release of which should be expected to:

- (1) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;
  - (2) reveal information that would assist in the development or use of weapons of mass destruction;
  - (3) reveal information that would impair U.S. cryptologic systems or activities;
  - (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;
  - (5) reveal actual U.S. military war plans that remain in effect;
  - (6) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;
  - (7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;
  - (8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or
  - (9) violate a statute, treaty, or international agreement.
- (c) No later than the effective date of this order, an agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within those file series almost invariably falls within one or more of the exemption categories listed in paragraph (b), above, and which the agency proposes to exempt from automatic declassification. The notification shall include:
- (1) a description of the file series;
  - (2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and
  - (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information.

The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended.

- (d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, of any specific information beyond that included in a notification to the President under paragraph (c), above, that the agency proposes to exempt from automatic declassification. The notification shall include:
- (1) a description of the information;
  - (2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and
  - (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.
- (e) No later than the effective date of this order, the agency head or senior agency official shall provide the Director of the Information Security Oversight Office with a plan for compliance with the requirements of this section, including the establishment of interim target dates. Each such plan shall include the requirement that the agency declassify at least 15 percent of the records affected by this section no later than 1 year from the effective date of this order, and similar commitments for subsequent years until the effective date for automatic declassification.
- (f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.
- (g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

### Sec. 3.5. Systematic Declassification Review.

- (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to historically valuable records exempted from automatic declassification under section 3.4 of this order. Agencies shall prioritize the systematic review of records based upon:
  - (1) recommendations of the Information Security Policy Advisory Council, established in section 5.5 of this order, on specific subject areas for systematic review concentration; or
  - (2) the degree of researcher interest and the likelihood of declassification upon review.
- (b) The Archivist shall conduct a systematic declassification review program for classified information: (1) accessioned into the National Archives as of the effective date of this order; (2) information transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the recommendations of the Information Security Policy Advisory Council; or the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall assure that agencies provide the Archivist with adequate and current declassification guides.
- (c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

### Sec. 3.6. Mandatory Declassification Review.

- (a) Except as provided in paragraph (b), below, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:
  - (1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
  - (2) the information is not exempted from search and review under the Central Intelligence Agency Information Act; and

- (3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.
- (b) Information originated by:
- (1) the incumbent President;
  - (2) the incumbent President's White House Staff;
  - (3) committees, commissions, or boards appointed by the incumbent President; or
  - (4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a), above. However, the Archivist shall have the authority to review, downgrade, and declassify information of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Interagency Security Classification Appeals Panel. The information shall remain classified pending a prompt decision on the appeal.
- (c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.
- (d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Interagency Security Classification Appeals Panel.
- (e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information, the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods, and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

**Sec. 3.7. Processing Requests and Reviews.** In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

- (a) An agency may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under this order.
- (b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order. In cases in which the originating agency determines in writing that a response under paragraph (a), above, is required, the referring agency shall respond to the requester in accordance with that paragraph.

**Sec. 3.8. Declassification Database.**

- (a) The Archivist in conjunction with the Director of the Information Security Oversight Office and those agencies that originate classified information, shall establish a Governmentwide database of information that has been declassified. The Archivist shall also explore other possible uses of technology to facilitate the declassification process.
- (b) Agency heads shall fully cooperate with the Archivist in these efforts.
- (c) Except as otherwise authorized and warranted by law, all declassified information contained within the database established under paragraph (a), above, shall be available to the public.

#### **PART 4 - SAFEGUARDING**

**Sec. 4.1. Definitions.** For purposes of this order:

- (a) "Safeguarding" means measures and controls that are prescribed to protect classified information.
- (b) "Access" means the ability or opportunity to gain knowledge of classified information.
- (c) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

- (d) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.
- (e) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.
- (f) "Network" means a system of two or more computers that can exchange data or information.
- (g) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.
- (h) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

#### Sec. 4.2. General Restrictions on Access.

- (a) A person may have access to classified information provided that:
  - (1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;
  - (2) the person has signed an approved nondisclosure agreement; and
  - (3) the person has a need-to-know the information.
- (b) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.
- (c) Classified information may not be removed from official premises without proper authorization.
- (d) Persons authorized to disseminate classified information outside the executive branch shall assure the protection of the information in a manner equivalent to that provided within the executive branch.
- (e) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:
  - (1) prevent access by unauthorized persons; and
  - (2) ensure the integrity of the information.



- (f) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.
- (g) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.
- (h) Except as provided by statute or directives issued pursuant to this order, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency.

#### Sec. 4.3. Distribution Controls.

- (a) Each agency shall establish controls over the distribution of classified information to assure that it is distributed only to organizations or individuals eligible for access who also have a need-to-know the information.
- (b) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

#### Sec. 4.4. Special Access Programs.

- (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that:
  - (1) the vulnerability of, or threat to, specific information is exceptional; and

- (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure; or
  - (3) the program is required by statute.
- (b) Requirements and Limitations.
- (1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.
  - (2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.
  - (3) Special access programs shall be subject to the oversight program established under section 5.6(c) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office; or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.
  - (4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.
  - (5) Upon request, an agency shall brief the Assistant to the President for National Security Affairs, or his or her designee, on any or all of the agency's special access programs.
- (c) Within 180 days after the effective date of this order, each agency head or principal deputy shall review all existing special access programs under the agency's jurisdiction. These officials shall terminate any special access programs that do not clearly meet the provisions of this order. Each existing special access program that an agency head or principal deputy validates shall be treated as if it were established on the effective date of this order.
- (d) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

**Sec. 4.5. Access by Historical Researchers and Former Presidential Appointees.**

- (a) The requirement in section 4.2(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:
  - (1) are engaged in historical research projects; or
  - (2) previously have occupied policy-making positions to which they were appointed by the President.
- (b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:
  - (1) determines in writing that access is consistent with the interest of national security;
  - (2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and
  - (3) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

**PART 5 - IMPLEMENTATION AND REVIEW**

**Sec. 5.1. Definitions. For purposes of this order:**

- (a) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this order and its implementing directives.
- (b) "Violation" means:
  - (1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;
  - (2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or
  - (3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.
- (c) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not comprise a "violation," as defined above.

**Sec. 5.2. Program Direction.**

- (a) The Director of the Office of Management and Budget, in consultation with the Assistant to the President for National Security Affairs and the co-chairs of the Security Policy Board, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Office of Management and Budget shall establish standards for:
  - (1) classification and marking principles;
  - (2) agency security education and training programs;
  - (3) agency self-inspection programs; and
  - (4) classification and declassification guides.
- (b) The Director of the Office of Management and Budget shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.
- (c) The Security Policy Board, established by a Presidential Decision Directive, shall make a recommendation to the President through the Assistant to the President for National Security Affairs with respect to the issuance of a Presidential directive on safeguarding classified information. The Presidential directive shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information.

**Sec. 5.3. Information Security Oversight Office.**

- (a) There is established within the Office of Management and Budget an Information Security Oversight Office. The Director of the Office of Management and Budget shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.
- (b) Under the direction of the Director of the Office of Management and Budget acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:
  - (1) develop directives for the implementation of this order;
  - (2) oversee agency actions to ensure compliance with this order and its implementing directives;
  - (3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;

- (4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the Director of the Office of Management and Budget within 60 days of the request for access. Access shall be denied pending a prompt decision by the Director of the Office of Management and Budget, who shall consult on this decision with the Assistant to the President for National Security Affairs;
- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Director of the Office of Management and Budget;
- (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;
- (7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;
- (8) report at least annually to the President on the implementation of this order; and
- (9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

#### Sec. 5.4. Interagency Security Classification Appeals Panel.

##### (a) Establishment and Administration.

- (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States, and the Assistant to the President for National Security Affairs shall each appoint a senior level representative to serve as a member of the Panel. The President shall select the Chair of the Panel from among the Panel members.
- (2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (1), above.
- (3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

- (4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.
  - (5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.
  - (6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.
- (b) Functions. The Panel shall:
- (1) decide on appeals by persons who have filed classification challenges under section 1.9 of this order;
  - (2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.4 of this order; and
  - (3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.6 of this order.
- (c) Rules and Procedures. The Panel shall issue bylaws, which shall be published in the Federal Register no later than 120 days from the effective date of this order. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which: (1) the appellant has exhausted his or her administrative remedies within the responsible agency; (2) there is no current action pending on the issue within the federal courts; and (3) the information has not been the subject of review by the federal courts or the Panel within the past 2 years.
- (d) Agency heads will cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel will report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.
- (e) The Appeals Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless reversed by the President.

#### Sec. 5.5. Information Security Policy Advisory Council.

- (a) Establishment. There is established an Information Security Policy Advisory Council ("Council"). The Council shall be composed of seven members appointed by the President for staggered terms not to exceed 4 years, from among persons who have demonstrated interest and expertise in an area related to the subject matter of this

order and are not otherwise employees of the Federal Government. The President shall appoint the Council Chair from among the members. The Council shall comply with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

(b) **Functions.** The Council shall:

- (1) advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, or such other executive branch officials as it deems appropriate, on policies established under this order or its implementing directives, including recommended changes to those policies;
- (2) provide recommendations to agency heads for specific subject areas for systematic declassification review; and
- (3) serve as a forum to discuss policy issues in dispute.

(c) **Meetings.** The Council shall meet at least twice each calendar year, and as determined by the Assistant to the President for National Security Affairs or the Director of the Office of Management and Budget.

(d) **Administration.**

- (1) Each Council member may be compensated at a rate of pay not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the general schedule under section 5376 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Council.
- (2) While away from their homes or regular place of business in the actual performance of the duties of the Council, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5703(b)).
- (3) To the extent permitted by law and subject to the availability of funds, the Information Security Oversight Office shall provide the Council with administrative services, facilities, staff, and other support services necessary for the performance of its functions.
- (4) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, that are applicable to the Council, except that of reporting to the Congress, shall be performed by the Director of the Information Security Oversight Office in accordance with the guidelines and procedures established by the General Services Administration.

**Sec. 5.6. General Responsibilities.** Heads of agencies that originate or handle classified information shall:

- (a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;
- (b) commit necessary resources to the effective implementation of the program established under this order; and
- (c) designate a senior agency official to direct and administer the program, whose responsibilities shall include:
  - (1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;
  - (2) promulgating implementing regulations, which shall be published in the Federal Register to the extent that they affect members of the public;
  - (3) establishing and maintaining security education and training programs;
  - (4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;
  - (5) establishing procedures to prevent unnecessary access to classified information, including procedures that: (i) require that a need for access to classified information is established before initiating administrative clearance procedures; and (ii) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;
  - (6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;
  - (7) assuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of: (i) original classification authorities; (ii) security managers or security specialists; and (iii) all other personnel whose duties significantly involve the creation or handling of classified information;
  - (8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and



- (9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

**Sec. 5.7. Sanctions.**

- (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.
- (b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:
  - (1) disclose to unauthorized persons information properly classified under this order or predecessor orders;
  - (2) classify or continue the classification of information in violation of this order or any implementing directive;
  - (3) create or continue a special access program contrary to the requirements of this order; or
  - (4) contravene any other provision of this order or its implementing directives.
- (c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.
- (d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.
- (e) The agency head or senior agency official shall:
  - (1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b), above, occurs; and
  - (2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2) or (3), above, occurs.

## **PART 6 - GENERAL PROVISIONS**

### **Sec. 6.1. General Provisions.**

- (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.
- (b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.
- (c) Nothing in this order limits the protection afforded any information by other provisions of law, including the exemptions to the Freedom of Information Act, the Privacy Act, and the National Security Act of 1947, as amended. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. The foregoing is in addition to the specific provisos set forth in sections 1.2(b), 3.2(b) and 5.4(e) of this order.
- (d) Executive Order No. 12356 of April 6, 1982, is revoked as of the effective date of this order.

**Sec. 6.2. Effective Date.** This order shall become effective 180 days from the date of this order.

William J. Clinton

The White House,  
April 17, 1995.

**APPENDIX V. TITLE 18. CRIMES AND CRIMINAL PROCEDURE -  
UNITED STATES CODE\***

**\*Includes amendments made through the Summer of 1994.**



## **APPENDIX V. TITLE 18. CRIMES AND CRIMINAL PROCEDURE - UNITED STATES CODE**

### **A. ESPIONAGE AND CENSORSHIP**

#### ***18 U.S.C. § 792. Harboring or concealing persons***

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined under this title or imprisoned not more than ten years, or both.

#### ***18 U.S.C. § 793. Gathering, transmitting, or losing defense information***

- (a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or
- (b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or
- (c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter [18 U.S.C. §§ 792 et seq.]; or

- (d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or
- (e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or
- (f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer--
- Shall be fined under this title or imprisoned not more than ten years, or both.
- (g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.
- (h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

- (2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.
- (3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to--
  - (A) property subject to forfeiture under this subsection;
  - (B) any seizure or disposition of such property; and
  - (C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.
- (4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

***18 U.S.C. § 794. Gathering or delivering defense information to aid foreign government***

- (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. § 1801(a)]) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.
- (b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for

or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

- (c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.
- (d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law--
  - (A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and
  - (B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.
- (2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.
- (3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to--
  - (A) property subject to forfeiture under this subsection;
  - (B) any seizure or disposition of such property; and
  - (C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.
- (4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

**18 U.S.C. § 795. Photographing and sketching defense installations**

- (a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding



officer or higher authority for censorship or such other action as he may deem necessary.

- (b) Whoever violates this section shall be fined under this title or imprisoned not more than one year, or both.

***18 U.S.C. § 796. Use of aircraft for photographing defense installations***

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined under this title or imprisoned not more than one year, or both.

***18 U.S.C. § 797. Publication and sale of photographs of defense installations***

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined under this title or imprisoned not more than one year, or both.

***18 U.S.C. § 798. Disclosure of classified information***

- (a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information--
- (1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or
  - (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or
  - (3) concerning the communication intelligence activities of the United States or any foreign government; or
  - (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes--

Shall be fined under this title or imprisoned not more than ten years, or both.

- (b) As used in subsection (a) of this section--

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

- (c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

***18 U.S.C. § 798A. Temporary extension of section 794***

The provisions of section 794 of this title [18 U.S.C. § 794], as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Sup., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 [18 U.S.C. § 794] when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

## EXECUTIVE ORDER 10104.

### DEFINITIONS OF VITAL MILITARY AND NAVAL INSTALLATIONS AND EQUIPMENT

Source: The provisions of Executive Order 10104 of Feb. 1, 1950, appear at 15 FR 597, 3 CFR, 1949-1953 Comp., p. 298, unless otherwise noted.

WHEREAS section 795 of title 18 of the United States Code provides:

- "(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.
- "(b) Whoever violates this section shall be fined not more than \$1000 or imprisoned not more than one year, or both.";

AND WHEREAS section 797 of title 18 of the United States Code provides:

"On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military and naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than \$1000 or imprisoned not more than one year, or both.":

NOW, THEREFORE, by virtue of the authority vested in me by the foregoing statutory provisions, and in the interests of national defense, I hereby define the following as vital military and naval installations or equipment requiring protection against the general dissemination of information relative thereto:

1. All military, naval, or air-force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret," "secret," "confidential," or "restricted," and all military, naval, or air-force installations and equipment which may hereafter be so

classified, designated, or marked with the approval or at the direction of the President, and located within:

- (a) Any military, naval, or air-force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.
  - (b) Any defensive sea area heretofore established by Executive order and not subsequently discounted by Executive order, and any defensive sea area thereafter established under authority of section 2152 of title 18 of the United States Code.
  - (c) Any airspace reservation heretofore or hereafter established under authority of section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174) except the airspace reservation established by Executive Order No. 10092 of December 17, 1949.
  - (d) Any naval harbor closed to foreign vessels
  - (e) Any area required for fleet purposes
  - (f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.
2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret" "secret," "confidential," or "restricted," and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.
3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret" "secret," "confidential," or "restricted," and all such articles, or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled "Defining Certain Vital Military and Naval Installations and Equipment".

**18 U.S.C. § 1924. Unauthorized removal and retention of classified documents or material**

- (a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined not more than \$ 1,000, or imprisoned for not more than one year, or both.
- (b) For purposes of this section, the provision of documents and materials to the Congress shall not constitute an offense under subsection (a).
- (c) In this section, the term "classified information of the United States" means information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.

**B. SABOTAGE**

**18 U.S.C. § 2151. Definitions**

As used in this chapter [18 U.S.C. §§ 2151 et seq.]:

The words "war material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words "war premises" include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words "war utilities" include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless

stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

The words "associate nation" mean any nation at war with any nation with which the United States is at war.

The words "national-defense material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuff, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words "national-defense premises" include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words "national-defense utilities" include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

***18 U.S.C. § 2152. Fortifications, harbor defenses, or defensive sea areas***

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea

areas, which the President, for purposes of national defense, may from time to time establish by executive order--

Shall be fined under this title or imprisoned not more than five years, or both.

***18 U.S.C. § 2153. Destruction of war material, war premises, or war utilities***

- (a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined under this title or imprisoned not more than thirty years, or both.
- (b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

***18 U.S.C. § 2154. Production of defective war material, war premises, or war utilities***

- (a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined under this title or imprisoned not more than thirty years, or both.
- (b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

***18 U.S.C. § 2155. Destruction of national-defense materials, national-defense premises or national-defense utilities***

- (a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense

premises, or national-defense utilities, shall be fined under this title or imprisoned not more than ten years, or both.

- (b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

**18 U.S.C. § 2156. Production of defective national-defense material, national-defense premises or national-defense utilities**

- (a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined under this title or imprisoned not more than ten years, or both.
- b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

**18 U.S.C. § 2157. [Repealed]**

**18 U.S.C. § 2280. Violence against maritime navigation**

- (a) Offenses.

- (1) In general. A person who unlawfully and intentionally--
- (A) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;
  - (B) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
  - (C) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;
  - (D) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;
  - (E) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;



- (F) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;
- (G) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in subparagraphs (A) through (F); or
- (H) attempts to do any act prohibited under subparagraphs (A) through (G),

shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

- (2) Threat to navigation. A person who threatens to do any act prohibited under paragraph (1) (B), (C) or (E), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title, imprisoned not more than 5 years, or both.
- (b) Jurisdiction. There is jurisdiction over the activity prohibited in subsection (a)--
- (1) in the case of a covered ship, if--
    - (A) such activity is committed--
      - (i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;
      - (ii) in the United States and the activity is not prohibited as a crime by the State in which the activity takes place; or
      - (iii) the activity takes place on a ship flying the flag of a foreign country or outside the United States, by a national of the United States or by a stateless person whose habitual residence is in the United States;
    - (B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or
    - (C) the offender is later found in the United States after such activity is committed;
  - (2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and
  - (3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

- (c) Bar to prosecution. It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term "labor dispute" has the meaning set forth in section 2(c) of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)).
- (d) Delivery of suspected offender. The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that there is on board that ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action to take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of the master's intention to deliver such person and the reasons therefor. If the master delivers such person, the master shall furnish to the authorities of such country the evidence in the master's possession that pertains to the alleged offense.
- (e) Definitions. In this section--

"covered ship" means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country.

"national of the United States" has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"territorial sea of the United States" means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

"ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft, but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up.

"United States", when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and all territories and possessions of the United States.

***18 U.S.C. § 33. Destruction of motor vehicles or motor vehicle facilities***

Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or

Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such; or

Whoever willfully attempts to do any of the aforesaid acts--

shall be fined under this title or imprisoned not more than twenty years, or both.

**C. TREASON AND SUBVERSIVE ACTIVITIES**

***18 U.S.C. § 2381. Treason***

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$ 10,000; and shall be incapable of holding any office under the United States.

***18 U.S.C. § 2382. Misprision of treason***

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

***18 U.S.C. § 2383. Rebellion or insurrection***

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be

fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

**18 U.S.C. § 2384. Seditious conspiracy**

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

**18 U.S.C. § 2385. Advocating overthrow of Government**

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof--

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

#### **D. MISREPRESENTATION AND IMPERSONATION**

##### ***18 U.S.C. § 499. Military, naval, or official passes***

Whoever falsely makes, forges, counterfeits, alters, or tampers with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with intent to defraud uses or possesses any such pass or permit, or personates or falsely represents himself to be or not to be a person to whom such pass or permit has been duly issued, or willfully allows any other person to have or use any such pass or permit, issued for his use alone, shall be fined under this title or imprisoned not more than five years, or both.

##### ***18 U.S.C. § 701. Official badges, identification cards, other insignia***

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

##### ***18 U.S.C. § 872. Extortion by officers or employees of the United States***

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed \$ 100, he shall be fined under this title or imprisoned not more than one year, or both.

##### ***18 U.S.C. § 880. Receiving the proceeds of extortion***

A person who receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter [18 U.S.C. §§ 871 et seq.] that is punishable by imprisonment for more than 1 year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 3 years, fined under this title, or both.

##### ***18 U.S.C. § 911. Citizen of the United States***

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.

**18 U.S.C. § 912. Officer or employee of the United States**

Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both.

**18 U.S.C. § 913. Impersonator making arrest or search**

Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined under this title or imprisoned not more than three years, or both.

**18 U.S.C. § 1001. Statements or entries generally**

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

**18 U.S.C. § 1031. Major fraud against the United States**

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent--

- (1) to defraud the United States; or
- (2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises,

in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is \$ 1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than \$ 1,000,000, or imprisoned not more than 10 years, or both.

(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$ 5,000,000 and--

- (1) the gross loss to the Government or the gross gain to a defendant is \$500,000 or greater; or
- (2) the offense involves a conscious or reckless risk of serious personal injury.

- (c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed \$10,000,000.
- (d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).
- (e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including--
  - (1) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the defendant;
  - (2) whether the defendant previously has been fined for a similar offense; and
  - (3) any other pertinent equitable considerations.
- (f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.
- (g)(1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed \$250,000. Upon application by the Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.
  - (2) An individual is not eligible for such a payment if--
    - (A) that individual is an officer or employee of a Government agency who furnishes information or renders service in the performance of official duties;
    - (B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;
    - (C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or

(D) that individual participated in the violation of this section with respect to which such payment would be made.

(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.

(h) Any individual who--

(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and

(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

**18 U.S.C. § 1516. Obstruction of Federal audit**

(a) Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of \$ 100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) For purposes of this section--

(1) the term "Federal auditor" means any person employed on a full- or part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States;

(2) the term "in any 1 year period" has the meaning given to the term "in any one-year period" in section 666.

**18 U.S.C. § 1621. Perjury generally**

Whoever--

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration,



deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

#### **E. EMBEZZLEMENT AND THEFT**

##### ***18 U.S.C. § 21. Stolen or counterfeit nature of property for certain crimes defined***

(a) Wherever in this title it is an element of an offense that--

- (1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and
- (2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

- (b) For purposes of this section, the term "official representation" means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.

##### ***18 U.S.C. § 641. Public money, property or records***

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted--

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$ 100, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

**18 U.S.C. § 643. Accounting generally for public money**

Whoever, being an officer, employee or agent of the United States or of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement, and shall be fined under this title or in a sum equal to the amount of the money embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed \$ 100, he shall be fined under this title or imprisoned not more than one year, or both.

**18 U.S.C. § 659. Interstate or foreign shipments by carrier; State prosecutions**

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels, or whoever buys, receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen--

Shall in each case be fined under this title or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not exceed \$ 100, he shall be fined under this title or imprisoned not more than one year, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which

such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. The removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

***18 U.S.C. § 831. Prohibited transactions involving nuclear materials***

- (a) Whoever, if one of the circumstances described in subsection (c) of this section occurs--
  - (1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material and--
    - (A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property; or
    - (B) knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;
  - (2) with intent to deprive another of nuclear material, knowingly--
    - (A) takes and carries away nuclear material of another without authority;
    - (B) makes an unauthorized use, disposition, or transfer, of nuclear material belonging to another; or
    - (C) uses fraud and thereby obtains nuclear material belonging to another;
  - (3) knowingly--
    - (A) uses force; or
    - (B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material belonging to another from the person or presence of any other;

- (4) intentionally intimidates any person and thereby obtains nuclear material belonging to another;
  - (5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;
  - (6) knowingly threatens to use nuclear material to cause death or serious bodily injury to any person or substantial damage to property under circumstances in which the threat may reasonably be understood as an expression of serious purposes;
  - (7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or
  - (8) is a party to a conspiracy of two or more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in subsection (b) of this section.
- (b) The punishment for an offense under--
- (1) paragraphs (1) through (7) of subsection (a) of this section is--
    - (A) a fine under this title; and
    - (B) imprisonment--
      - (i) for any term of years or for life (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and
      - (ii) for not more than 20 years in any other case; and
  - (2) paragraph (8) of subsection (a) of this section is--
    - (A) a fine under this title; and
    - (B) imprisonment--
      - (i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and
      - (ii) for not more than 10 years in any other case.

- (c) The circumstances referred to in subsection (a) of this section are that--
- (1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);
  - (2) the defendant is a national of the United States, as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101);
  - (3) at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or
  - (4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material for peaceful purposes by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States.
- (d) The Attorney General may request assistance from the Secretary of Defense under chapter 18 of title 10 [10 U.S.C. §§ 371 et seq.] in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with chapter 18 of title 10 [10 U.S.C. §§ 371 et seq.], except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.
- (e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if--
- (A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and
  - (B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).
- (2) As used in this subsection, the term "emergency situation" means a circumstance--
- (A) that poses a serious threat to the interests of the United States; and
  - (B) in which--
    - (i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(3) Assistance under this section may include--

(A) use of personnel of the Department of Defense to arrest persons and conduct searches and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(4) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(5) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(f) As used in this section--

(1) the term "nuclear material" means material containing any--

(A) plutonium with an isotopic concentration not in excess of 80 percent plutonium 238;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term "international organization" means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(3) the term "serious bodily injury" means bodily injury which involves--

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

- (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and
- (4) the term "bodily injury" means--
  - (A) a cut, abrasion, bruise, burn, or disfigurement;
  - (B) physical pain;
  - (C) illness;
  - (D) impairment of a function of a bodily member, organ, or mental faculty; or
  - (E) any other injury to the body, no matter how temporary.

***18 U.S.C. § 2111. Special maritime and territorial jurisdiction***

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

***18 U.S.C. § 2112. Personal property of United States***

Whoever robs or attempts to rob another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years.

***18 U.S.C. § 2114. Mail, money, or other property of United States***

- (a) Assault. A person who assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years.
- (b) Receipt, possession, concealment, or disposal of property. A person who receives, possesses, conceals, or disposes of any money or other property that has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 10 years, fined under this title, or both.

***18 U.S.C. § 2117. Breaking or entering carrier facilities***

Whoever breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing interstate or foreign shipments of freight

or express or other property, or enters any such vehicle or pipeline system with intent in either case to commit larceny therein, shall be fined under this title or imprisoned not more than ten years, or both.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

**18 U.S.C. § 2119. Motor vehicles**

Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall--

- (1) be fined under this title or imprisoned not more than 15 years, or both,
- (2) if serious bodily injury (as defined in section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and
- (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.

**F. MALICIOUS MISCHIEF**

**18 U.S.C. § 1361. Government property or contracts**

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses shall be punished as follows:

If the damage or attempted damage to such property exceeds the sum of \$ 100, by a fine [of] under this title or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of \$ 100, by a fine [of] under this title or by imprisonment for not more than one year, or both.

**18 U.S.C. § 1362. Communication lines, stations or systems**

Whoever willfully or maliciously injures or destroys or attempts willfully or maliciously to injure or destroy any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously



obstructs, hinders, or delays the transmission of any communication over any such line, or system, shall be fined under this title or imprisoned not more than ten years, or both.

In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.

***18 U.S.C. § 1363. Buildings or property within special maritime and territorial jurisdiction***

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures or attempts to destroy or injure any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping, shall be fined under this title or imprisoned not more than five years, or both, and if the building be a dwelling, or the life of any person be placed in jeopardy, shall be fined under this title or imprisoned not more than twenty years, or both.

**G. CONSPIRACY**

***18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States***

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

**H. SEARCHES AND SEIZURES**

***18 U.S.C. § 111. Assaulting, resisting, or impeding certain officers or employees***

(a) In general. Whoever--

- (1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or
- (2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service, shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in

all other cases, be fined under this title or imprisoned not more than three years, or both.

- (b) Enhanced penalty. Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

**18 U.S.C. § 2231. Assault or resistance**

- (a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined under this title or imprisoned not more than three years, or both; and--
- (b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined under this title or imprisoned not more than ten years, or both.

**18 U.S.C. § 2232. Destruction or removal of property to prevent seizure**

- (a) Physical interference with search. Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined under this title or imprisoned not more than five years, or both [;].
- (b) Notice of search. Whoever, having knowledge that any person authorized to make searches and seizures has been authorized or is otherwise likely to make a search or seizure, in order to prevent the authorized seizing or securing of any person, goods, wares, merchandise or other property, gives notice or attempts to give notice of the possible search or seizure to any person shall be fined under this title or imprisoned not more than five years, or both.
- (c) Notice of certain electronic surveillance. Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 [18 U.S.C. §§ 2510 et seq.] to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.

**18 U.S.C. § 2233. Rescue of seized property**

Whoever forcibly rescues, dispossesses, or attempts to rescue or dispossess any property, articles, or objects after the same shall have been taken, detained, or seized by any officer or other person under the authority of any revenue law of the United States, or by any person authorized to make searches and seizures, shall be fined under this title or imprisoned not more than two years, or both.

**18 U.S.C. § 2234. Authority exceeded in executing warrant**

Whoever, in executing a search warrant, willfully exceeds his authority or exercises it with unnecessary severity, shall be fined not more than \$ 1,000 or imprisoned not more than one year.

**18 U.S.C. § 2235. Search warrant procured maliciously**

Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined not more than \$1,000 or imprisoned not more than one year.

**18 U.S.C. § 2236. Searches without warrant**

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than \$1,000; and, for a subsequent offense, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

This section shall not apply to any person--

- (a) serving a warrant of arrest; or
- (b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or
- (c) making a search at the request or invitation or with the consent of the occupant of the premises.

**18 U.S.C. § 3118. Implied consent for certain tests**

- (a) Consent. Whoever operates a motor vehicle in the special maritime and territorial jurisdiction of the United States consents thereby to a chemical test or tests of such person's blood, breath, or urine, if arrested for any offense arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. The test or tests shall be administered upon the request of a police officer having reasonable

grounds to believe the person arrested to have been driving a motor vehicle upon the special maritime and territorial jurisdiction of the United States while under the influence of drugs or alcohol in violation of the laws of a State, territory, possession, or district.

- (b) Effect of refusal. Whoever, having consented to a test or tests by reason of subsection (a), refuses to submit to such a test or tests, after having first been advised of the consequences of such a refusal, shall be denied the privilege of operating a motor vehicle upon the special maritime and territorial jurisdiction of the United States during the period of a year commencing on the date of arrest upon which such test or tests was refused, and such refusal may be admitted into evidence in any case arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. Any person who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States after having been denied such privilege under this subsection shall be treated for the purposes of any civil or criminal proceedings arising out of such operation as operating such vehicle without a license to do so.

**18 U.S.C. § 3125. *Emergency pen register and trap and trace device installation***

- (a) Notwithstanding any other provision of this chapter [18 U.S.C. §§ 3121 et seq.], any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that--

- (1) an emergency situation exists that involves--

- (A) immediate danger of death or serious bodily injury to any person; or  
(B) conspiratorial activities characteristic of organized crime,

that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and

- (2) there are grounds upon which an order could be entered under this chapter [18 U.S.C. §§ 3121 et seq.] to authorize such installation and use;

may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with section 3123 of this title.["]

- (b) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

- (c) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to subsection (a) without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter [18 U.S.C. §§ 3121 et seq.].
- (d) A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

## I. MISCELLANEOUS

### ***18 U.S.C. § 175. Prohibitions with respect to biological weapons***

- (a) In general. Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.
- (b) Definition. For purposes of this section, the term "for use as a weapon" does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.

### **18 U.S.C. § 176. Seizure, forfeiture, and destruction**

- (a) In general.
  - (1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that--
    - (A) exists by reason of conduct prohibited under section 175 of this title; or
    - (B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.
  - (2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.
- (b) Procedure. Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture

under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

- (c) Affirmative defense. It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that--
  - (1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and
  - (2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose.

**18 U.S.C. § 177. Injunctions**

- (a) In general. The United States may obtain in a civil action an injunction against--
  - (1) the conduct prohibited under section 175 of this title;
  - (2) the preparation, solicitation, attempt, or conspiracy to engage in conduct prohibited under section 175 of this title; or
  - (3) the development, production, stockpiling, transferring, acquisition, retention, or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention, or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.
- (b) Affirmative defense. It is an affirmative defense against an injunction under subsection (a)(3) of this section that--
  - (1) the conduct sought to be enjoined is for a prophylactic, protective, or other peaceful purpose; and
  - (2) such biological agent, toxin, or delivery system is of a type and quantity reasonable for that purpose.

**18 U.S.C. § 178. Definitions (Biological weapons)**

As used in this chapter [18 U.S.C. §§ 175 et seq.]--

- (1) the term "biological agent" means any micro-organism, virus, or infectious substance, capable of causing--
  - (A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

- (B) deterioration of food, water, equipment, supplies, or material of any kind; or
  - (C) deleterious alteration of the environment
- (2) the term "toxin" means, whatever its origin or method of production--
- (A) poisonous substance produced by a living organism; or
  - (B) any poisonous isomer, homolog, or derivative of such a substance;
- (3) the term "delivery system" means--
- (A) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or
  - (B) any vector; and
- (4) the term "vector" means a living organism capable of carrying a biological agent or toxin to a host.

**18 U.S.C. § 231. Civil disorders**

- (a)(1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or
- (2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or
- (3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function--

Shall be fined under this title or imprisoned not more than five years, or both.

- (b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

**18 U.S.C. § 841. Definitions**

As used in this chapter [18 U.S.C. §§ 841 et seq.]--

- (a) "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company.
- (b) "Interstate or foreign commerce" means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).
- (c) "Explosive materials" means explosives, blasting agents, and detonators.
- (d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title [18 U.S.C. § 844(d)-(j)], "explosive" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title [18 U.S.C. § 844(d)-(j)], the term "explosive" is defined in subsection (j) of such section 844 [18 U.S.C. § 844(j)].
- (e) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.
- (f) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.
- (g) "Importer" means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.
- (h) "Manufacturer" means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.
- (i) "Dealer" means any person engaged in the business of distributing explosive materials at wholesale or retail.



- (j) "Permittee" means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter [18 U.S.C. §§ 841 et seq.].
- (k) "Secretary" means the Secretary of the Treasury or his delegate.
- (l) "Crime punishable by imprisonment for a term exceeding one year" shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may be regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
- (m) "Licensee" means any importer, manufacturer, or dealer licensed under the provisions of this chapter [18 U.S.C. §§ 841 et seq.].
- (n) "Distribute" means sell, issue, give, transfer, or otherwise dispose of.

***18 U.S.C. § 844. Penalties (Use of Explosives or Fire)\****

- (a) Any person who violates subsections (a) through (i) of section 842 of this chapter [18 U.S.C. § 842(a)--(i)] shall be fined under this title or imprisoned not more than ten years, or both.
- (b) Any person who violates any other provision of section 842 of this chapter [18 U.S.C. § 842] shall be fined under this title or imprisoned not more than one year, or both.
- (c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 [26 U.S.C. §§ 1 et seq.] relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code [26 U.S.C. § 5845(a)], shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter [18 U.S.C. §§ 841 et seq.].
- (2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

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\*Author's Note: IDCFR 1047.4 (a)(1)(i)(H) limits the authority of a DOE protective force officer to section (f) and (g) of 18 U.S.C. § 844.

- (3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that--
- (A) the property has not been used or involved in a violation of law; or
  - (B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness, the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.
- (d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.
- (e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than five years or fined under this title, or both.
- (f) Whoever maliciously damages, or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,[,] or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,[,] or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.
- (g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any

building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to--

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter [18 U.S.C. §§ 841 et seq.]) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Research and Special Projects Administration for the handling of hazardous materials pursuant to chapter 51 of title 49 [49 U.S.C. §§ 5101 et seq.].

(h) Whoever--

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 5 years but not more than 15 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 10 years but not more than 25 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed[,], or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed[,], or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct

prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment. No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.

- (j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.
- (k) A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.
- (l) A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.
- (m) A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

**18 U.S.C. § 873. Blackmail**

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title or imprisoned not more than one year, or both.

**18 U.S.C. § 921. Definitions (Firearms)**

- (a) As used in this chapter [18 U.S.C. §§ 921 et seq.]--
  - (1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.
  - (2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means--

(A) any explosive, incendiary, or poison gas--

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 [10 U.S.C. §§ 4684(2), 4685, or 4686]; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

- (6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.
- (7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.
- (9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter [18 U.S.C. §§ 921 et seq.].
- (10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter [18 U.S.C. §§ 921 et seq.].
- (11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter [18 U.S.C. §§ 921 et seq.].
- (12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.
- (13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter [18 U.S.C. §§ 921 et seq.].
- (14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.
- (15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

- (16) The term "antique firearm" means--
- (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and
  - (B) any replica of any firearm described in subparagraph (A) if such replica--
    - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
    - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
- (17) (A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.
- (B) The term "armor piercing ammunition" means--
- (i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or
  - (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.
- (C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.
- (18) The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.
- (19) The term "published ordinance" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter [18 U.S.C. §§ 921 et seq.] and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter [18 U.S.C. §§ 921 et seq.].

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include--

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means--

- (A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;
- (B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;
- (C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A) [subsec. (a)(11)(A) of this section], a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;
- (D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B) [subsec. (a)(11)(B) of this section], a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;
- (E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the



principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which--

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means--

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

- (26) The term "school" means a school which provides elementary or secondary education, as determined under State law.
- (27) The term "motor vehicle" has the meaning given such term in section 10102 of title 49, United States Code.
- (28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.
- (29) The term "handgun" means--
- (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
  - (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.
- (30) The term "semiautomatic assault weapon" means--
- (A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as--
    - (i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);
    - (ii) Action Arms Israeli Military Industries UZI and Galil;
    - (iii) Beretta Ar70 (SC-70);
    - (iv) Colt AR-15;
    - (v) Fabrique National FN/FAL, FN/LAR, and FNC;
    - (vi) SWD M-10, M-11, M-11/9, and M-12;
    - (vii) Steyr AUG
    - (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
    - (ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;
  - (B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of--
    - (i) a folding or telescoping stock;

- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) a bayonet mount;
  - (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
  - (v) a grenade launcher;
- (C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of--
- (i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
  - (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
  - (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
  - (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
  - (v) a semiautomatic version of an automatic firearm; and
- (D) a semiautomatic shotgun that has at least 2 of--
- (i) a folding or telescoping stock;
  - (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) a fixed magazine capacity in excess of 5 rounds; and
  - (iv) an ability to accept a detachable magazine.
- (31) The term "large capacity ammunition feeding device"--
- (A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 [enacted Sept. 13, 1994] that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but
  - (B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

- (32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
- (b) For the purposes of this chapter [18 U.S.C. §§ 921 et seq], a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

**18 U.S.C. § 927. Effect on State law (Firearms)**

No provision of this chapter [18 U.S.C. §§ 921 et seq.] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

**18 U.S.C. § 930. Possession of firearms and dangerous weapons in Federal facilities**

- (a) Except as provided in subsection (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.
- (b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.
- (c) A person who kills or attempts to kill any person in the course of aviolation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall be punished as provided in sections 1111, 1112, and 1113.
- (d) Subsection (a) shall not apply to--
- (1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;
  - (2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or
  - (3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

- (e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.
- (2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection [(d)] (c).
- (f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.
- (g) As used in this section:
- (1) The term "Federal facility" means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.
- (2) The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
- (3) The term "Federal court facility" means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.
- [(h)](g) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection [(e)](d) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or [(e)](d) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or [(e)](d), as the case may be.

**18 U.S.C. § 1111. Murder**

- (a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

- (b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

**18 U.S.C. § 1112. Manslaughter**

- (a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary--Upon a sudden quarrel or heat of passion.

Involuntary--In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

- (b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than ten years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than six years, or both.

**18 USCS § 1121. Killing persons aiding Federal investigations or State correctional officers**

- (a) Whoever intentionally kills--

- (1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation--

(A) while the victim is engaged in the performance of official duties;

(B) because of the performance of the victim's official duties; or

(C) because of the victim's status as a public servant; or

- (2) any person assisting a Federal criminal investigation, while that assistance is being rendered and because of it,

shall be sentenced according to the terms of section 1111, including by sentence of death or by imprisonment for life.

- (b)(1) Whoever, in a circumstance described in paragraph (3) of this subsection, while incarcerated, intentionally kills any State correctional officer engaged in, or on account of the performance of such officer's official duties, shall be sentenced to a term of imprisonment which shall not be less than 20 years, and may be sentenced to life imprisonment or death.
- (2) As used in this section, the term, "State correctional officer" includes any officer or employee of any prison, jail, or other detention facility, operated by, or under contract to, either a State or local governmental agency, whose job responsibilities include providing for the custody of incarcerated individuals.
- (3) The circumstance referred to in paragraph (1) is that--
- (A) the correctional officer is engaged in transporting the incarcerated person interstate; or
- (B) the incarcerated person is incarcerated pursuant to a conviction for an offense against the United States.

***18 U.S.C. § 1382. Entering military, naval, or Coast Guard property***

Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation; or

Whoever reenters or is found within any such reservation, post, fort, arsenal, yard, station, or installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof--

Shall be fined under this title or imprisoned not more than six months, or both.

***18 U.S.C. § 1383. [Repealed]***

***18 U.S.C. § 1864. Hazardous or injurious devices on Federal lands***

- (a) Whoever--
- (1) with the intent to violate the Controlled Substances Act,
- (2) with the intent to obstruct or harass the harvesting of timber, or
- (3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, uses a hazardous or injurious device on Federal land, on an Indian reservation, or on an Indian allotment while the title to such allotment is held in trust by the United States or while such allotment remains inalienable by the allottee without the consent of the United States shall be punished under subsection (b).

- (b) An individual who violates subsection (a) shall--
- (1) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;
  - (2) if serious bodily injury to any individual results, be fined under this title or imprisoned for not more than twenty years, or both;
  - (3) if bodily injury to any individual results, be fined under this title or imprisoned for not more than ten years, or both;
  - (4) if damage exceeding \$ 10,000 to the property of any individual results, be fined under this title or imprisoned for not more than ten years, or both; and
  - (5) in any other case, be fined under this title or imprisoned for not more than one year.
- (c) Any individual who is punished under subsection (b)(5) after one or more prior convictions under any such subsection shall be fined under this title or imprisoned for not more than ten years, or both.
- (d) As used in this section--
- (1) the term "serious bodily injury" means bodily injury which involves--
    - (A) a substantial risk of death;
    - (B) extreme physical pain;
    - (C) protracted and obvious disfigurement; and
    - (D) protracted loss or impairment of the function of bodily member, organ, or mental faculty;
  - (2) the term "bodily injury" means--
    - (A) a cut, abrasion, bruise, burn, or disfigurement;
    - (B) physical pain;
    - (C) illness;
    - (D) impairment of the function of a bodily member, organ, or mental faculty; or
    - (E) any other injury to the body, no matter how temporary; and



- (3) the term "hazardous or injurious device" means a device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. Such term includes guns attached to trip wires or other triggering mechanisms, ammunition attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump.

**18 U.S.C. § 2071. Concealment, removal, or mutilation generally**

- (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.
- (b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

**18 U.S.C. § 2331. Definitions (Terrorism)**

As used in this chapter [18 U.S.C. §§ 2331 et seq.] --

- (1) the term "international terrorism" means activities that--
- (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- (B) appear to be intended--
- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by assassination or kidnapping; and

- (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;
- (2) the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. § 1101(a)(22)];
- (3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property; and
- (4) the term "act of war" means any act occurring in the course of--
  - (A) declared war;
  - (B) armed conflict, whether or not war has been declared, between two or more nations; or
  - (C) armed conflict between military forces of any origin.

**18 U.S.C. § 2332a. Use of weapons of mass destruction**

- (a) Offense. A person who uses, or attempts or conspires to use, a weapon of mass destruction--
  - (1) against a national of the United States while such national is outside of the United States;
  - (2) against any person within the United States; or
  - (3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.
- (b) Definitions. For purposes of this section--
  - (1) the term "national of the United States" has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)); and
  - (2) the term "weapon of mass destruction" means--
    - (A) any destructive device as defined in section 921 of this title;

- (B) poison gas;
- (C) any weapon involving a disease organism; or
- (D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**18 U.S.C. § 2338. Exclusive Federal jurisdiction**

The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter [18 U.S.C. §§ 2331 et seq.].

**18 U.S.C. § 2339A. Providing material support to terrorists**

- (a) Definition. In this section, "material support or resources" means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.
- (b) Offense. A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 36, 351, 844 (f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2331, or 2339 of this title or section 46502 of title 49, or in preparation for or carrying out the concealment of an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.
- (c) Investigations.
  - (1) In general. Within the United States, an investigation may be initiated or continued under this section only when facts reasonably indicate that--
    - (A) in the case of an individual, the individual knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law; and
    - (B) in the case of a group of individuals, the group knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law.
  - (2) Activities protected by the First Amendment. An investigation may not be initiated or continued under this section based on activities protected by the First Amendment to the Constitution, including expressions of support or the provision of financial support

for the nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group.

**18 U.S.C. § 3281. Capital offenses**

An indictment for any offense punishable by death may be found at any time without limitation.

**18 U.S.C. § 3282. Offenses not capital**

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

**18 U.S.C. § 3286. Extension of statute of limitation for certain terrorism offenses**

Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 46502, 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed.

**J. ARSON**

**18 U.S.C. § 7. Special maritime and territorial jurisdiction of the United States defined**

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

- (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
- (2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters

connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

- (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.
- (4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.
- (5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
- (6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.
- (7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.
- (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

***18 U.S.C. § 81. Arson within special maritime and territorial jurisdiction***

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns, or attempts to set fire to or burn any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, shall be fined under this title or imprisoned not more than five years, or both.

If the building be a dwelling or if the life of any person be placed in jeopardy, he shall be fined under this title or imprisoned not more than twenty years, or both.

**K. OBSCENITY**

**18 U.S.C. § 1460. Possession with intent to sell, and sale, of obscene matter on Federal property**

(a) Whoever, either--

- (1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or
- (2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term "visual depiction" includes undeveloped film and videotape but does not include mere words.

**18 U.S.C. § 1466. Engaging in the business of selling or transferring obscene matter**

(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

**18 U.S.C. § 1467. Criminal forfeiture**

(a) Property subject to criminal forfeiture. A person who is convicted of an offense involving obscene material under this chapter [18 U.S.C. § 1460 et seq.] shall forfeit to the United States such person's interest in--

- (1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter [18 U.S.C. § 1460 et seq.];
  - (2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
  - (3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.
- (b) Third party transfers. All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bonafide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.
- (c) Protective orders.
- (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section--
    - (A) upon the filing of an indictment or information charging a violation of this chapter [18 U.S.C. § 1460 et seq.] for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or
    - (B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--
      - (i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
      - (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

- (2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.
- (3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.
- (d) Warrant of seizure. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.
- (e) Order of forfeiture. The court shall order forfeiture of property referred to in subsection (a) if--
  - (1) the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture; and
  - (2) with respect to property referred to in subsection (a)(3), if the court exercises the court's discretion under that subsection.
- (f) Execution. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to



the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

- (g) Disposition of property. Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.
- (h) Authority of Attorney General. With respect to property ordered forfeited under this section, the Attorney General is authorized to--
  - (1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter [18 U.S.C. §§ 1460 et seq.], or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;
  - (2) comprise claims arising under this section;
  - (3) award compensation to persons providing information resulting in a forfeiture under this section;
  - (4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930 [19 USCS § 1616a], of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and
  - (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.
- (i) Bar on intervention. Except as provided in subsection (l) of this section, no party claiming an interest in property subject to forfeiture under this section may--
  - (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

- (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.
- (j) Jurisdiction to enter orders. The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.
- (k) Depositions. In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.
- (l) Third party interests.
- (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.
- (2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.
- (3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.
- (4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.
- (5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the

property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bonafide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) Construction. This section shall be liberally construed to effectuate its remedial purposes.

(n) Substitute assets. If any of the property described in subsection (a), as a result of any act or omission of the defendant--

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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**APPENDIX VI. TITLE 50. INTERNAL SECURITY ACT OF THE UNITED STATES CODE\***

**\*Includes amendments made through the Summer of 1994.**



## **APPENDIX VI. TITLE 50. INTERNAL SECURITY ACT OF THE UNITED STATES CODE**

### ***50 U.S.C. § 47a. Information concerning illegal introduction, manufacture, acquisition or export of special nuclear material or atomic weapons or conspiracies relating thereto; reward***

Any person who furnishes original information to the United States--

- (a) leading to the finding or other acquisition by the United States of special nuclear material or an atomic weapon which has been introduced into the United States or manufactured or acquired therein contrary to the laws of the United States, or
- (b) with respect to the introduction or attempted introduction into the United States or the manufacture or acquisition or attempted manufacture or acquisition of, or a conspiracy to introduce into the United States or to manufacture or acquire, special nuclear material or an atomic weapon contrary to the laws of the United States, or
- (c) with respect to the export or attempted export, or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States,

shall be rewarded by the payment of an amount not to exceed \$ 500,000.

### ***50 U.S.C. § 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources***

- (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than \$ 50,000 or imprisoned not more than ten years, or both.
- (b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than \$ 25,000 or imprisoned not more than five years, or both.
- (c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive

classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than \$15,000 or imprisoned not more than three years, or both.

**50 U.S.C. § 422. Defenses and exceptions**

- (a) It is a defense to a prosecution under section 601 [50 U.S.C. § 421] that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.
- (b)
  - (1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code [18 U.S.C. §§ 2, 4], or shall be subject to prosecution for conspiracy to commit an offense under such section.
  - (2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, or (B) in the case of a person who has authorized access to classified information.
- (c) It shall not be an offense under section 601 [50 U.S.C. § 421] to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.
- (d) It shall not be an offense under section 601 [50 U.S.C. § 421] for an individual to disclose information that solely identifies himself as a covert agent.

**50 U.S.C. § 423. Report**

- (a) The President, after receiving information from the Director of Central Intelligence, shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents.
- (b) The report described in subsection (a) shall be exempt from any requirement for publication or disclosure. The first such report shall be submitted no later than February 1, 1983.



**50 U.S.C. § 424. Extraterritorial jurisdiction**

There is jurisdiction over an offense under section 601 [50 U.S.C. § 421] committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act) [8 U.S.C. § 1101(a)(20)].

**50 U.S.C. § 425. Providing information to Congress**

Nothing in this title [50 U.S.C. §§ 421 et seq.] may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

**50 U.S.C. § 426. Definitions**

For the purposes of this title [50 U.S.C. §§ 421 et seq.]:

- (1) The term "classified information" means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.
- (2) The term "authorized", when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.
- (3) The term "disclose" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.
- (4) The term "covert agent" means--
  - (A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency--
    - (i) whose identity as such an officer, employee, or member is classified information, and
    - (ii) who is serving outside the United States or has within the last five years served outside the United States; or

- (B) a United States citizen whose intelligence relationship to the United States is classified information, and--
- (i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or
  - (ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or
- (C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.
- (5) The term "intelligence agency" means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.
- (6) The term "informant" means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.
- (7) The terms "officer" and "employee" have the meanings given such terms by section 2104 and 2105, respectively, of title 5, United States Code [5 U.S.C. §§ 2104, 2105].
- (8) The term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (9) The term "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.
- (10) The term "pattern of activities" requires a series of acts with a common purpose or objective.

**50 U.S.C. § 783. Offenses**

- (a) Communication of classified information by Government officer or employee. It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government, any information of a kind which shall have been classified by the President (or by the

head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

- (b) Receipt of, or attempt to receive, by foreign agent or member of Communist organization, classified information. It shall be unlawful for any agent or representative of any foreign government knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.
- (c) Penalties for violation. Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$ 10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.
- (d) Limitations period. Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: Provided, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.
- (e) [Redesignated]
- (f) [Repealed]

**50 U.S.C. § 784. [Repealed]**

**50 U.S.C. § 797. Security regulations and orders; penalty for violation**

- (a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports,

piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, and Department or agency of which said Department consists, or any officer or employee of said Department or agency, or of the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed \$ 5,000 or to imprisonment for not more than one year, or both.

- (b) Every such regulation or order shall be posted in conspicuous and appropriate places.

**APPENDIX VII. TITLE 41. CODE OF FEDERAL REGULATIONS  
CHAPTER 101. FEDERAL PROPERTY MANAGEMENT REGULATIONS  
(SELECTED PARTS ONLY)\***

\*Includes amendments made through the Summer of 1994.



**APPENDIX VII. TITLE 41 -- CODE OF FEDERAL REGULATIONS,  
CHAPTER 101. FEDERAL PROPERTY MANAGEMENT REGULATIONS  
(SELECTED PARTS ONLY)**

***41 CFR § 101-20.000. Scope of part***

The regulations in this part prescribe policies and procedures for the management, operation, protection, and maintenance of Government-owned and-leased buildings and grounds under the assignment responsibility of GSA.

***41 CFR § 101-20.002. Basic policy***

It is the responsibility of GSA to provide or otherwise arrange for all services required to house occupant agencies. GSA shall provide fully service space equivalent to that furnished in commercial practice.

***41 CFR § 101-20.003. Definitions***

- (e) Crime prevention assessments are formal, on-site reviews which consist of a detailed survey, review, and analysis of an occupant agency's vulnerability to criminal activity. In addition to the normal process of a physical security survey, it involves an intensive review of an occupant's and/or building's operation and administrative procedures. It is designed to identify specific weaknesses and to recommend cost-effective, positive steps to Federal managers in dealing with criminal threats and occurrences.
- (f) Cultural activities include, but are not limited to, films dramatics dances, and musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.
- (g) The Designated Official is the highest ranking official of the primary occupant agency of a Federal facility; or, alternatively, a designee selected by mutual agreement of occupant agency officials.
- (h) Educational activities mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.
- (i) The term emergency includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks. Note: Civil defense emergencies are addressed by the Federal Emergency Management Agency.

**Comment.** Only certain definitions are provided here.

## **41 CFR § 101-20.103. PHYSICAL PROTECTION AND BUILDING SECURITY**

### **41 CFR § 101-20.103-1 Standard protection.**

For properties under its custody and control, GSA will provide standard protection services by:

- (a) Responding to criminal occurrences, incidents, and lifethreatening events through the use of Federal Protective Officers and local law enforcement officers where a response agreement is in effect.
- (b) Installing and maintaining perimeter security devices and systems if they are monitored to provide timely response by authorized personnel;
- (c) Implementing crime prevention activities, including tenant awareness programs;
- (d) Investigating crimes and violations of Federal statutes, recording and evaluating reports of criminal incidents, and referring findings and evidence to appropriate enforcement agencies;
- (e) Entering into cooperative agreements with local law enforcement agencies;
- (f) Performing physical security surveys and providing security advisory services; or
- (g) Coordinating a comprehensive Occupant Emergency Program.
- (h) Periodically evaluating the effectiveness of protection services by in-depth inspections of procedures and records.

### **41 CFR § 101-20.103-2. Special protection**

The degree of protection beyond standard levels required by the nature of an agency's activities or by unusual public reaction to an agency's programs will be determined jointly by GSA and the occupant agency. Special protection will be provided on a reimbursable basis. The level of special protection will be determined on a facility-by-facility basis, after the conducting of appropriate security surveys and crime prevention assessments. In such determinations, GSA and occupant agencies will consider:

- (a) The characteristics of the facility, including size, configuration, exterior lighting, and presence of physical barriers;
- (b) The location of the facility and the history of criminal or disruptive incidents in the surrounding neighborhoods; and
- (c) The reimbursable funding and resources available to GSA for provision of protective service.
- (d) Tenant agency's mission.



**41 CFR § 101-20.103-3. Responsibilities of occupant agencies**

Occupants of facilities under the custody and control of GSA shall:

- (a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;
- (b) Promptly report all crimes and suspicious circumstances occurring on GSA-controlled property to the regional Law Enforcement Branch and other designated law enforcement agencies and then through internal agency channels;
- (c) Provide training to employees regarding protection and responses to emergency situations; and
- (d) Make recommendations for improving the effectiveness of protection in Federal facilities.

**41 CFR § 101-20.3. -- CONDUCT ON FEDERAL PROPERTY**

**41 CFR § 101-20.300. Applicability**

These rules and regulations apply to all property under the charge and control of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations.

**41 CFR § 101-20.301. Inspection**

Packages, briefcases, and other containers in the immediate possession of visitors, employees, or other persons arriving on, working at, visiting, or departing from Federal property, are subject to inspection. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

**41 CFR § 101-20.302. Admission to property**

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency program after consultation with the buildings manager and the ranking representative of the Law Enforcement Branch responsible for protection of the facility or the area. The designated official is defined in § 101-20.003(g) as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display

Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

**41 CFR § 101-20.303. Preservation of property**

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

**41 CFR § 101-20.304. Conformity with signs and directions**

Persons in and on property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the lawful direction of Federal Protective Officers and other authorized individuals.

**41 CFR § 101-20.305. Disturbances**

Any loitering, disorderly conduct, or other conduct on property which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining the administrative services provided on the property in a timely manner, is prohibited.

**41 CFR § 101-20.306. Gambling**

Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, et seq.)

**41 CFR § 101-20.307. Alcoholic beverages and narcotics**

Operations of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings manager and the Chief, Law Enforcement Branch, or other authorized officials, responsible for the security of the property.

**41 CFR § 101-20.308. Soliciting, vending, and debt collection**

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to:

- (a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR, parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations issued by the U.S. Office of Personnel Management under Executive Order 12353 of March 23, 1982, as amended, and sponsored or approved by the occupant agencies;
- (b) Concessions or personal notices posted by employees on authorized bulletin boards;
- (c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454); and
- (d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)).

NOTE: Public areas of GSA-controlled property may be used for other activities permitted in accordance with subpart 101-20.4.

**41 CFR § 101-20.309. Posting and distributing materials**

Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in § 101-20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public areas of the property as defined in § 101-20.003(z), unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the building manager under subpart 101-20.4 and shall conduct distribution in accordance with the provisions of subpart 101-20.4. Failure to comply with those provisions is a violation of these regulations.

**41 CFR § 101-20.310. Photographs for news, advertising, or commercial purposes**

Photographs may be taken in space occupied by a tenant agency only with the consent of the occupying agency concerned. Except where security regulations apply or a Federal court order or rule prohibits it, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of an authorized official of the agency occupying the space where the photographs are to be taken.

**41 CFR § 101-20.311. Dogs and other animals**

Dogs and other animals, except seeing eye dogs, other guide dogs, and animals used to guide or assist handicapped persons, shall not be brought upon property for other than official purposes.

**41 CFR § 101-20.312. Vehicular and pedestrian traffic**

- (a) Drivers of all vehicles entering or while on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Federal protective officers or other authorized individuals and all posted traffic signs;
- (b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on property is prohibited; and
- (c) Except in emergencies, parking on property is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owners' risk and expense. This paragraph may be supplemented from time to time with the approval of the Regional Administrator by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part thereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

**41 CFR § 101-20.313. Explosives**

No person entering or while on property shall carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes. (Weapons, see title 18, U.S. Code 930.)

**41 CFR § 101-20.314. Nondiscrimination**

There shall be no discrimination by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the property.

**41 CFR § 101-20.315. Penalties and other laws**

Whoever shall be found guilty of violating any rule or regulations in this subpart 101-20.3 while on any property under the charge and control of the U.S. General Services Administration is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both (See title 40 U.S. Code 318c.) Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (section 205(c), 63 U.S. Statutes, 390; 40 U.S. Code 486(c)).