

June 22, 2001

The Honorable Richard B. Cheney  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

I am enclosing the Nuclear Regulatory Commission's (NRC) legislative proposals in the form of an omnibus draft bill that would make a number of changes to the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as well as a few revisions to other statutory provisions that directly affect the Commission's exercise of its mission. Specifically, this legislation would accomplish the following objectives:

- (1) authorize guards to carry firearms at certain NRC-licensed or certified facilities;
- (2) make unauthorized introduction of weapons at facilities subject to licensing or certification by the NRC a Federal crime;
- (3) make it a Federal crime to sabotage a production, utilization, waste storage, waste treatment, or waste disposal, uranium enrichment or nuclear fuel fabrication facility during its construction, if the action could jeopardize public health and safety, or to sabotage a uranium enrichment or nuclear fuel fabrication facility during its operation;
- (4) make clear that in the case of a combined construction and operating license the initial duration and the commencement of the licensing period are consistent with the period provided for situations where there are separate construction and operating licenses;
- (5) elimination of the restriction on foreign ownership of power reactors and research reactors;
- (6) elimination of the Commission's antitrust review authority with respect to pending or future initial applications for a license to construct or operate a utilization facility;
- (7) make clear that, with very limited exception, the standards issued by the Commission and Agreement States govern cleanup of Atomic Energy Act material at facilities licensed by them;
- (8) make clear that NRC's jurisdiction extends to former licensees of production or utilization facilities to the extent that they own or control decommissioning funds;
- (9) to ensure bankruptcy of a nuclear plant licensee does not jeopardize decommissioning funding, provide that decommissioning obligations are a nondischargeable priority claim in bankruptcy and related proceedings;

(10) authorize the Commission to reimburse an Agreement State, in limited circumstances, for work performed by the State in connection with remediation of a site formerly licensed by the Commission or its predecessor, where the work took place before the Commission approved a grant or cooperative agreement providing funds for such purposes;

(11) elimination of the requirement that the hearing process associated with the NRC licensing of uranium enrichment facilities must be "on the record";

(12) make clear that the existence of an organizational conflict of interest does not bar the Commission from entering into a contract or other arrangement for work to be performed by a Department of Energy laboratory or the operator of such a laboratory, provided that the Commission determines that the conflict of interest cannot be mitigated and that adequate justification exists to proceed with the contract or other arrangement;

(13) authorize the Commission to assess and collect fees from other Federal agencies for services provided to them;

(14) authorize the Commission to provide direct support to U.S. college and university students who are acquiring technical skills of which there are shortages and which the Commission needs in order to carry out its safety mission;

(15) allow a Commissioner whose term has expired to continue in office for a limited period of time if a successor has not been confirmed;

(16) provide the NRC with general gift acceptance authority;

(17) authorize the Commission to purchase items of nominal value to give as gifts to potential employees as part of the Commission's recruitment effort; and

(18) elimination of the requirement that the NRC maintain an office for the services of process and papers within the District of Columbia.

With respect to the proposal to make clear that standards issued by the NRC and Agreement States govern cleanup of Atomic Energy Act material at facilities licensed by them, this amendment is offered for the consideration of the Congress should it choose not to await the completion of discussions between the NRC and the Environmental Protection Agency regarding a Memorandum of Understanding concerning remediation of sites under NRC regulatory authority.

In addition, to the proposals listed above, the Commission supports the enactment of legislation extending the Price-Anderson Act. We have not included this in our proposals because Price-Anderson Act extension is addressed in a number of bills that have been introduced in the 107<sup>th</sup> Congress, including S. 389 (the "National Energy Security Act of 2001"), S. 472 (the "Nuclear Energy Electricity Assurance Act of 2001"), S. 596 (the "Comprehensive And Balanced Energy Policy Act of 2001"), and H.R. 1679 (the "Electric Supply Assurance Act of 2001"). The Commission has separately provided comments concerning the Price-Anderson Act provisions in these bills.

The Commission had intended to submit a proposal on compensation and benefits for NRC officers and employees, in connection with its efforts to enhance the agency's recruitment and retention of professional personnel. We understand, however, that the Office of Personnel Management is in the process of developing Government-wide legislative proposals that may address some of the NRC's needs. Accordingly, we are postponing submission of an NRC-specific proposal.

The enactment of the listed proposals would enhance nuclear safety and physical security, increase the NRC's efficiency, and enhance the economic use of Commission resources. A draft bill (Enclosure 1), an analysis of its provisions (Enclosure 2), a comparative text (Enclosure 3), and a memorandum explaining the need for the legislation (Enclosure 4) are provided. The Commission may submit other proposed legislation later in this Congress.

Sincerely,

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Richard A. Meserve

Enclosures:

1. Draft Bill
2. Analysis of Proposal
3. Comparative Text
4. Legislative Memorandum

**IDENTICAL LETTERS SENT TO:**

The Honorable Richard B. Cheney  
President of the United States Senate  
Washington, D.C. 20510

The Honorable J. Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515

The Honorable Joseph I. Lieberman, Chairman  
Subcommittee on Clean Air, Wetlands,  
Private Property and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

cc: Senator George V. Voinovich

The Honorable Joe Barton, Chairman  
Subcommittee on Energy and Air Quality  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

cc: Representative Rick Boucher

The Honorable Sonny Callahan, Chairman  
Subcommittee on Energy and Water Development  
Committee on Appropriations  
United States House of Representatives  
Washington, D.C. 20515

cc: Representative Peter J. Visclosky

The Honorable Harry Reid, Chairman  
Subcommittee on Energy and Water Development  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

cc: Senator Pete V. Domenici

The Honorable W.J. "Billy" Tauzin, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

cc: Representative John D. Dingell

The Honorable Harry Reid, Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

cc: Senator Bob Smith

The Honorable Pete V. Domenici  
United States Senate  
Washington, D.C. 20510

DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Atomic Energy Act Amendments of 2001".

SECTION 2. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"Sec. 161. GENERAL PROVISIONS.

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

\* \* \* \*

"k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize--

"(1) 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; and

"(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the

common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

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 or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) 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 a licensee or certificate holder of the Commission, or (2) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or (3) any provision of this chapter 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 and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;"

### SECTION 3. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after "custody of the Commission" the words "or subject to its licensing authority or to certification by the Commission under this Act or any other Act".

### SECTION 4. SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

"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, treatment or disposal facility licensed under this Act;

"(3) any nuclear fuel for a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility;

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility;

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



## SECTION 5. PERIOD OF COMBINED LICENSE

Subsection c. of section 103 of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by adding at the end the following: "In the case of a combined construction and operating license issued under section 185 b., the initial duration of the license may not exceed 40 years from the date on which the Commission finds, prior to operation of the facility, that the acceptance criteria required by section 185 b. have been met."

## SECTION 6. ELIMINATION OF FOREIGN OWNERSHIP PROHIBITIONS

(1) Section 103 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(d)) is amended by inserting the words "for a production facility" after "license" in the second sentence.

(2) Section 104 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(d)) is amended by inserting the words "for a production facility" after "license" in the second sentence.

## SECTION 7. ELIMINATION OF NRC ANTITRUST REVIEWS

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended--

(1) by deleting the first sentence in subsection (a) and inserting the following:

"Nothing in this chapter shall be construed to modify or supersede the 'antitrust laws', as that term is defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), or the application of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition."

(2) by deleting "the laws cited above" in subsection (a) and inserting "the laws covered by the first sentence of this subsection".

(3) by deleting "the foregoing Acts" in subsection b. and inserting "the laws covered by the first sentence of subsection a.".

(4) by deleting “the antitrust laws as specified in subsection 105a.” in subsection c.(5) and (7) and inserting “the laws covered by the first sentence of subsection a.”.

(5) by adding the following subsection after subsection c.:

“d. Subsection c. shall not apply to an application for a license to construct or operate a utilization facility under section 103 or 104 b., if the application is pending on or filed after the effective date of this subsection. This subsection shall not affect the Commission’s authority to enforce antitrust conditions included in licenses issued under section 103 or 104 b. before the effective date of this subsection.”

#### SECTION 8. ACTIONS RELATING TO SOURCE, BYPRODUCT AND SPECIAL NUCLEAR MATERIAL

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended --

(1) by adding the following new paragraph at the end of section 121(b):

“(3) No authority of this Act may be used to commence an administrative or judicial action with respect to source, special nuclear, or byproduct material that is subject to decontamination regulations issued by the Nuclear Regulatory Commission for license termination under the Atomic Energy Act of 1954, or by a State that has entered into an agreement pursuant to section 274 b. of that Act, unless such action is requested by the Nuclear Regulatory Commission or, in the case of such material under the jurisdiction of a State that has entered into an agreement pursuant to section 274 b. of that Act, the Governor of the State.”

(2) by inserting the following before the period at the end of paragraph (K) of section 101(10):

“, or any release of such material in accordance with regulations of the Nuclear Regulatory Commission following termination of a license issued by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or by a State acting under an Agreement entered into pursuant to section 274 b. of that Act”.

#### SECTION 9. NRC AUTHORITY OVER NON-LICENSEES FOR DECOMMISSIONING FUNDING

Section 161 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended by--

- (1) deleting “and” before “(3)”, and
- (2) inserting the following before the period:

“, and (4) to establish any requirement that the Commission considers necessary to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under this Act, including standards and restrictions governing the activities of any person, whether or not a licensee under this Act, pertaining to the decommissioning funding for such facilities.”

#### SECTION 10. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY

Section 523 of title 11, United States Code, is amended by inserting the following new subsection after subsection (e):

“(f) Any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee or former licensee to comply with regulations or orders of the Nuclear Regulatory Commission governing the decontamination and decommissioning of nuclear power reactors licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133 AND 2134(b)) may not

be used to satisfy any claims of creditors, other than claims resulting from activities undertaken to satisfy such responsibility. Regardless whether incurred before or after a petition for bankruptcy has been filed or a discharge has been granted under this title, obligations of licensees, former licensees, or any other person to use such funds or other assets to satisfy such an order or regulation shall be given priority and may not be rejected, avoided, or discharged in any proceeding under title 11, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State or Federal law."

SECTION 11. ASSISTANCE TO STATES FOR REMEDIATION OF FORMERLY LICENSED SITES

(a) Section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) is amended by adding the following subsection after subsection o.:

"p. The Commission is authorized to make grants to, and enter into cooperative agreements with, States that have entered into an agreement under subsection b. to assist such States in remediation of sites containing materials covered by the agreement, where ownership or possession of the material or activities involving such material was licensed by, and the license was terminated by, the Commission before the agreement became effective. Such a grant or cooperative agreement may include reimbursement of State costs incurred in connection with remediation of a site where the costs were incurred for work completed before the Commission approved the grant or cooperative agreement."

(b) Any limitation contained in this Act or any other Act on the amount available for grants to and cooperative agreements with States from funds authorized or appropriated for use by the Nuclear Regulatory Commission shall not be applicable to Commission assistance to States for remediation of sites containing material covered by an agreement entered into under

section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)), where the ownership or possession of the material or activities involving such material was licensed by, and the license was terminated by, the Commission before the agreement became effective.

(c) The authorization contained in subsection p. of section 274 shall apply whether licensing of ownership or possession of material or activities involving material covered by an agreement, or termination of such a license, was effected by the Nuclear Regulatory Commission or the Atomic Energy Commission.

#### SECTION 12. HEARINGS ON LICENSING URANIUM ENRICHMENT FACILITIES

Section 193(b)(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2243(b)(1)) is amended by deleting “on the record”.

#### SECTION 13. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS

Subsection b. of section 170A of the Atomic Energy Act of 1954 (42 U.S.C. 2210a.(b)) is amended by inserting the following before the period at the end of the subsection:

“; provided that if the Commission determines that a conflict of interest exists with respect to a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, that the conflict of interest cannot be mitigated, and that adequate justification exists to proceed without mitigation of the conflict of interest, the Commission may enter into such contract, agreement, or arrangement”.

#### SECTION 14. COST RECOVERY FROM GOVERNMENT AGENCIES

Section 161 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended by--

(1) deleting “or which operates any facility regulated or certified under section 1701 or 1702,”;

(2) striking “483a” and inserting “9701”; and

(3) inserting the following before the period:

“; and commencing on October 1, 2002, prescribe and collect from any other Government agency, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of title 31 of the United States Code or any other law”.

#### SECTION 15. TRAINING IN CRITICAL SAFETY SKILLS

The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding the following new subsection at the end of section 161 (42 U.S.C. 2201):

“y. provide fellowships, scholarships, and other support to students in departments and programs at colleges and universities in the United States that provide training in technical skills that the Commission determines are critical to the safety functions of the Commission and in short supply.”

#### SECTION 16. CONTINUATION OF COMMISSIONER SERVICE

Section 201(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(c)) is amended --

(1) by inserting “(1)” after “(c)”, and

(2) by adding the following paragraph after paragraph (1) (as so designated):

"(2) A member of the Commission whose term of office has expired may, subject to the removal power of the President, continue to serve as a member until the member's successor has taken office, except that the member shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of the fixed term of office.".

#### SECTION 17. GIFT ACCEPTANCE AUTHORITY

Section 161 g. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) is amended --

(1) by inserting "(1)" after "g.", and

(2) by adding the following paragraph after paragraph (1) (as so designated):

"(2) accept, hold, utilize, sell, and administer gifts, bequests, or donations of real and personal property for the purpose of aiding or facilitating the work of the Nuclear Regulatory Commission. There is established in the Treasury a fund for use in accordance with the provisions of this paragraph. Any gift of money accepted pursuant to the authority granted in this paragraph, or the net proceeds from the sale of any property so accepted, shall be deposited in the fund. Such funds shall be held in trust by the Secretary of the Treasury, and are hereby appropriated, without fiscal year limitation, and shall be available to the Chairman of the Nuclear Regulatory Commission without further appropriations action. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or donation, if such terms are not inconsistent with this paragraph or any other applicable law. The Commission shall establish written criteria for determining whether to accept bequests, gifts, or donations of money or property pursuant to this paragraph. Such criteria shall take into consideration whether the acceptance of the bequest, gift, or donation would compromise the integrity of, or the

appearance of the integrity of, the Nuclear Regulatory Commission or any officer or employee of the Commission;”.

#### SECTION 18. PURCHASE OF PROMOTIONAL ITEMS FOR USE IN RECRUITMENT

Section 506(a) of the Energy and Water Development Appropriations Act, 1999 (42 U.S.C. 5852(a)), is amended by adding the following at the end of subsection (a):

“(9) purchase of promotional items of nominal value for use in recruitment of individuals for employment.”

#### SECTION 19. OFFICE LOCATION

Section 23 of the Atomic Energy Act of 1954 (42 U.S.C. 2033) is amended by striking “; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia”.



## SECTION ANALYSIS

### SECTION 2. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

The purpose of this amendment is to permit guards at NRC-licensed or certified facilities designated by the Commission, guards at any NRC-licensed or certified facility where there are special nuclear materials present, and guards that are engaged in transporting special nuclear materials, to carry weapons and to use them, where necessary to prevent sabotage of a facility designated by the Commission or to prevent theft of materials capable of being used for nuclear explosives. Guards at DOE facilities and DOE guards transporting special nuclear materials already possess this authority. The amendment would provide identical authority to guards at NRC-licensed or certified facilities to be designated by the Commission.

In circumstances defined by NRC regulations and guidelines, the amendment would also provide the possibility of shielding guards against prosecution by state authorities for discharge of firearms in the performance of official duties. This should help remove licensee guards' reluctance to use their weapons in defending facilities or transports containing special nuclear materials against attack.

### SECTION 3. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

The purpose of this amendment is to authorize the Nuclear Regulatory Commission to promulgate regulations that would prohibit a person who has not obtained prior authorization from carrying, transporting, or otherwise introducing or causing to be introduced any weapon, explosive, or other dangerous instrumentality into any facility, installation, or real property regulated by the Commission or subject to certification by the Commission. Violation of the

regulation would constitute a Federal crime punishable by a fine of up to \$5000, imprisonment for not more than one year, or both.

The Commission's implementing regulations would determine the scope of the prohibition. It is the Commission's intent to limit the applicability of the implementing regulations to nuclear facilities and materials that must be protected against theft or radiological sabotage.

#### SECTION 4. SABOTAGE OF NUCLEAR FACILITIES OR FUEL

The purpose of this amendment is to extend Federal criminal sanctions to sabotage or attempted sabotage of (1) production, utilization, or waste storage, treatment, disposal, uranium enrichment or nuclear fuel fabrication facilities during their construction, and (2) uranium enrichment and fuel fabrication facilities during their operations. With respect to sabotage during construction of facilities listed in clause (1), only acts that potentially affect the public health and safety during operation of the facility will be subject to Federal criminal sanctions.

#### SECTION 5. PERIOD OF COMBINED LICENSE

This amendment of section 103 c. of the Atomic Energy Act of 1954 would make clear that in the case of a combined construction and operating license issued under section 185 b. of the Act the initial duration of the license may be up to 40 years (as is true with respect to other licenses covered by section 103 c.), and that the term of the license would begin on the date on which the Commission finds, before operation of the facility, that the acceptance criteria required by section 185 b. have been met.

#### SECTION 6. ELIMINATION OF FOREIGN OWNERSHIP PROHIBITIONS

These amendments of section 103 d. and section 104 d. of the Atomic Energy Act of 1954 would eliminate the restrictions on foreign ownership of utilization facilities (power and research reactors). The amendments would not alter either the restrictions on foreign ownership of production facilities or the requirement that the Commission not authorize issuance of any license to a new owner if it finds that such ownership would be inimical to the common defense and security or to the health and safety of the public.

#### SECTION 7. ELIMINATION OF NRC ANTITRUST REVIEWS

The purpose of this amendment of section 105 of the Atomic Energy Act of 1954 is to eliminate the Commission's antitrust review authority with respect to pending or future applications for a license (including applications for a combined license or a license transfer) to construct or operate a utilization or production facility under section 103 or 104 b. of the Act. The amendment would preserve the Commission's authority to enforce antitrust conditions in licenses issued before this amendment became effective, and it would not affect the Commission's legal authority with respect to those conditions.

#### SECTION 8. ACTIONS RELATING TO SOURCE, BYPRODUCT AND SPECIAL NUCLEAR MATERIAL

The proposed amendment of section 121(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) would make it clear that the standards issued by the Commission and Agreement States govern cleanup of Atomic Energy Act material at facilities licensed by them, except in the rare case in which the NRC or the cognizant Agreement State invokes the application of CERCLA as necessary to effect adequate cleanup. This would eliminate dual regulation of such materials. The proposed

amendment of section 101(10)(K) of CERCLA would include in the definition of “federally permitted release” Atomic Energy Act material that is released in accordance with NRC regulations following termination of a license issued by the Commission or by an Agreement State, just as is the case with such releases under a current license issued pursuant to the Atomic Energy Act.

EPA would retain jurisdiction over segregable non-radioactive, hazardous material on the site.

#### SECTION 9. NRC AUTHORITY OVER NON-LICENSEES FOR DECOMMISSIONING FUNDING

This amendment would make clear that the Commission has authority to impose such requirements as it considers necessary to ensure that the Commission’s jurisdiction extends to any person, including a non-licensee, that retains control over decommissioning funds for a production or utilization facility licensed by the Commission.

#### SECTION 10. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY

The amendment of section 523 of title 11, United States Code, would exclude from discharge in a bankruptcy proceeding obligations to comply with NRC requirements governing decontamination of nuclear power reactors licensed by the Commission.

#### SECTION 11. ASSISTANCE TO STATES FOR REMEDIATION OF FORMERLY LICENSED SITES

This section would augment the Nuclear Regulatory Commission's authority to make grants to or enter into cooperative agreements with States for remediation of sites formerly licensed by the Commission or its predecessor, where the license was terminated by the Commission before the State became an Agreement State. These grants or cooperative agreements could include reimbursement of Agreement State remediation costs incurred prior to the award of the grant or cooperative agreement, including costs for reviewing documentation and conducting site surveys related to the need for remediation. A statutory limitation contained in the Atomic Energy Act or any other legislation on the amount available from funds appropriated for use by the NRC for grants to and cooperative agreements with States would not be applicable to assistance provided by NRC to States for the purposes authorized by this section.

#### SECTION 12. HEARINGS ON LICENSING URANIUM ENRICHMENT FACILITIES

The proposed amendment of section 193(b)(1) of the Atomic Energy Act of 1954 would improve the hearing process associated with NRC licensing of uranium enrichment facilities by eliminating the requirement for such a hearing to be "on the record". Elimination of the "on the record" requirement with respect to licensing of uranium enrichment facilities would provide the NRC with more flexibility in determining the appropriate hearing process in such proceedings.

### SECTION 13. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS

The proposed amendment of section 170A. of the Atomic Energy Act of 1954 would make it clear that the existence of a conflict of interest or potential conflict of interest does not bar the Commission from entering into a contract or other arrangement for work to be performed at a Department of Energy facility. The amendment would allow the Commission to enter into such a contract, even if a conflict of interest exists, so long as the Commission determines that the conflict of interest cannot be mitigated and that adequate justification exists to proceed without mitigation of the conflict of interest.

### SECTION 14. COST RECOVERY FROM GOVERNMENT AGENCIES

The purpose of this amendment is to authorize the Nuclear Regulatory Commission to assess and collect fees from other Federal agencies for services provided, such as licensing and inspection services, rather than recovering the costs through annual fees assessed to all licensees.

### SECTION 15. TRAINING IN CRITICAL SAFETY SKILLS

The purpose of this amendment is to give the Nuclear Regulatory Commission the authority to provide direct support to U.S. college and university students who are acquiring technical skills of which there are shortages and which the Commission needs in order to carry out its safety mission.

#### SECTION 16. CONTINUATION OF COMMISSIONER SERVICE

Subject to the removal power of the President, this amendment of section 201 of the Energy Reorganization Act of 1974 would allow a Commissioner to continue in office until whichever of the following occurs first: (a) his or her successor has taken office, or (b) the expiration of the next session of Congress subsequent to the expiration of the member's fixed term of office. The provision will enable the Commission to maintain a quorum for a significant period of time, even when no successor has been appointed for three Commissioners whose terms have expired.

#### SECTION 17. GIFT ACCEPTANCE AUTHORITY

This amendment of section 161 g. of the Atomic Energy Act of 1954 would authorize the Commission to accept gifts (e.g., donated library and training materials from outside sources), bequests, or devises of real and personal property. Any money received would be deposited in a separate fund in the United States Treasury and would be available to the Commission without further appropriations action and without fiscal year limitation. The Commission would establish written criteria for determining whether to accept such bequests, gifts, or donations.

#### SECTION 18. PURCHASE OF PROMOTIONAL ITEMS FOR USE IN RECRUITMENT

This amendment of section 506(a) of the Energy and Water Development Appropriations Act, 1999, would authorize the Commission to purchase items of nominal value to give as gifts to potential employees as part of NRC's recruitment efforts.

SECTION 19. OFFICE LOCATION

This amendment of section 23 of the Atomic Energy Act of 1954 would eliminate the requirement that the Commission maintain an office for the service of process and papers within the District of Columbia. Process would be served at the Commission's headquarters in Rockville, Maryland.



COMPARATIVE TEXT

SECTION 2.

The amended section 161 k. of the Atomic Energy Act of 1954 would read as follows:

"Sec. 161. General Provisions.

"In the performance of its function the Commission is authorized to --

\* \* \* \*

"k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize--

"(1) 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; and

"(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

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 or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) 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 a licensee or certificate holder of the Commission, or (2) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or (23) any provision of this chapter 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 and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;"

### SECTION 3.

The amended section 229 a. of the Atomic Energy Act of 1954 would read as follows:

"Sec. 229. Trespass Upon Commission Installations.

"a. The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing, or causing to be introduced, any dangerous 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 or subject to its licensing authority or to certification by the Commission under this Act or any other Act. Every such regulation of the Commission shall be posted conspicuously at the location involved."

#### SECTION 4.

The amended section 236 a. of the Atomic Energy Act of 1954 would read as follows:

"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, treatment or disposal facility licensed under this Act;

"(3) any nuclear fuel for ~~such~~ a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility; ~~or~~

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; ~~or~~

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or nuclear fuel fabrication facility subject to

licensing or certification under this Act during its construction where the  
destruction or damage caused or attempted to be caused could affect  
public health and safety during the operation of the facility;

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

## SECTION 5.

The amended section 103 c. of the Atomic Energy Act of 1954 would read as follows:

"Sec. 103. Commercial Licenses.

\* \* \* \*

"c. 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. In the case of a  
combined construction and operating license issued under section 185 b., the initial  
duration of the license may not exceed 40 years from the date on which the Commission  
finds, prior to operation of the facility, that the acceptance criteria required by section  
185 b. have been met."

## SECTION 6.

(1) The amended section 103 d. of the Atomic Energy Act of 1954 would read as  
follows:

Sec. 103. Commercial Licenses.

\* \* \* \*

“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, or except under the provisions of section 109. No license for a production facility 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.”

(2) The amended section 104 d. of the Atomic Energy Act of 1954 would read as follows:

Sec. 104. Medical Therapy And 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 or except under the provisions of section 109. No license for a production facility 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 the health and safety of the public.”

## SECTION 7.

The amended section 105 of the Atomic Energy Act of 1954 would read as follows:

“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: 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’, ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October fifteen, nineteen hundred and fourteen’, 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’.~~ Nothing in this chapter shall be construed to modify or supersede the ‘antitrust laws’, as that term is defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), or the application of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section applies to unfair methods of competition. 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~~ the laws covered by the first sentence of this subsection, to have violated any 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~~ the laws covered by the first sentence of subsection a.

“c. (1) \* \* \* \*

\* \* \* \*

(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 105a:~~ the laws covered by the first sentence of subsection a.

\* \* \* \*

“(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 105a:~~ the laws covered by the first sentence of subsection a.

\* \* \* \*

“d. Subsection c. shall not apply to an application for a license to construct or operate a utilization facility under section 103 or 104 b., if the application is pending on or filed after the effective date of this subsection. This subsection shall not affect the Commission’s authority to enforce antitrust conditions included in licenses issued under section 103 or 104 b. before the effective date of this subsection.”

## SECTION 8.

(1) The amended section 121(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.) would read as follows:

### SEC. 121. CLEANUP STANDARDS.

\* \* \* \*

“(b) GENERAL RULES.--

\* \* \* \*

“(3) No authority of this Act may be used to commence an administrative or judicial action with respect to source, special nuclear, or byproduct material that is subject to decontamination regulations issued by the Nuclear Regulatory Commission for license termination under the Atomic Energy Act of 1954, or by a State that has entered into an agreement pursuant to section 274 b. of that Act, unless such action is requested by the Nuclear Regulatory Commission or, in the case of such material under the jurisdiction of a State that has entered into an agreement pursuant to section 274 b. of that Act, the Governor of the State.”

(2) The amended section 101(10)(K) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.) would read as follows:

“SEC. 101. For purposes of this title--



\* \* \* \*

“(10) The term “federally permitted release” means \* \* \* \*

“(K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954, or any release of such material in accordance with regulations of the Nuclear Regulatory Commission following termination of a license issued by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or by a State acting under an Agreement entered into pursuant to section 274 b. of that Act.”

## SECTION 9.

The amended section 161 i. of the Atomic Energy Act of 1954 would read as follows:

“Sec. 161. General Provisions.

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

\* \* \* \*

“i. prescribe such regulations or orders as it may deem necessary \* \* \* \*  
~~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, and  
(4) to establish any requirement that the Commission considers necessary to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under this Act, including standards and restrictions governing the activities of any person, whether or not a licensee under this Act, pertaining to the decommissioning funding for such facilities.”

SECTION 10.

The amended section 523 of title 11, United States Code, would read as follows:

§ 523. Exceptions to discharge

\* \* \* \*

“(f) Any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee or former licensee to comply with regulations or orders of the Nuclear Regulatory Commission governing the decontamination and decommissioning of nuclear power reactors licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133 AND 2134(b)) may not be used to satisfy any claims of creditors, other than claims resulting from activities undertaken to satisfy such responsibility. Regardless whether incurred before or after a petition for bankruptcy has been filed or a discharge has been granted under this title, obligations of licensees, former licensees, or any other person to use such funds or other assets to satisfy such an order or regulation shall be given priority and may not be rejected, avoided, or discharged in any proceeding under title 11, or in any liquidation, reorganization, receivership , or other insolvency proceeding under State or Federal law.”

SECTION 11.

(1) The amended section 274 of the Atomic Energy Act of 1954 would read as follows:

“Sec. 274. Cooperation With States.

\* \* \* \*

“p. The Commission is authorized to make grants to, and enter into cooperative agreements with, States that have entered into an agreement under subsection b. to

assist such States in remediation of sites containing materials covered by the agreement, where ownership or possession of the material or activities involving such material was licensed by, and the license was terminated by, the Commission before the agreement became effective. Such a grant or cooperative agreement may include reimbursement of State costs incurred in connection with remediation of a site where the costs were incurred for work completed before the Commission approved the grant or cooperative agreement."

**(2) [Using free-standing language, this section also provides that any limitation on the amount available for NRC grants to and cooperative agreements with States shall not apply to assistance to Agreement States under section 274 p.]**

## SECTION 12.

The amended section 193(b)(1) of the Atomic Energy Act of 1954 would read as follows:

Sec. 193 Licensing of Uranium Enrichment Facilities.

\* \* \* \*

"(b) Adjudicatory Hearings.--

"(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."

## SECTION 13.

The amended subsection b. of section 170A. of the Atomic Energy Act of 1954 would read as follows:

\* \* \* \*

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

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

“(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict; provided that if the Commission determines that a conflict of interest exists with respect to a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, that the conflict of interest cannot be mitigated, and that adequate justification exists to proceed without mitigation of the conflict of interest, the Commission may enter into such contract, agreement, or arrangement.”

#### SECTION 14.

The amended section 161 w. of the Atomic Energy Act of 1954 would read as follows:

“Sec. 161. General Provisions

“In the performance of its function the Commission is authorized to--

\* \* \* \*

“w. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy

pursuant to section 103 or 104b, ~~or which operates any facility regulated or certified under section 1701 or 1702~~; any fee, charge, or price which it may require, in accordance with the provisions of section ~~483a~~ 9701 of title 31 of the United States Code or any other law, of applicants for, or holders of, such licenses or certificates; and commencing on October 1, 2002, prescribe and collect from any other Government agency, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of title 31 of the United States Code or any other law."

#### SECTION 15.

The amended section 161 of the Atomic Energy Act of 1954 would read as follows:

"Sec. 161. General Provisions.

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

\* \* \* \*

"y. provide fellowships, scholarships, and other support to students in departments and programs at colleges and universities in the United States that provide training in technical skills that are critical to the safety functions of the Commission and in short supply."

#### SECTION 16.

The amended section 201(c) of the Energy Reorganization Act of 1974 would read as follows:

Sec. 201. ESTABLISHMENT AND TRANSFERS

\* \* \* \*

"(c)(1) 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.

"(2) A member of the Commission whose term of office has expired may, subject to the removal power of the President, continue to serve as a member until the member's successor has taken office, except that he shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of the fixed term of office."

## SECTION 17.

The amended section 161 g. of the Atomic Energy Act of 1954 would read as follows:

"Sec. 161. General Provisions.

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

\* \* \* \*

"g. (1) acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;\_

"(2) accept, hold, utilize, sell, and administer gifts, bequests, or donations of real and personal property for the purpose of aiding or facilitating the work of the Nuclear Regulatory Commission. There is established in the Treasury a fund for use in accordance with the provisions of this paragraph. Any gift of money accepted pursuant to the authority granted in this paragraph, or the net proceeds from the sale of any property so accepted, shall be deposited in the fund. Such funds shall be held in trust by the Secretary of the Treasury, and are hereby appropriated, without fiscal year limitation, and shall be available to the Chairman of the Nuclear Regulatory Commission without further appropriations action. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or donation, if such terms are not inconsistent with this paragraph or any other applicable law. The Commission shall establish written criteria for determining whether to accept bequests, gifts, or donations of money or property pursuant to this paragraph. Such criteria shall take into consideration whether the acceptance of the bequest or gift would compromise the integrity of, or the appearance of the integrity of, the Nuclear Regulatory Commission or any officer or employee of the Commission;"

#### SECTION 18.

The amended section 506(a) of the Energy and Water Development Appropriations Act, 1999 (42 U.S.C. 5852(a)), would read as follows:

"Sec. 506. (a) Funds appropriated for 'Nuclear Regulatory Commission—Salaries and Expenses' shall be available to the Commission for the following additional purposes:

\* \* \* \*

“(9) purchase of promotional items of nominal value for use in recruitment of individuals for employment.”

SECTION 19.

The amended section 23 of the Atomic Energy Act of 1954 would read as follows:

"Sec. 23. Office.

“The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; ~~however, the Commission shall maintain an office for the service of process and papers within the District of Columbia.~~”



LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

SECTION 2. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

Section 161 k. of the Atomic Energy Act permits employees of the Department of Energy (DOE) and its contractors and subcontractors engaged in the protection of property located at nuclear facilities or being transported to or from such facilities to carry arms, make arrests, and use force as DOE deems necessary in the interests of the common defense and security. As a result of this section, DOE guards may be shielded from State criminal prosecution for actions taken during the performance of their official duties.

In contrast, State law governs the use of weapons by guards at NRC-licensed facilities. In some States, guards at NRC-licensed facilities may use weapons only to protect their own lives or the lives of others. Even when the use of a weapon meets the highest standard, these guards, unlike the guards at DOE facilities and DOE guards transporting special nuclear materials, cannot be shielded from State criminal prosecution for actions taken during the performance of official duties. The purpose of this legislation is to give guards at NRC-licensed or certified facilities designated by the Commission equivalent authority to that provided for guards at DOE facilities.

The proposed amendment would enhance national security by eliminating several weaknesses under the current safeguards and security regime. For example, licensee guards, knowing that the Federal Government does not have the potential for shielding them from State criminal prosecution if they use their weapons, may hesitate to act to prevent an adversary's attack against a nuclear power plant, or theft or sabotage of weapons grade material, when force is required to stop the attack or theft. Additionally, without being able to use appropriate force, licensee guards may hesitate to expose themselves to danger. The facilities to which the

NRC seeks to extend section 161 k. protection are entities that currently possess or in the future will possess special nuclear materials, including nuclear power plants. The Commission is particularly concerned about formula quantities of strategic special nuclear materials that could be used in an improvised nuclear weapon. The specific facilities that will be covered will be separately designated by the Commission following the enactment of this legislation.

The proposed amendment would also fulfill the national goal, first expressed in 1974, of maintaining fully adequate and essentially equivalent safeguards systems for weapons-usable materials in the licensed and license-exempt sectors. This is one area in which the NRC and DOE safeguards lack comparability.

### SECTION 3. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

There have been a number of reported incidents where persons without authorization have brought firearms into protected areas of NRC-regulated sites. The Commission's current authority to prevent unauthorized weapons or other dangerous instruments to enter the site is limited. Although the NRC may impose sanctions against the licensee for violations of its security regulations, there is no federal law permitting the imposition of criminal sanctions against the person responsible for bringing the weapon or other dangerous instrument to the site.

Because of the potential danger to the public health and safety from nuclear theft or radiological sabotage that could result from the unauthorized introduction of weapons or other dangerous instruments to NRC regulated sites, the Commission is proposing that legislation be enacted permitting it to promulgate regulations prohibiting the unauthorized introduction of weapons into NRC regulated sites. Violation of the regulations would constitute a Federal crime, which (under section 229 c. of the Atomic Energy Act) could result in a fine or imprisonment, or

both. Such legislation would assist our licensees in their efforts to safeguard licensed nuclear facilities and materials that must be protected against nuclear theft or radiological sabotage.

Facilities subject to certification by the Commission have been added to the provision. This refers principally to the U.S. Enrichment Corporation.

#### SECTION 4. SABOTAGE OF NUCLEAR FACILITIES OR FUEL

The proposed amendment would modify Section 236 of the Atomic Energy Act of 1954 to provide criminal sanctions for sabotage or attempted sabotage of a production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or fuel fabrication facility, during its construction where the action could affect public health and safety during the operation of the facility. The amendment would also extend section 236 coverage to all fuel fabrication facilities licensed or certified by the Commission.

Section 236, which makes sabotage or attempted sabotage of production or utilization facilities a Federal crime, was enacted in 1980, in response to a sabotage incident at the Surry nuclear reactor in Virginia. While the language of the present Section 236 could arguably be read to include plants which have been granted construction permits by the Commission, the legislative history strongly suggests that sabotage during the construction phase is not covered by the section.

The need for this legislation is illustrated by an incident which was discovered in 1984 at a plant under construction. There a bag containing some parts was found inside a pipe which had been welded closed after it had undergone several pre-welding checks. While this incident was determined to be negligence rather than sabotage, it demonstrated that an act of sabotage during construction could potentially have an adverse effect on public health and safety.

Sabotage during the later stages of construction, particularly during pre-operational testing, is of

special concern because of the possibility that it might not be discovered prior to operation since most of the inspections which could have led to the discovery of the sabotage would have already taken place. Thus, the Commission believes that enacting criminal sanctions to help deter such sabotage is warranted to protect more adequately the public health and safety.

#### SECTION 5. PERIOD OF COMBINED LICENSE

Historically, under the Atomic Energy Act of 1954, the Commission licensed nuclear power plants in a two-step process, i.e., a construction permit was issued first, and an operating license followed. Section 103 c. of the Atomic Energy Act of 1954 provides a statutory duration limitation of 40 years for an operating license. The 40-year period commences when the operating license is issued by the Commission.

After years of experience with the two-step process, it became clear that a one-step combined license would lend itself to a more efficient licensing process, and the Commission published regulations authorizing the issuance of such licenses in 1989. As the result of a court challenge to those regulations, the Congress made clear, in the Energy Policy Act of 1992, that the Commission has the authority to issue combined licenses. This was done by adding a new subsection b. to section 185 of the Atomic Energy Act, directing the Commission to issue a combined construction and operating license for a production or utilization facility if, after holding a public hearing, the Commission determines that the application contains sufficient information to support the issuance and there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the Act, and NRC rules and regulations. Under section 185 b., the Commission is required to identify within the license the inspections, tests, and analyses that the licensee must perform, and the acceptance criteria that, if met, will provide

reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the Act and NRC rules and regulations. Following issuance of the license, the Commission must ensure that the inspections, tests, and analyses identified in the license are performed and, prior to operation of the facility, the Commission must make a finding that the prescribed acceptance criteria are met.

The amendment did not make any express provision regarding the date on which the 40-year period of operation under a combined license would commence. Since under the process that involves a separate construction permit and operating license, the operating license for a facility becomes effective immediately upon issuance of such a license, the duration of operation of the facility can be a full 40 years. The potential duration of operations under a combined license should be no less, and achieving that goal is the purpose of the proposed amendment.

Therefore, the proposed amendment would make clear that the term of operation of a combined license commences when the Commission finds that the acceptance criteria prescribed in the license have been met. This approach is most consistent with the original Congressional intent in providing for a combined license, that is, to make the licensing process more efficient and expeditious.

## SECTION 6. ELIMINATION OF FOREIGN OWNERSHIP PROHIBITIONS

Sections 103 d. and 104 d. of the Atomic Energy Act prohibit the Commission from issuing a license for construction or operation of utilization facilities (power and research reactors) to an alien or any 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.” The proposed amendment would remove this unqualified bar on foreign ownership. This change

would not alter either the restrictions on foreign ownership of production facilities or the requirement that the Commission not authorize issuance of any license to a new owner if it finds that such ownership would be inimical to the common defense and security or to the health and safety of the public.

The restriction on foreign ownership of utilization facilities dates back to the original enactment of the Atomic Energy Act of 1954 (a somewhat similar provision was contained in the Atomic Energy Act of 1946), but at that time commercial development of nuclear power was in its incipient stages. Today, the situation is quite different. Commercial use of nuclear power is common in many countries, and the underlying technology is widely known and no longer requires the protection that may have seemed appropriate 45 years ago. Such a restriction is virtually non-existent with respect to other energy sources.

Further, since the amendment would make no change in the requirement that the Commission not authorize issuance of any license to a new owner if it finds that such ownership would be inimical to the common defense and security or to the health and safety of the public, there would be ample protection from takeovers by unacceptable foreign sources even with the elimination of the restriction on foreign ownership.

## SECTION 7. ELIMINATION OF NRC ANTITRUST REVIEWS

Section 105 c. of the Atomic Energy Act requires antitrust reviews by the NRC in connection with applications for a Commission license to construct or operate a commercial utilization or production facility. At the time the Commission was given this authority in 1970, the Congress believed that the Commission would be in a unique position to ensure that the licensed activities of nuclear utilities could not be used to create or maintain a situation

inconsistent with the antitrust laws. However, the situation has changed considerably since that time.

NRC's antitrust reviews are now duplicative of other agencies' efforts. In 1992, the Congress passed the Energy Policy Act, which amended the Federal Power Act to substantially enlarge the authority of the Federal Energy Regulatory Commission (FERC) to prevent and mitigate potential and existing abuses of market power by electric utilities, including nuclear utilities. As a result, FERC now possesses statutory authority overlapping that of the Commission under section 105 c. of the Atomic Energy Act to prevent and mitigate potential and existing anticompetitive behavior by electric utilities that utilize nuclear power plants. In addition, as reflected in section 105 a. of the Atomic Energy Act, the Attorney General possesses broad authority to enforce nuclear utility compliance with the antitrust laws. Thus, retaining the Commission's antitrust authority would result in duplicative regulation, which is wasteful of the NRC's resources and contrary to the objective of streamlining government.

The proposed amendment would eliminate NRC antitrust reviews of applications for a license (including applications for a combined license or a license transfer) that are pending on, or that are filed after, the effective date of the amendment. It would leave intact existing antitrust license conditions and the Commission's authority to enforce these existing conditions or otherwise take actions with respect to them. At the same time, the amendment would not relieve any person from compliance with the antitrust laws, and would not change the requirement that the Commission report to the Attorney General any information it may have with respect to violations of these laws. Thus, passage of the proposed amendment would not affect in any meaningful way the enforcement of antitrust laws with respect to NRC-licensed activities.

SECTION 8. ACTIONS RELATING TO SOURCE, BYPRODUCT AND  
SPECIAL NUCLEAR MATERIAL

The proposed amendment would establish that NRC's cleanup standards are adequately protective for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, and that those standards govern the cleanup of sites and material licensed by the Commission, or by a State that has entered into an agreement pursuant to section 274 b. of the Atomic Energy Act. This amendment is offered for the consideration of the Congress, if it chooses not to await the completion of discussions between the NRC and the Environmental Protection Agency (EPA) regarding a Memorandum of Understanding (MOU) concerning remediation of sites under NRC regulatory authority. However, at the end of the previous MOU negotiations between NRC and EPA, EPA informed NRC that there were statutory and regulatory impediments to EPA's granting finality to any NRC license termination decision. If EPA takes a different view of this matter, the proposed amendment may not be required.

The NRC has, by regulation, established the radiological criteria for the termination of licenses that fall under the regulatory authority of the Commission. These regulations provide a clear and consistent basis for determining the adequacy of remediation of residual radioactivity resulting from the possession of Atomic Energy Act material. Creating an additional cleanup standard, whether by Federal statute or by regulation, may make it extremely difficult for the cleanup of a site containing residual radioactivity to reach finality, and the potential cleanup liability of parties who have been associated with an affected site may be viewed as being limitless in duration and amount.

The proposed amendment has implications for States that have entered into an agreement with the Commission under section 274 of the Atomic Energy Act, which provides a program under which an interested State may enter into an agreement with the Commission



(thereby becoming an Agreement State) for the Commission to discontinue its authority over certain radioactive material within the State. An Agreement State may undertake to regulate the termination of Atomic Energy Act material licenses, requiring it to issue radiological criteria for the termination of licenses. The State's criteria must be at least as stringent as the Commission's in order for the State program to be found compatible, and may be more stringent than the Commission's. (The Commission retains continuing responsibility to review the State's regulatory program to ensure, among other things, that the program is adequate to protect the public health and safety and is compatible with the Commission's program.) The proposed amendment would avoid the development of conflicts between the standards prescribed by Agreement States and additional cleanup standard created by Federal statute or regulation.

While the proposed amendment would make it clear that the standards issued by the Commission and Agreement States would govern cleanup of Atomic Energy Act material at licensed facilities, the Commission or an Agreement State could invoke the application of CERCLA in circumstances where it is necessary to effect adequate cleanup. That could conceivably be the case in rare cases where the regulatory efforts of the NRC or an Agreement State have not accomplished results that are satisfactory to the NRC or the Agreement State.

The proposed amendment of section 101(10)(K) is applicable to the notification and liability provisions of sections 102 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act. The amendment would make it clear that the exceptions to these provisions that apply to Federally permitted releases of Atomic Energy Act material by a licensee also apply to a release of Atomic Energy Act material after a license has been terminated. This would ensure that releases presenting the same risk receive the same treatment under the notification and liability requirements of the Act.

## SECTION 9. NRC AUTHORITY OVER NON-LICENSEES FOR DECOMMISSIONING FUNDING

Due to utility deregulation and restructuring, the Nuclear Regulatory Commission has received an increasing number of applications for the transfer of ownership of commercial nuclear power reactors. It has been the NRC's experience that, because of uncertainties regarding application of current Internal Revenue Code provisions, license transfer applicants may seek to retain control of accumulated decommissioning funds without remaining owners, operators, or licensees of a nuclear power facility. Legislative clarification that the NRC's jurisdiction extends to non-licensees would assure that accumulated decommissioning funds will be available for their intended purpose, regardless of who controls the funds, and would greatly reduce the administrative complexity of license transfers.

Section 161 i. of the Atomic Energy Act of 1954 gives the NRC broad authority to prescribe regulations or orders to govern activities authorized under the Act. While section 161 i. does not expressly limit the NRC's authority to persons that are NRC licensees, an explicit statutory recognition of the NRC's authority over the activities of non-licensees with respect to decommissioning funding would remove any ambiguity in the situation, thus eliminating the potential of costly and burdensome litigation with respect to the NRC's authority over non-licensees to ensure availability of funds for decommissioning.

The amendment would make clear that, for the purpose of ensuring that established decommissioning funds will be available and used for decommissioning, the NRC has direct authority under section 161 i. to regulate the activities with respect to decommissioning funds of any person in control of decommissioning funds for a commercial utilization or production facility. By providing an unequivocal statutory basis for asserting regulatory control over non-licensees who retain control of the decommissioning fund, the amendment would provide greater

assurance, in a deregulated environment, that the NRC can effectively carry out the objective that decommissioning is done in a safe and efficient manner once a nuclear facility has reached the end of its operating life.

#### SECTION 10. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY

Restructuring of the electric utility industry could potentially lead to financial instability for some nuclear plant licensees. One of the basic concerns of the Nuclear Regulatory Commission is ensuring that its power reactor licensees have adequate recourse to funds to decommission their nuclear power plants safely. To meet these concerns, the Bankruptcy Act should be amended to require that decommissioning costs are given priority and are a nondischargeable claim. This would also ensure that decommissioning funds would be used for that purpose rather than to satisfy other debts of the bankrupt entity. The proposed amendment would assure that result in any bankruptcy, liquidation, reorganization, receivership, or other insolvency proceeding under State or Federal law.

#### SECTION 11. ASSISTANCE TO STATES FOR REMEDIATION OF FORMERLY LICENSED SITES

Section 274 b. of the Atomic Energy Act of 1954 authorizes the Nuclear Regulatory Commission to enter into agreements with States whereby the NRC's regulatory authority over certain radioactive material within the State is discontinued and regulatory jurisdiction over the material is assumed by the State. A number of these Agreement States contain sites where remediation had taken place and the license had been terminated by the NRC or the Atomic Energy Commission before the State assumed jurisdiction. Later investigation found that in a number of cases the sites need further remediation.

Some of the Agreement States containing such sites did not anticipate at the time they entered into their Agreement with the NRC that it would become their responsibility to undertake remediation-related activities with respect to those sites, and consider this an inequitable burden. In addition, the expense involved has prevented some States from undertaking or completing the activities. (Though the cost of remediation may be recoverable from responsible parties, it is not always possible to identify those parties or the parties may not have adequate funds.)

It is important to remediate these formerly licensed sites. The NRC has established a program for providing financial assistance for that purpose to Agreement States to encourage them to undertake remediation-related activities at such sites. The proposed amendment is needed to provide grants where a State has already undertaken such activities and needs financial assistance in meeting the associated costs. Without express authority to do so, the NRC may not provide funds for State expenses incurred before a grant was made or a cooperative agreement entered into to provide such assistance. This amendment would solve the problem by explicitly providing the NRC with authority to reimburse Agreement States for costs that were incurred for work completed before the Commission approved the grant or cooperative agreement. One State has requested the NRC to provide grant money for work already undertaken.

## SECTION 12. HEARINGS ON LICENSING URANIUM ENRICHMENT FACILITIES

The proposed amendment would improve the hearing process associated with NRC licensing of uranium enrichment facilities by eliminating the requirement for such a hearing to be “on the record.” In fact, the only statutory requirement for “on the record” hearing in the Atomic Energy Act is with respect to licensing of a uranium enrichment facility. Hearings that are required to be “on the record” must conform to the formalities prescribed by sections 554, 556,

and 557 of the Administrative Procedure Act. Such proceedings can be inefficient, protracted, and costly. Not infrequently, they are associated with unwarranted delays in the proceedings, and they reduce the ability of the presiding officer to control the proceedings.

Elimination of the “on the record” requirement with respect to licensing of uranium enrichment facilities would provide the NRC with more flexibility in determining the appropriate hearing process in such proceedings. The Commission has adopted both formal hearing procedures (10 C.F.R. Part 2, Subpart G, Rules of General Applicability) and informal hearing procedures (10 C.F.R. Part 2, Subpart L, Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings). Informal hearings are not without safeguards for the parties, who still have an opportunity to present their views, but they can be streamlined to be more efficient and expeditious than formal hearings. The process for licensing of uranium enrichment facilities may be better served by informal hearing procedures, but such procedures cannot be adopted so long as the “on the record” requirement remains in the statute.

### SECTION 13. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS

Section 170A. of the Atomic Energy Act of 1954 generally prohibits the Commission from entering into a contract, agreement, or other arrangement for the conduct of research, development, or evaluation activities with any person who has a conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of activities or relationships with other persons. An exception to application of this bar can be made only under extraordinary circumstances.

Department of Energy laboratories have expertise that may be of considerable value in an area with respect to which the NRC must seek external technical assistance. In fact, in

some instances, expertise of that caliber is not available from any source that is not subject to the restrictions of section 170A. Although a drafting technicality in the language of the Atomic Energy Act regarding the definition of the word “person” makes the application of section 170A. to Department of Energy facilities somewhat unclear, the NRC does address conflict of interest or potential conflict of interest considerations when placing work with Department of Energy laboratories.

The amendment of section 170A. would make it clear that the existence of a conflict of interest does not bar the Commission from entering into a contract, agreement, or other arrangement for work to be performed at such a facility. However, if the Commission determines that such a conflict of interest does exist, it would be required to take appropriate actions to mitigate the conflict to the extent feasible. If it is not feasible to mitigate the conflict, the NRC could place the work with the DOE laboratory, if the Commission determines that, consistent with the agency’s mission to protect public health and safety, the environment and common defense and security, it is in the best interests of the United States to do so.

#### SECTION 14. COST RECOVERY FROM GOVERNMENT AGENCIES

Under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the NRC is not authorized to charge fees to other Federal agencies for licensing and inspection services absent explicit legislation. The NRC currently possesses such authority with respect to the Tennessee Valley Authority, but does not have such authority with respect to any other Federal agency. The proposed amendment would permit the NRC to assess and collect fees from other Federal agencies for these services commencing on October 1, 2002, rather than recovering the costs through annual fees assessed to all licensees. This would make the NRC fee schedules more equitable.

The reference to sections 1701 and 1702 of the Atomic Energy Act would be deleted as obsolete because of the privatization of the United States Enrichment Corporation.

#### SECTION 15. TRAINING IN CRITICAL SAFETY SKILLS

A recent blue-ribbon engineering panel reporting to the Department of Energy has identified a significant decline in the number of nuclear-related academic programs. Moreover, many universities are contemplating the shut-down of research reactors and limiting the opportunities for students and researchers. Both the nuclear power industry and the Nuclear Regulatory Commission depend on these academic programs as sources of skilled employees and capable research. Congress could help to reverse the downward trend in these programs by funding academic fellowships to attract engineering students, by sustaining important research facilities, and by enabling the NRC to establish a training program to address shortages of individuals with critical safety skills. The NRC does not currently have authority to provide direct support to students who are not already employees of the agency. The new subsection would give the agency that authority.

#### SECTION 16. CONTINUATION OF COMMISSIONER SERVICE

Section 201 of the Energy Reorganization Act provides for the establishment of the Nuclear Regulatory Commission as an independent regulatory agency composed of five members who are appointed by the President, by and with the advice and consent of the Senate, for a term of five years. A quorum for the transaction of business by Commission members consists of three members. There is no provision in the Act for the conduct of business by Commission members in the situation where the Commission consists of less than three members.

At times, this has left the Commission without a quorum. This occurred most recently during the period July 1, 1995 to February 14, 1996, when only two Commissioners were in place at the Nuclear Regulatory Commission. While the agency was able to conduct business during this period, the situation is awkward and it is contrary to the legislative determination that the agency should be headed by a collegial body. By way of contrast, most independent agencies' organic legislation contains a carry-over service provision that usually has the effect of permitting the continuation of a quorum, even when there is a hiatus in time between the termination of members' appointment periods and their reappointment or the appointment of new members.

Though the amendment of section 201 to permit members whose term of office has been completed to serve for a limited period would not ensure a quorum, it would have that effect in most instances. It has been the experience of the agency that the situation of lack of a quorum usually results from the inability to have successor Commissioners appointed immediately upon the expiration of the prior Commissioners' terms. The problem would be solved in most instances by a provision that would allow Commissioners to continue to serve until (a) their successors have taken office, or (b) if earlier, the expiration of the next session of Congress subsequent to the expiration of the fixed term of office of the Commissioner. A holdover member could be removed at the President's discretion.

#### SECTION 17. GIFT ACCEPTANCE AUTHORITY

From time-to-time, various non-Governmental sources have offered the Nuclear Regulatory Commission gifts of personal property that would facilitate the work of the Commission. Such offers have included, for example, provision of expensive technical publications dealing with nuclear power plant technology; provision of specialized training for



NRC employees; provision of nuclear power plant equipment samples for the purpose of educating NRC employees about their properties and uses; provision of electronic equipment to facilitate exchange of information with non-Governmental parties who deal with the NRC. In some cases, the donor places only a modest value on the property offered, but in others the value placed on the property is high.

The acceptance of these types of offers can be of considerable benefit to the Commission. However, the Atomic Energy Act does not expressly authorize the Nuclear Regulatory Commission to accept gifts of property. This is in contrast to the broad spectrum of Federal agencies that have such statutory authority, including independent regulatory agencies such as the Federal Communications Commission and the Consumer Products Safety Commission. A provision that would authorize the Nuclear Regulatory Commission to accept gifts would be useful, and could provide modest savings to taxpayers.

#### SECTION 18. PURCHASE OF PROMOTIONAL ITEMS FOR USE IN RECRUITMENT

As part of its effort to hire new personnel with the knowledge, skills and abilities upon which the NRC is dependent, the NRC participates in job fairs, conducts interviews of likely candidates at universities, and carries on other similar recruitment efforts. It is not unusual for agencies to provide potential employees with gifts of nominal value (e.g., a pen inscribed with the name of the agency) in such circumstances, both as an aid to memory and for the good will that such gifts demonstrate. However, the Comptroller General has ruled that an agency may not use appropriated funds to purchase promotional gifts for recruitment purposes, unless it has received explicit authorization to use its funds for that purpose. The Commission does not have such authority. Given the Commission's pressing need to strengthen its recruitment efforts,

authorizing the Commission to use its appropriated funds to purchase items of nominal value to attract potential employees would be of assistance to the agency.

#### SECTION 19. OFFICE LOCATION

Section 23 of the Atomic Energy Act now requires the Nuclear Regulatory Commission to "maintain an office for the service of process and papers within the District of Columbia." This requirement was enacted before the Commission's consolidation in Rockville, Maryland. Now, requiring maintenance of a District of Columbia office for this purpose has little point. Commission efficiency could be enhanced if there were no such statutory requirement.