



DEPARTMENT OF ENERGY NATIONAL  
NUCLEAR SECURITY ADMINISTRATION  
IMPLEMENTATION PLAN:  
*AN ASSESSMENT*

by the House Armed Services Committee  
Special Panel on Department of Energy Reorganization

February 2000



# EXECUTIVE SUMMARY

Congress passed a substantial reorganization of the Department of Energy (DOE) in Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (*P.L. 106-65*). The President signed the measure into law on October 5, 1999. The legislation creates a new semi-autonomous agency within DOE, the National Nuclear Security Administration (NNSA, or, simply, the Administration), with responsibility for the nation's nuclear weapons, non-proliferation, and naval reactors programs. Congress took this action in response to a major espionage scandal, decades of documented mismanagement at the Department, and numerous reports and studies that detailed weak management, confused lines of authority, and lack of mission focus within the Department's military nuclear programs. One of those studies conducted by the President's Foreign Intelligence Advisory Board (PFIAB) contended that DOE is a "dysfunctional bureaucracy...incapable of reforming itself." The reorganization in Title 32 resembles one of the structures recommended in the PFIAB report.

Representative Floyd D. Spence (R-S.C), the Chairman of the House Armed Services Committee, created the Special Oversight

Panel on DOE Reorganization to work with the Administration on the timely and effective implementation of the DOE reorganization mandated by the new law. The Panel is chaired by Rep. Mac Thornberry (R-TX), and Rep. Ellen Tauscher (D-CA) serves as ranking member. The panel is currently conducting oversight activities including

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**“The Panel has a number of concerns with the implementation plan.”**

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visits to the nuclear weapons labs and production facilities and a review of the plan to implement the new law recently prepared by DOE.

Recently, the Panel has been encouraged by some preliminary and necessary implementation activities, including DOE's issu-

ance of the implementation plan and the appointment of a senior search committee to identify a viable nominee to serve as NNSA Administrator.

The Panel also has a number of concerns with the implementation plan. Key among them is that the plan overemphasizes DOE control over the NNSA, undermines the semi-autonomy of the NNSA, and would violate key provisions of Title 32. It would place DOE personnel and officers in key NNSA positions by "dual-hatting" them. The plan would also retain DOE management and budget processes, organizational structures, and lines of authority that the Panel believes to be flawed and that Title 32 was intended to reform. The plan also suffers from a disappointing lack of detail. Further, the implementation plan provides no guidance concerning budget reforms required by Title 32 or use of tools provided in Title 32 to the NNSA and DOE to restructure the workforce.

The Panel will hold hearings in the near future and looks forward to working with the Department to ensure full compliance with the law and to seek additional means of effectively protecting national security interests.



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# BACKGROUND

## Departmental Security and Management Problems

Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65) creates a semi-autonomous agency within the Department of Energy (DOE) to provide management and oversight of the nation's nuclear weapons, non-proliferation, and naval reactors programs.

Congress passed this restructuring to correct longstanding and long-identified management shortcomings at DOE that have resulted in serious damage to U.S. national security. The recent exposure of serious deficiencies in the protection of highly classified U.S. nuclear weapons design data is just one of the manifestations of the management difficulties.

The Department's security problems were discussed at length in the report of the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, headed by Reps. Chris Cox (R-CA) and Norm Dicks (D-WA). The Cox Committee concluded in its unclassified report that China "has stolen design information on the United States' most advanced thermonuclear weapons designs." The thefts, according to the report, compromised the designs of all nuclear weapons currently deployed in the U.S. arsenal as well as the enhanced radiation weapon (commonly referred to as the "neutron bomb"). While the alleged thefts were reported to have started in the 1970s, the Cox committee noted that the espionage almost certainly continued well into the 1990s. A comprehensive assessment performed by a Central Intelligence Agency panel of the intelligence damage concluded that the Chinese espionage "had probably accelerated its program to develop future nuclear weapons."

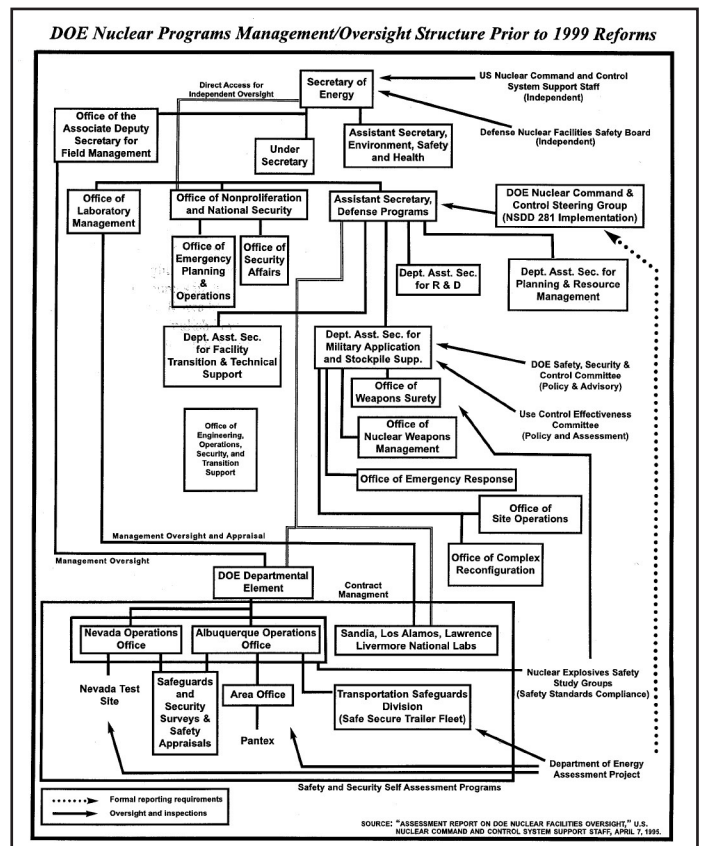
In response to the Cox report and continuing security problems at DOE, in March of 1999, the President ordered the President's Foreign Intelligence Advisory Board (PFIAB) to review the Department's security and counterintelligence capabilities and to make recommendations for improve-

ments. The PFIAB report, entitled "Science at its Best, Security at its Worst," was issued in June 1999. It maintained that security problems had persisted for over 20 years at DOE, and that "DOE and the weapons laboratories have a deeply rooted culture of low regard for and, at times, hostility to security issues." It described the Department as a "dysfunctional bureaucracy...incapable of reforming itself." To correct these problems, the PFIAB recommended the creation of a new, completely independent agency with sole responsibility for the nuclear weapons program or, alternatively, a semi-autonomous agency within the Department of Energy in which the bureaucratic contacts between the new agency and DOE be kept to a minimum.

The Panel notes that the Cox Committee and the PFIAB reports were part of a long series of reports documenting management shortcomings at DOE. A 1997 study by the Institute for Defense Analyses on the management of the nuclear weapons program concluded that the Department suffered from confusing and redundant lines of authority. The 1999 report of the Commission on Maintaining United States Nuclear Weapons Expertise, chaired by retired Admiral Henry Chiles, Jr., noted weak management and a perceived lack of commitment to the program to sustain the U.S. nuclear arsenal. The PFIAB report also noted confused lines of authority and a lack of mission focus in the nuclear weapons facilities. PFIAB Chairman Warren Rudman compared the DOE organizational chart to a wiring diagram of Frankenstein's brain (see chart). The Panel believes Secretary of Energy Bill Richard-

son deserves credit for taking initial steps to address these problems.

These steps include establishment of a security "czar," establishment of offices of counterintelligence and security, and an attempt in April 1999 to clarify reporting chains within the Department. However, the Secretary's reforms did not alter the role of the Secretary's staff in Defense Programs management. Nor did the Secretary's reforms make enough progress in clarifying lines of authority. For example, the Secretary's April reorganization established "lead program secretarial offices" (LPSOs). DOE's Office of Defense Programs, Office of Science, and Office Environmental Management will serve as the LPSO's in this plan and each field operations office now reports to one LPSO. However, in this reorganization scheme, Lawrence Livermore, a nuclear weapons laboratory, reports to the Office of Science through the Oakland Operations Office. Y-12, a nuclear weapons production plant, also reports to the Office of Science through the Oak Ridge Operations Office.





Consequently, Congress determined that further reforms were urgently required. That determination was based not only on the shortcomings of the reforms proposed by Secretary Richardson, but on the depth and persistence of the problems at DOE and on a long history of DOE's bureaucratic resistance to reforms proposed by a number of Secretaries of Energy.

### Title 32

Congress adopted the PFIAB recommendation to create a semi-autonomous agency within the Department of Energy. The National Nuclear Security Administration (NNSA) was established by Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (*P.L. 106-65*). The central purpose of the new organization is to correct the confused lines of authority and responsibility within the DOE nuclear weapons complex that contributed to the mismanagement and security problems at the Department, and to provide a clear mission focus and accountability for DOE personnel involved in the nuclear weapons program.

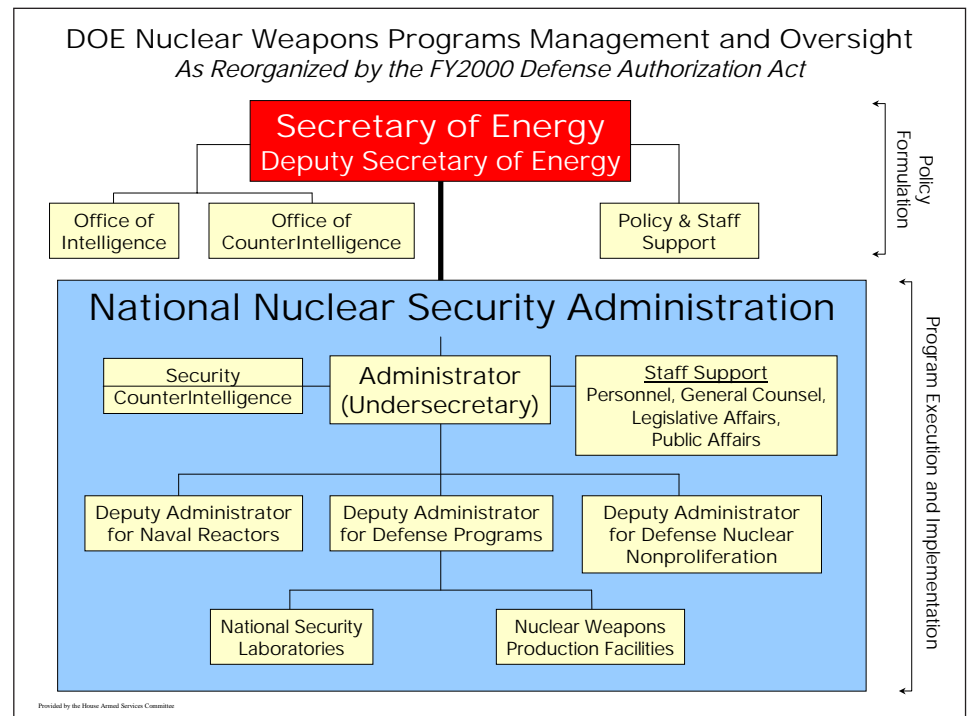
Section 3211(b) clearly and explicitly defines the NNSA mission; the semi-autonomous nature of the NNSA is also key to clarifying mission and lines of authority (*see chart*). Several provisions of Title 32 establish this semi-autonomy. These include:

- section 3202, which grants the Secretary of Energy authority, direction, and control over the NNSA, but prohibits delegation of authority, direction, and control to anyone other than the Deputy Secretary of Energy;
- section 3212(d), which authorizes the Administrator to establish Administration specific policies, subject to the disapproval of the Secretary; and
- section 3213, which establishes that Administration and contractor personnel are responsible directly to the Administrator or his designee, or the Secretary acting through the Administrator.

The weight of these provisions is to provide a substantial degree of independence — but not total independence — from the Department of Energy. The Secretary clearly retains overall control of the Administration. The Secretary is specifically vested with authority over, and direction and control of the Administration, responsibility for developing Administration policies, oversight responsibilities over the Administration, control over the NNSA budget, and the authority to maintain headquarters staff resources sufficient to carry out these functions. Title 32 also grants the Secretary a range of other authorities and responsibilities with respect to the NNSA, including appointing NNSA security and counterintelligence chiefs, promulgating NNSA security and counterintelligence policies, use of tools to reshape the DOE workforce, and the reassignment of missions, facilities, or functions to or from the NNSA.

Staff-to-staff contact between DOE and the Administration is to be expected and should be routine. However, section 3213 specifically prohibits DOE staff from exerting authority, direction, and control over Administration or contractor personnel.

Consequently, DOE staff will not be in the Administration's direct chain of command. Staff disagreements, when they arise, must be resolved through a clearly established line of authority. These disagreements would be reported up to the Secretary and Administrator and the Secretary may then direct the Administrator to take specific actions. The Administrator, in turn, would direct his personnel or contractor subordinates likewise. This arrangement leaves sufficient authority with the Secretary to meet his statutory responsibilities while avoiding the disastrous proliferation of reporting chains and confusing lines of authority that has plagued the Department since its inception. Title 32 also contains provisions that require DOE to improve its management practices and provide the mechanisms by which the Department can do so. Subtitle C provides for early retirement options, severance pay, and most importantly, excepted service positions (exempt from civil service regulations) which the Administration can use to restructure and improve the technical competence of its oversight staff. Subtitle D requires implementation of a planning, programming, and budgeting system, implementation of a system of limited term funding, and preparation of future year budgets.





# DOE ACTIONS AND IMPLEMENTATION EFFORTS

The Panel believes that DOE is making some progress in the effort to implement the provisions of Title 32. The Department prepared an implementation plan, due January 1, 2000 as required by Section 3297, and submitted it on January 7, 2000. Secretary Richardson and the implementation plan he submitted stated an unequivocal commitment to the implementing the law.

On December 30, 1999, the Secretary appointed a search committee to identify a viable candidate for NNSA Administrator. The panel includes former DOE Secretary James Watkins, former Deputy Secretary of Energy Charles Curtis, retired Admiral Henry Chiles, Jr., and Chairman of the Secretary of Energy Advisory Board Andrew Athy. The Panel believes that the members of the search committee are highly qualified and is encouraged that this group will be able to identify a qualified candidate in a timely manner.

Overall, however, the panel remains very concerned that senior DOE leadership remains opposed to the provisions of Title 32 and lacks a strong commitment to full compliance with the law.

## The President's Signing Statement

The President and DOE initially opposed passage of Title 32, and attempted to persuade Congress to amend the legislation prior to passage and to alter the law after it passed. DOE opposition was reflected in the President's statement that was released when the bill was signed into law. In that statement, the President instructed the Secretary to perform the roles and functions of the Administrator until further notice, and to assure DOE control over the NNSA by assigning DOE personnel to serve concurrently in NNSA positions. The Panel assesses both actions as contrary to the spirit and letter of the law.

Specifically, the Congressional Research Service (CRS), in an analysis requested by

Panel Chairman Thornberry, concluded that the President has an obligation to submit a nomination for Administrator and that "applicable case law and statutory authority...limits the President's ability to indefinitely fill an office subject to Senate confirmation with a temporary assignee." The

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Panel expects the President to send forward, in a timely manner, a nominee with extensive leadership, management, and technical expertise in the nuclear weapons complex able to implement effectively a program to protect and sustain U.S. nuclear forces.

CRS also concluded that “an attempt by the Secretary, acting as the designee of the President as acting Under Secretary [Administrator], to place current departmental officials who presently hold positions redundant to those created by the new legislation, would be plainly *contrary to the letter and intent of the law*” (emphasis added). Section 3213 states that “each officer or employee of the Administration, in carrying out any function of the Administration...shall not be responsible to, or subject to the authority, direction and control of, any other officer, employee, or agent of the Department of Energy [other than the Secretary].” The Panel does not believe that any reasonable reading of this provision would allow for assigning DOE officers or employees duties within the NNSA.

## Transition Plan

The Panel has reviewed the implementation plan, highlighting both positive aspects and concerns. For example, the Panel is

encouraged that the Secretary submitted an implementation plan within a week of when required by law. The plan will establish the NNSA, and the new Administration will include the Offices of Defense Programs, Defense Nuclear Nonproliferation (which will also incorporate the Office of Fissile Materials Disposition), and Naval Reactors, as required. The Nuclear Emergency Search Team will also be folded into the NNSA. The panel approves of the plan's stated goal “to provide clear and direct lines of accountability and responsibility” for the nation's nuclear weapons, nuclear nonproliferation, and naval reactors programs. The panel is also pleased that the Secretary reports in the implementation plan that he has asked his search

committee to proceed expeditiously in anticipation of Senate confirmation of a nominee for Administrator prior to March 1, 2000. The Panel views these as positive and necessary steps in the broader process of transitioning to the new organization.

Nevertheless, the Panel believes that the implementation plan and the process by which it was developed suffer from serious flaws. Most fundamentally, the Panel believes that the implementation plan seeks to minimize the NNSA's semi-autonomy. This approach is inconsistent with the letter and intent of Title 32. Further, the Panel believes that the underlying assumption behind all the recommendations within the plan is that current DOE organization, lines of authority, and management practices are adequate for the NNSA. The Panel believes that this assumption is unjustified because it runs counter to the findings of dozens of studies and assessments dating back to the 1980s and including most recently the PFIAB report.

## Dual-Hatting

The clearest example of this is the intention expressed in the implementation plan to assign DOE officers to serve contemporaneously in the NNSA. Key legislated



positions within the NNSA will be filled by non-NNSA DOE officers or employees. These positions include the NNSA Chiefs of Defense Nuclear Counterintelligence and Security (to be filled by the DOE Directors of Counterintelligence and Security respectively), and the NNSA General Counsel and Deputy General Counsel (to be filled by the DOE General Counsel and Deputy General Counsel). The implementation plan also notes that Title 32 provides for the establishment of support offices within the NNSA. The plan states that these offices will be established as of March 1, 2000, but “anticipates that DOE employees will serve concurrently in some of these positions and DOE positions outside of NNSA.” As previously noted, “dual-hatting” is clearly in violation of Title 32, and the Panel strongly recommends that DOE reconsider such plans.

### Continues Confused and Inadequate Lines of Authority

The Panel also notes with concern that the plan explicitly sustains current reporting relationships between the NNSA contractors, field offices, and headquarters staff. Thus, NNSA contractors will report to the Deputy Administrator for Defense Programs through the field offices rather than directly to the Deputy Administrator. Several studies have found that this arrangement has generated redundant and confusing lines of authority in the past. Despite strong criticism in the PFIAB and other reports, no changes in the field office reporting structure are contemplated. Furthermore, section 3214 states that the NNSA facilities should report to the Deputy Administrator.

This concern is only magnified by inadequate DOE reforms, establishing Lead Program Secretarial Offices for the field offices, and the extent to which the Department has now continued DOE personnel involvement in the day-to-day management of the NNSA. As previously noted, the Panel believes that reporting chains for sites through LPSOs that are not responsible for NNSA functions confuse lines of authority and are not rationally structured.

Further, according to the implementation plan, the field offices will be managed by directors who will be dual-hatted in DOE and NNSA. Finally, the implementation plan directs NNSA employees to manage non-NNSA DOE employees. The Panel believes that these arrangements will continue to engender a confusing proliferation of lines of authority in DOE generally and the NNSA specifically.

### Excessive Emphasis on DOE Authority

The Panel notes with disappointment that the implementation plan consistently emphasizes Departmental staff authority over the NNSA. For example, the plan states that, “All attorneys of the NNSA will remain subject to the professional supervision of the Department’s General Counsel.” The plan also states that DOE policy is that all congressional and intergovernmental affairs are to be coordinated by a DOE Assistant Secretary, and that public affairs are to be coordinated by a DOE director. The panel recognizes that the interactions at the staff level are necessary and will be routine, that policy for the Administration

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will be established by the Secretary, and that NNSA personnel are bound by those policies.

However, Section 3212(d) also permits the Administrator to establish NNSA-unique policy, subject to the disapproval of the Secretary, and section 3213 provides that NNSA and contractor personnel are subject to authority, direction, and control only

by the Administrator, his designee, or the Secretary acting through the Administrator. Section 3212 also provides the Administrator with specific authority over and responsibility for NNSA programs and activities, including legislative affairs, intergovernmental relations, and public affairs and section 3217 establishes the position of General Counsel within the NNSA to be “the chief legal officer of the Administration.” All of these provisions provide a substantial degree of independence to the NNSA. The Panel believes that the very strong emphasis on DOE staff authority is not consistent with the chain of command established in Title 32, which requires staff disputes to be channeled to the Secretary of Energy and the NNSA Administrator and resolved through NNSA actions ordered by the Secretary through the Administrator.

### Lack of Planning to Improve Programming, Budgeting and Workforce

The Panel does not believe that the implementation plan adequately addresses Title 32 requirements to improve NNSA budgeting, nor does it take advantage of the tools provided in Title 32 to restructure the NNSA and DOE workforces. Improved planning and budgeting was a major concern the Panel heard during visits to the nuclear weapons facilities.

Specifically, Section 3251 requires changes in how the NNSA budget is formulated and presented to Congress, section 3252 requires changes in NNSA budgeting practices, and section 3253 requires that the Administrator submit a future year defense plan to Congress every year. None of these requirements is addressed in the implementation plan.

The Panel also notes that subtitle C of Title 32 provides authorities to the Administrator and Secretary to help reshape the NNSA and DOE workforces. Section 3241 provides the Administrator with the authority to establish up to 300 technical positions exempt from usual civil service requirements. Section 3242 of subtitle C provides the Secretary with authorities related to early retirement. The implementation plan does not address how these authorities might be used.



### Lack of Specificity and Comprehensiveness

The Panel would have preferred an implementation plan with greater specificity and comprehensiveness. A more robust transition plan should include the following:

- a detailed transition schedule that supports full implementation by March 1, 2000;
- the intended uses by NNSA of the personnel authorities granted in Subtitle C to reshape its workforce;
- the organization and size of the NNSA staff;
- clarified and simplified lines of authority within NNSA;
- clarified and simplified reporting chains for contractor and NNSA personnel;
- personnel realignments between DOE and NNSA that will be required by Title 32;
- a reasonable estimate of when nominations for key positions in the NNSA will be forthcoming. These key positions include, but are not limited to, the Under Secretary for Nuclear Security, the Deputy Administrator for Defense Programs, the Deputy Administrator for Defense Nuclear Nonproliferation, the Chief of Defense Nuclear Counterintelligence, the Chief of Defense Nuclear Security, the NNSA director of personnel, the NNSA director of legislative affairs, the NNSA director

of public affairs, and the NNSA General Counsel. NNSA personnel appointments in the areas of budget formulation, integrated safety management, and environment, safety, and health are also of great interest to the Panel, and the plan should indicate that progress is being made in establishing NNSA offices in these areas as well;

- a description of how and when the NNSA will prepare and submit its budgets in compliance with the requirements of Title 32;
- a description of guidelines being developed to instruct non-NNSA DOE employees on their relationship to the Administration;
- how NNSA will provide contract and personnel support to its labs and plants and the role for the operations and field offices in the NNSA; and
- notice of any areas in which complete implementation of Title 32 is not anticipated by March 1, 2000, and a complete description of the problems that preclude complete implementation in these areas.

The Panel believes that the implementation plan falls far short of resolving these issues satisfactorily.

### Poor Procedure

Finally, the Panel is concerned that the Department sought very limited input from only a few sources in developing its implementation plan. Site visits by Panel mem-

bers and investigation by Panel staff have revealed that the DOE transition task force failed to consult with many key personnel. DOE contractors and Defense Programs personnel will be significantly impacted by the new organization, have valuable insights concerning NNSA organization and processes, and have a clear stake in the outcome of transition activities. The Panel believes that adequate consultation with industry and Defense Programs leaders would improve the substance and credibility of the implementation plan.

### Summary

The Panel is pleased that the Department has taken preliminary and necessary steps toward the implementation of the requirements in Title 32. When viewed comprehensively, however, the Department's implementation effort does not fully meet the requirements of the new law. Implementation activities started late and were insufficient in their execution. The implementation plan, taken as a whole, appears to allow continued DOE authority, direction, and control over the NNSA and to retain current DOE management, budget, and planning practices and organizational structures.

Because of these concerns, the Panel believes it is in the nation's best interests for the Panel to remain actively and cooperatively engaged with DOE to ensure full compliance with the law. Clearly, the successful implementation of the NNSA offers the best opportunity to fix decades of DOE mismanagement and will serve the ultimate goal of improving the safety, security, and reliability of our nuclear weapons and materials.

## PANEL CONCLUSIONS

\* Recent actions by the Department of Energy offer some encouragement that progress is being made in implementing provisions of Title 32 of the National Defense Authorization Act for Fiscal Year 2000, the provision of law that mandates the establishment of the new National Nuclear Security Administration. These include appointment of a high-level search committee to

find a viable candidate for Administrator of the NNSA, and submission of a required implementation plan.

\* The implementation plan, if carried out as presented to the Panel, would violate key provisions of the law and would fail to provide for the creation of an Administration with the degree of autonomy both required

by Title 32 and anticipated by Congress. It appears to reflect continued opposition by senior DOE leadership to the fundamental reforms approved by Congress.

\* The implementation plan appears to have been developed without adequate input from key sources and personnel directly affected by the legislation.





# APPENDIX A: PANEL ACTIVITIES

The House Armed Services Committee Special Oversight Panel on Department of Energy Reorganization was created by Chairman Spence on October 8, 1999, pursuant to House Rule 10 and Committee Rule 5. The panel provides a mechanism for the committee to track DOE implementation of the provisions of Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65). Representative Mac Thornberry (R-TX) was named Panel chairman and Rep. Ellen Tauscher (D-CA) was named ranking minority member. The other panel members are Rep. Duncan Hunter (R-CA), Rep. Lindsey Graham (R-S.C.), Rep. Jim Ryun (R-KS), Rep. Jim Gibbons (R-NV), Rep. Norm Sisisky (D-VA), and Rep. John Spratt (D-SC). House Armed Services Committee Chairman Rep. Floyd Spence (R-SC) and Ranking Member Rep. Ike Skelton (D-MO) serve on the Panel as members. To accomplish its mission, the Panel has actively sought to engage Department leadership, headquarters, field organizations, and contractors to determine the nature of the transition efforts.

On October 22, 1999, Panel Chairman Thornberry and Ranking Member Tauscher met with Secretary Richardson to discuss the NNSA. The Secretary expressed strong opposition to some of the provisions of Title 32 and the view that the Title did not provide him adequate authority over the new Administration. The Secretary provided a copy of an amendment to restore the Secretary's authority to delegate authority over the Administration to members of the DOE staff when he deemed it necessary to do so. He strongly implied that his willingness to appear before the Panel to testify would be contingent on Panel support for this amendment.

On November 1, 1999, the Panel received analysis it had requested from the Congressional Research Service (CRS) assessing legal issues raised by the President's direction to the Secretary of Energy with respect

to the implementation of Title 32. CRS concluded that constitutional requirements, applicable case law, and statutory authority limits the President's authority to assign the roles and functions of the NNSA Administrator to the Secretary of Energy indefinitely and obligates the President to send a nominee for Administrator to the Senate for confirmation in a timely manner. CRS also concluded that assigning non-NNSA DOE employees to serve concurrently in NNSA posts "is plainly contrary to the letter and intent of the law."

On November 23, 1999, committee staff and personal staff from Rep. Thornberry's office and Rep. Tauscher's office met with the managing director of the DOE transition task force, Mr. David Klaus, and task force member Assistant Secretary of Energy for Congressional and External Affairs John Angell. The purpose of the meeting was to determine progress in drafting the implementation plan and the nature and degree of detail embodied in the plan. Panel staff concluded, based on the meeting, that the plan as envisioned by the DOE transition task force would probably not meet Panel expectations.

The Panel also conducted site visits to the DOE national security laboratories, nuclear weapons production plants, and the Nevada Test Site (NTS). From December 8-10, 1999, Panel members traveled to NTS and Lawrence Livermore, Los Alamos, and Sandia National Laboratories. From January 11-13, 2000, panel members traveled to the Kansas City, Pantex, and Y-12 plants and the Savannah River Site.

Panel members sought to gain a more complete understanding of the missions, programs and activities of the sites, how the Department transition team had engaged the sites in the preparation of the transition plan, and any concerns that the sites might have concerning the NNSA and the transition to the new structure. The Panel also wanted to assure personnel in the nuclear weapons complex that their efforts are appreciated.

Contractor and DOE personnel at the sites generally expressed either approval for the new legislation and confidence that implementation would improve management of the nuclear weapons program or that the new organization would have little real impact on how the sites performed. Panel members, however, were concerned to learn that very few of the personnel at the sites had been interviewed by the DOE transition task force. Most of those interviewed represented the field operations offices.

Personnel at some sites expressed specific concerns about the legislation. For example, personnel at all three laboratories expressed concern that the intelligence function remained centralized within DOE. They noted that intelligence expertise on foreign nuclear weapons programs resides almost exclusively in the laboratories. Panel members noted that the NNSA Administrator has responsibility for an NNSA intelligence function.

On January 24, 2000, the Panel received analysis it had requested from CRS assessing whether the implementation plan allayed the concerns raised by the President's signing statement. CRS concluded that "the breadth of many of the directions of the Implementation Plan that concededly are not in compliance with Title 32 provisions may arguably be seen to create further issues. Although the matter is not free from doubt, it appears problematic whether a reviewing court would accept the totality of deviations from the statutory requirements simply on the proffered grounds of administrative necessity."

The Panel has requested testimony by Secretary Richardson on his concerns about the legislation. The Secretary has refused to appear. The Committee on Armed Services has invited the Secretary to appear on March 1, the date by which the legislation is required to be fully implemented, to discuss the NNSA and transition effort.



# APPENDIX B: DISSENTING VIEWS

BY REPRESENTATIVE JOHN M. SPRATT, JR.

I have not joined my fellow panel members in signing this report for two reasons. First, the report reviews DOE's compliance with Title 32 but does not make a critical review of Title 32 and whether it is workable. Second, the report presents conclusions in many places where concerns and questions would have been appropriate. For example, the report draws conclusions about the legality of DOE's plan to "dual-hat" certain NNSA positions. These conclusions are based on a CRS report written in response to the President's Signing Statement. CRS is not the final authority on DOE's Implementation Plan; and DOE is not alone in believing that its plan to dual-hat a limited number of NNSA personnel is legal. I am concerned about dual-hatting, and I believe that DOE may need to alter its plan, but I do not think the panel should dismiss any dual-hatting whatever without more analysis, input, and explanation from DOE.

After reading the first draft of the report, I asked for changes to be made, and in addition to changes in the text, I submitted my own "Additional Views" because I continue to think that Title 32 itself needs another look. A majority of the panel members preferred the report without my changes. I file my own views separately, therefore, because I think the panel report is too conclusive and skirts a basic issue: whether Title 32 is a realistic framework for reorganizing DOE. Title 32 was drafted during last year's defense authorization conference without the benefit of committee hearings,

mark-up, floor debate, or reasonable input from Democratic members. In my opinion, a more open process would have produced a more workable design.

The drive for DOE's reorganization picked up momentum when the President's Foreign Intelligence Advisory Board (PFIAB) issued its report. The PFIAB took a look at the Department of Energy (DOE), particularly the defense weapons program, and found redundant levels of management and unclear lines of authority. It found a department, on the one hand, that is not sufficiently self-critical, and on the other, that is not responsive to outside direction. The solution the PFIAB proposed - an autonomous or almost-autonomous agency - may be correct, but it seems paradoxical. It does not naturally follow that an agency set on doing things its own way, and sometimes the wrong way, will do better by becoming more autonomous. The history of the Atomic Energy Commission (AEC) suggests the contrary, and the money we spend every year to clean up its environmental legacy should be a constant reminder to us of the AEC's record as an autonomous agency.

The nearly autonomous agency created by Title 32 is answerable only to its Administrator, and its Administrator is answerable only to the Secretary of Energy. This structure creates two problems, which ironically are problems the PFIAB and Title 32 sought to resolve.

First, this structure creates more redundancy in the Department of Energy. Should DOE now hire additional legal counsel, additional legislative liaison personnel, or additional environmental compliance officers? If so, will Congress appropriate funds for the new personnel? Or should some of the personnel be "dual-hatted," both to save money and to ensure consistency of policy within the Department?

Second, this structure invites unclear lines of authority. How does the Secretary of Energy exercise his oversight of this agency that Title 32 authorizes if he cannot delegate or appoint others in his Department to act as his eyes and ears and to speak on his behalf? Every department of our government runs by delegation or appointment, but Title 32 tightly circumscribes the Secretary of Energy, and virtually denies him the power of delegation. Can the Secretary exercise the oversight responsibilities vested in him without the power of delegation?

I agree that what the Department has proposed up to this point falls short of what Title 32 requires. I think the Implementation Plan requires further explanation, and I think the Secretary and the Department bear the burden of persuasion. But I also think that Title 32 requires another close look by Congress and revision to make it a workable structure. I do not think that we should criticize the Department and what it has done without also making a critical review of what Congress has enacted.



# APPENDIX C: TITLE XXXII — NATIONAL NUCLEAR SECURITY ADMINISTRATION

*Excerpted from the Fiscal Year 2000 National Defense Authorization Act  
(P.L. 106-65)*

## TITLE XXXII—NATIONAL NUCLEAR SECURITY ADMINISTRATION

The House amendment contained a provision (sec. 3165) that would require the Secretary of Energy to assign to the Assistant Secretary of Energy for Defense Programs direct authority over, and responsibility for, the nuclear weapons production facilities and national laboratories with respect to strategic management, policy development and guidance, budget guidance and formulation, resource requirements determinations and allocations, administration of contracts, environmental safety and health operations, integrated safety and management, safeguard and security operations, and relations with government agencies. The provision would also establish that certain nuclear weapons production facilities, national laboratories, and operations offices report directly to the Assistant Secretary for Defense Programs. The provision would further allow the Assistant Secretary to delegate to such operations offices a number of support functions, including operational activities, program execution, personnel, contracting and procurement, facility operations oversight, and integration of production and research activities.

The Senate bill contained no similar provision.

The Senate recedes with an amendment that would substantially reorganize the national security programs of the Department of Energy (DOE).

The conferees note that the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (known as the Cox Committee) concluded that Chinese espionage efforts had successfully gathered sensitive information related to U.S. nuclear weapons designs. The conferees further note that the President's Foreign Intelligence Advisory Board (PFIAB), chaired by former Senator Warren Rudman, after reviewing the security failures at DOE concluded that the root causes of the counterintelligence failures pertained to poor organization and a failure of accountability. The PFIAB noted that many previous efforts to improve organization and accountability at DOE had failed, and concluded that “. . . the Department of Energy is a dysfunctional bureaucracy that has proven incapable of reforming itself.”

To correct these systemic problems, the conferees agree to establish the National Nuclear Security Administration (NNSA), a semi-autonomous agency within the Department that would be responsible for nuclear weapons development, naval nuclear propulsion, defense nuclear nonproliferation, and fissile material disposition; establish security, counterintelligence, and intelligence offices; and prescribe personnel, budgeting, and other management practices for the NNSA.

*Short title (sec. 3201)*

The conferees agree to include a provision that would provide that this title may be cited as the “National Nuclear Security Administration Act.”



*Under Secretary for Nuclear Security of Department of Energy (sec. 3202)*

The conferees agree to include a provision that would amend the Department of Energy Organization Act (42 U.S.C. 7132) to establish in the Department of Energy an Under Secretary for Nuclear Security appointed by the President with the advice and consent of the Senate. The Under Secretary would serve as the Administrator for Nuclear Security under the National Nuclear Security Administration Act. As Administrator, the Under Secretary would be subject to the authority, direction, and control of the Secretary of Energy. Such authority, direction, and control could only be delegated to the Deputy Secretary of Energy.

*Establishment of policy for National Nuclear Security Administration (sec. 3203)*

The conferees agree to include a provision that would provide that the Secretary of Energy, acting through the Under Secretary of Nuclear Security, shall be responsible for establishing policy for the National Nuclear Security Administration. The Secretary could direct officials of the Department of Energy who are not within the National Nuclear Security Administration to review programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs.

*Organization of Department of Energy counterintelligence and intelligence programs and activities (sec. 3204)*

The conferees agree to include a provision that would amend the Department of Energy Organization Act (42 U.S.C. 7101) to specify that the Secretary of Energy shall be responsible for developing, and promulgating the security, counterintelligence, and intelligence policies of the Department of Energy. This provision would also establish the Department of Energy offices of Counterintelligence and Intelligence.

The Director of the Department of Energy Office of Counterintelligence would be a member of the Senior Executive Service and would be responsible for establishing policy for counterintelligence programs and activities at Department of Energy facilities in order to reduce the threat of disclosure of classified and other sensitive information at the Department facilities. The provision would also require the Director of the Office of Counterintelligence to report on the status and the effectiveness of the counterintelligence programs at facilities of the Department of Energy during the preceding year.

The Director of the Office of Intelligence of the Department of Energy would be a member of the Senior Executive Service and would be responsible for the programs and activities of the Department relating to the analysis of intelligence with respect to nuclear weapons and materials and energy security.

Subtitle A—Establishment and Organization

*Establishment and mission (sec. 3211)*

The conferees agree to include a provision that would establish within the Department of Energy a separately organized agency



that would be known as the National Nuclear Security Administration. The mission of the Administration would be to enhance the national security through the military application of nuclear energy and to reduce global danger from weapons of mass destruction, and to promote international nuclear safety. This provision would require that the Administrator ensure that all operations and activities of the Administration are consistent with the principles of environmental protection and the safety and health of the public and the Administration's workforce.

*Administrator for Nuclear Security (sec. 3212)*

The conferees agree to include a provision that would establish the Under Secretary for Nuclear Security as the Administrator for the National Nuclear Security Administration. The Administrator would have authority over, and be responsible for, all programs and activities of the Administration, except for the functions of the Office of Naval Reactors as specified in Executive Order 12344. In addition, the provision would give the Administrator responsibility for liaison between the Administration and other elements of the Department of Energy and other federal agencies. The Administrator may establish Administration-specific policies, unless disapproved by the Secretary.

*Status of Administration and contractor personnel within Department of Energy (sec. 3213)*

The conferees agree to include a provision that would make each officer or employee of the Administration, in carrying out the functions of the Administration, subject to the authority, direction, and control of the Administrator, the Secretary of Energy acting through the Administrator, or the Administrator's designee within the Administration. Officers or employees of the Administration would not be responsible to, or subject to the authority, direction, or control of any other officer, agent, or employee of the Department of Energy. The provision would also stipulate that each officer or employee of a contractor of the Administration would not be responsible to, or subject to the authority, direction, or control of any other officer, agent, or employee of the Department of Energy who is not an employee of the Administration, with the exception of the Secretary or Deputy Secretary of Energy.

*Deputy Administrator for Defense Programs (sec. 3214)*

The conferees agree to include a provision that would establish the position of Deputy Administrator for Defense Programs, subject to appointment by the President with the advice and consent of the Senate. The provision would make the Deputy Administrator responsible for maintaining and enhancing the safety, reliability, and performance of the U.S. nuclear weapons stockpile. The head of each national security laboratory and nuclear weapons production facility would report to the Deputy Administrator for Defense Programs, consistent with applicable contractual obligations.



*Deputy Administrator for Defense Nuclear Nonproliferation (sec. 3215)*

The conferees agree to include a provision that would establish the position of Deputy Administrator for Defense Nuclear Nonproliferation subject to appointment by the President with the advice and consent of the Senate. The provision would make the Deputy Administrator responsible for preventing the spread of materials, technology, and expertise relating to weapons of mass destruction; and for eliminating inventories of surplus fissile material.

*Deputy Administrator for Naval Reactors (sec. 3216)*

The conferees agree to include a provision that would establish the position of Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program, provided for under the Naval Nuclear Propulsion Executive Order, shall serve as the Deputy Administrator for Naval Reactors. The provision would assign the Deputy Administrator the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors.

*General Counsel (sec. 3217)*

The conferees agree to include a provision that would establish a General Counsel for the Administration.

*Staff of Administration (sec. 3218)*

The conferees agree to include a provision that would require the Administrator to maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties of that position. The Administrator would assign to the staff responsibility for the functions of personnel, legislative affairs, public affairs, and liaison with other elements of the Department of Energy, other federal agencies, and the public.

Subtitle B—Matters Relating to Security

*Protection of national security information (sec. 3231)*

The conferees agree to include a provision that would require the Administrator, subject to the approval of the Secretary of Energy, to establish policies and procedures to ensure maximum protection to classified information in the possession of the Administration. The Administrator would establish procedures requiring personnel of the Administration to report to the Administrator on significant violations of law or executive order relating to the management of classified information.

*Office of Defense Nuclear Counterintelligence and Office of Defense Nuclear Security (sec. 3232)*

The Senate bill contained a provision (sec. 3158) that would require the Secretary of Energy to maintain an Office of Counterintelligence and an Office of Intelligence. The Office of Counterintelligence would be headed by a senior executive of the Federal Bureau of Investigation with experience in matters relating to counterintelligence. The Director of the Office of Counterintelligence would report directly to the Secretary of Energy and ensure



that the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation are informed regularly on the status and effectiveness of counterintelligence efforts at DOE sites. The Director would be required to submit an annual assessment to the Secretary, Director of Central Intelligence, Director of the Federal Bureau of Investigation, and the defense committees of Congress on the effectiveness of counterintelligence efforts at DOE facilities. Such an assessment would be provided in both classified and unclassified form not later than March 1 of each year. The Director would be required to develop and implement specific security and counterintelligence programs to reduce the threat of loss of classified and sensitive information at DOE sites. The Director of Intelligence would also report directly to the Secretary and would be responsible for intelligence and energy security analysis.

The House amendment contained a similar provision (sec. 3184) that would require the Secretary of Energy to establish an Office of Foreign Intelligence and an Office of Counterintelligence.

The conferees agree to include a provision that would establish an Office of Defense Nuclear Counterintelligence and an Office of Defense Nuclear Security. The offices would be headed by a Chief of Defense Nuclear Counterintelligence and a Chief of Defense Nuclear Security.

The Chief of Defense Nuclear Counterintelligence would report to the Administrator and would implement counterintelligence policies directed by the Secretary and the Administrator. This Chief would develop programs for the Administration to prevent the disclosure of classified or sensitive information, and would develop and administer personnel assurance programs within the Administration.

The Chief of Defense Nuclear Security would report to the Administrator and would implement security policies directed by the Secretary and the Administrator. This Chief would be responsible for the development and implementation of security programs for the Administration including the protection, control, and accounting of nuclear materials and the physical security and cybersecurity for all facilities of the Administration.

#### *Counterintelligence programs (sec. 3233)*

The Senate bill contained a provision (sec. 3159) that would require the Secretary of Energy to assign at each DOE facility an individual to assess security and counterintelligence matters at that site. Such individuals would report directly to the DOE Director of Counterintelligence.

The House amendment contained a similar provision (sec. 3186) that would require the Secretary of Energy to assign at each DOE facility an individual to assess security and counterintelligence matters at that site. Such individuals would report directly to the DOE Director of Counterintelligence.

The House amendment contained another similar provision (sec. 3185) that would require the Secretary to establish and maintain at each DOE national laboratory, a counterintelligence program for the defense-related activities at the laboratory. The provision would require that the head of counterintelligence at each lab-



oratory have extensive experience in counterintelligence activities within the Federal Government and is hired by and directly responsible to Director of the laboratory and is hired with the concurrence of the DOE Director of Counterintelligence.

The conferees agree to include a provision that would require the Administrator to establish and maintain a counterintelligence program at each laboratory or production facility. The Administrator would be required to assign an employee of the Office of Defense Nuclear Counterintelligence to each facility at which Restricted Data is located, other than a laboratory or a production facilities. This employee would assess counterintelligence and security matters at the facility.

*Procedures relating to access by individuals to classified areas and information of Administration (sec. 3234)*

The House amendment contained a provision (sec. 3191) that would prohibit unescorted access by a foreign national to any classified area, or access to any classified information, at any DOE facility engaged in defense activities unless the individual has a security clearance granted by the United States or has a security clearance granted by a foreign government which the Secretary of State determines is comparable to a clearance granted by the United States. The provision would prohibit the Secretary from terminating the employment of any foreign national who is also an employee of the Department, as of the date of enactment of this Act until a security clearance investigation is completed. Such employees could, however, be terminated if the Director of Counterintelligence determines it is in the national security interest of the United States.

The Senate bill contained no similar provision.

The Senate recedes with an amendment that would require the Administrator to establish procedures to ensure that individuals are not permitted unescorted access to any classified area, or access to classified information, of the Administration until security clearances are verified.

*Government access to information on Administration computers (sec. 3235)*

The House amendment contained a provision (sec. 3194) that would require the Secretary of Energy to establish procedures to govern access to classified information on DOE defense-related computer systems.

The Senate bill contained no similar provision.

The Senate recedes with an amendment that would require the Administrator to establish procedures to govern access to all information on Administration computers. These procedures would provide that any individual who has access to information on an Administration computer be required, as a condition of such access, to provide to the Administrator written consent permitting access by an authorized investigative agency to any Administration computer. In addition, the provision would stipulate that, notwithstanding any other provision of law, no user of an Administration computer shall have any expectation of privacy in the use of that computer.





*Congressional oversight of special access programs (sec. 3236)*

The conferees agree to include a provision that would require the Administrator to submit an annual report to the congressional defense committees on the special access programs of the Administration. Each annual report shall contain budgetary information for special access programs and a brief discussion of each program. This provision would also require an annual report on the new special access programs with a justification for designating the program as special access, and an identification of existing programs or technologies that are similar to the subject of the new special access program. A new special access program would not be allowed to begin until 30 days after the defense committees have been notified that a new special access program is about to be initiated. The provision would also require a report to the congressional defense committees 14 days before any special access program is declassified.

Subtitle C—Matters Relating to Personnel

*Authority to establish certain scientific, engineering, and technical positions (sec. 3241)*

The conferees agree to include a provision that would provide the Administrator of the National Nuclear Security Administration authority to establish up to 300 scientific, engineering, and technical positions, hire qualified personnel to fill those positions, and set appropriate compensation levels.

*Voluntary early retirement authority (sec. 3242)*

The conferees agree to include a provision that would provide the Secretary of Energy temporary authority to offer voluntary early retirement to not more than 600 Department of Energy employees affected by the establishment of the National Nuclear Security Administration.

*Severance pay (sec. 3243)*

The conferees agree to include a provision that would provide the Secretary of Energy authority to pay severance pay in one lump sum to those Department of Energy employees entitled to severance pay as a result of the establishment of the National Nuclear Security Administration.

*Continued coverage of health care benefits (sec. 3244)*

The conferees agree to include a provision that would provide the Secretary of Energy authority to continue to pay the government's share of health insurance premiums to those Department of Energy employees who are involuntarily separated as a result of the establishment of the National Nuclear Security Administration.

Subtitle D—Budget and Financial Management

*Separate treatment in budget (sec. 3251)*

The conferees agree to include a provision that would require the President to submit the budget for the NNSA separately within the amounts requested for the Department of Energy. The section



would also require that the budget justification materials submitted to Congress in support of the budget be specified in individual program elements.

*Planning, programming, and budgeting process (sec. 3252)*

The conferees agree to include a provision that would require the Administrator to establish a sound planning, programming, and budgeting process for the activities of the Administration using funds that are available for obligation for a limited number of years.

*Future-years nuclear security program (sec. 3253)*

The Senate bill contained a provision (sec. 3172) that would amend section 3155(a) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) to require that the Secretary of Energy, beginning in fiscal year 2001, include in the President's annual budget request to Congress, a five-year program and budget plan for the activities anticipated to be carried out by the national security programs of the Department of Energy. The program and budget plan would be submitted at the same level of detail as the President's annual budget request to Congress and would include a description of anticipated workload requirements for each site. The provision would further require the Secretary of Energy, beginning in fiscal year 2001, to identify how each element of the President's budget request for weapons activities would help ensure that the weapons stockpile is safe and reliable as determined in accordance with the performance criteria established pursuant to section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) during each year of the five year period.

The House amendment contained no similar provision.

The House recedes with an amendment that would require the Administrator to submit a future-year nuclear security program that would contain the estimated expenditures necessary to support the programs, projects, and activities of the Administration for a five-year period and the anticipated workload requirements for each Administration site during the period of the plan. It would also require that the Administrator submit materials detailing how the funds identified for each program element in the weapons activities budget will help ensure the reliability and safety of the nuclear weapons stockpile.

The conferees note that the Secretary of Energy was required by law (section 3135 of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201) to provide a five-year budget plan, but that the Secretary has not complied with this provision. The conferees believe that such a plan will provide an important planning tool for the Administration and a baseline on which the congressional defense committees can better evaluate succeeding budget submissions.



### Subtitle E—Miscellaneous Provisions

#### *Environmental protection, safety, and health requirements (sec. 3261)*

The conferees agree to include a provision that would require the Administrator to ensure that Administration operations comply with applicable environmental, safety, and health statutes and to develop procedures for meeting such requirements. The provision would also provide that the Secretary of Energy continues to have overall authority and oversight responsibility to ensure that such compliance occurs.

#### *Compliance with federal acquisition regulation (sec. 3262)*

The conferees agree to include a provision that would require the Administrator to establish procedures that would ensure that Administration activities are operated in full compliance with the Federal Acquisition Regulation.

#### *Sharing of technology with Department of Defense (sec. 3263)*

The conferees agree to include a provision that would require the Administrator, in cooperation with the Secretary of Defense, to establish procedures that would allow for the sharing of technology and expertise between the Administration and the Department of Defense.

#### *Use of capabilities of national security laboratories by entities outside administration (sec. 3264)*

The conferees agree to include a provision that would require the Administrator to establish procedures that would, consistent with the national security mission of the Administration, make the capabilities of the national security laboratories available to elements of the Department of Energy that are not part of the Administration, other Federal agencies and other entities.

### Subtitle F—Definitions

#### *Definitions (sec. 3281)*

The conferees agree to include a provision that would define terms used throughout this title.

### Subtitle G—Amendatory Provisions, Transition Provisions, and Effective Dates

#### *Functions transferred (sec. 3291)*

The conferees agree to include a provision that would transfer the national security functions of the Department of Energy to the Administration upon enactment of this title, but would permit the Secretary of Energy to transfer environmental and waste management activities to other elements of the Department, in consultation with the Administrator and Congress.

#### *Transfer of funds and employees (sec. 3292)*

The conferees agree to include a provision that would require the Secretary of Energy to transfer to the Administration the bal-



ance of funding associated with the functions transferred to the Administration, as well as the employees necessary to carry out those functions.

*Pay levels (sec. 3293)*

The conferees agree to include a provision that would establish the compensation for the Under Secretary for Nuclear Security at executive level III and would establish the compensation for Deputy Administrators of the Administration at executive level IV.

*Conforming amendments (sec. 3294)*

The conferees agree to include a provision (sec. 3294) that would make conforming changes to the Atomic Energy Act of 1954, the Department of Energy Organization Act, the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–60), and the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

*Transition provisions (sec. 3295)*

The conferees agree to include a provision that would set dates by which the Administration would have to come into compliance with the provisions of title 32 of this Act. The Administrator would be required: to comply with the financial and fiscal management principles specified in section 3252 by October 1, 2000, and to report to the Armed Services Committees of the House and the Senate by January 1, 2000 on a plan to achieve that compliance; to submit the first future year nuclear security program required in section 3253 with the fiscal year 2001 budget; and to comply with the Federal Acquisition Regulation specified in section 3263 by October 1, 2000 and report to the Armed Services Committees of the House and the Senate by January 1, 2000 on a plan to achieve that compliance.

*Applicability of pre-existing laws and regulations (sec. 3296)*

The conferees agree to include a provision that would establish that all provisions of law and regulations in effect immediately before the effective date of title 32 of this act remain in force unless otherwise specified.

*Report containing implementation plan of Secretary of Energy (sec. 3297)*

The conferees agree to include a provision that would require the Secretary to submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the Secretary's plan for the implementation of the provisions of this title.

*Classification in United States Code (sec. 3298)*

The conferees agree to include a provision that would establish a new chapter of title 50 for the provisions of title 32 of this act.

*Effective dates (sec. 3299)*

The conferees agree to include a provision that would establish March 1, 2000 as the effective date of the provisions of title 32, except for sections 3202, 3204, 3251, 3295, and 3297, which would become effective upon the date of enactment of this Act.

The conferees direct that the implementation of this title begin immediately upon enactment so as to ensure that the period between enactment of this Act and the effective date of this title shall serve as a transition period to achieve full compliance of the requirements of this title no later than March 1, 2000.



# TITLE XXXII — NATIONAL NUCLEAR SECURITY ADMINISTRATION

- Sec. 3201. *Short title.*  
Sec. 3202. *Under Secretary for Nuclear Security of Department of Energy.*  
Sec. 3203. *Establishment of policy for National Nuclear Security Administration.*  
Sec. 3204. *Organization of Department of Energy counterintelligence and intelligence programs and activities.*

## **Subtitle A—Establishment and Organization**

- Sec. 3211. *Establishment and mission.*  
Sec. 3212. *Administrator for Nuclear Security.*  
Sec. 3213. *Status of Administration and contractor personnel within Department of Energy.*  
Sec. 3214. *Deputy Administrator for Defense Programs.*  
Sec. 3215. *Deputy Administrator for Defense Nuclear Nonproliferation.*  
Sec. 3216. *Deputy Administrator for Naval Reactors.*  
Sec. 3217. *General Counsel.*  
Sec. 3218. *Staff of Administration.*

## **Subtitle B—Matters Relating to Security**

- Sec. 3231. *Protection of national security information.*  
Sec. 3232. *Office of Defense Nuclear Counterintelligence and Office of Defense Nuclear Security.*  
Sec. 3233. *Counterintelligence programs.*  
Sec. 3234. *Procedures relating to access by individuals to classified areas and information of Administration.*  
Sec. 3235. *Government access to information on Administration computers.*  
Sec. 3236. *Congressional oversight of special access programs.*

## **Subtitle C—Matters Relating to Personnel**

- Sec. 3241. *Authority to establish certain scientific, engineering, and technical positions.*  
Sec. 3242. *Voluntary early retirement authority.*  
Sec. 3243. *Severance pay.*  
Sec. 3244. *Continued coverage of health care benefits.*

## **Subtitle D—Budget and Financial Management**

- Sec. 3251. *Separate treatment in budget.*  
Sec. 3252. *Planning, programming, and budgeting process.*  
Sec. 3253. *Future-years nuclear security program.*

## **Subtitle E—Miscellaneous Provisions**

- Sec. 3261. *Environmental protection, safety, and health requirements.*  
Sec. 3262. *Compliance with Federal Acquisition Regulation.*  
Sec. 3263. *Sharing of technology with Department of Defense.*  
Sec. 3264. *Use of capabilities of national security laboratories by entities outside Administration.*

## **Subtitle F—Definitions**

- Sec. 3281. *Definitions.*

## **Subtitle G—Amendatory Provisions, Transition Provisions, and Effective Dates**

- Sec. 3291. *Functions transferred.*  
Sec. 3292. *Transfer of funds and employees.*



- Sec. 3293. Pay levels.  
Sec. 3294. Conforming amendments.  
Sec. 3295. Transition provisions.  
Sec. 3296. Applicability of preexisting laws and regulations.  
Sec. 3297. Report containing implementation plan of Secretary of Energy.  
Sec. 3298. Classification in United States Code.  
Sec. 3299. Effective dates.

**SEC. 3201. SHORT TITLE.**

*This title may be cited as the “National Nuclear Security Administration Act”.*

**SEC. 3202. UNDER SECRETARY FOR NUCLEAR SECURITY OF DEPARTMENT OF ENERGY.**

*Section 202 of the Department of Energy Organization Act (42 U.S.C. 7132) is amended by adding at the end the following new subsection:*

*“(c)(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.*

*“(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—*

*“(A) have extensive background in national security, organizational management, and appropriate technical fields; and*

*“(B) are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.*

*“(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 3212 of the National Nuclear Security Administration Act. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.”.*

**SEC. 3203. ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION.**

*(a) ESTABLISHMENT OF POLICY FOR ADMINISTRATION.—The Department of Energy Organization Act is amended by adding at the end of title II (42 U.S.C. 7131 et seq.) the following new section:*

**“ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION**

*“SEC. 213. (a) The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.*

*“(b) The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.*

*“(c) The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary’s responsibilities under this section.”.*



(b) **CLERICAL AMENDMENT.**—*The table of contents at the beginning of the Department of Energy Organization Act is amended by inserting after the item relating to section 212 the following new item:*

*“213. Establishment of policy for National Nuclear Security Administration.”.*

**SEC. 3204. ORGANIZATION OF DEPARTMENT OF ENERGY COUNTER-INTELLIGENCE AND INTELLIGENCE PROGRAMS AND ACTIVITIES.**

(a) **ESTABLISHMENT OF OFFICES.**—*The Department of Energy Organization Act (42 U.S.C. 7101 et seq.) is amended by inserting after section 213, as added by section 3203(a), the following new sections:*

**“ESTABLISHMENT OF SECURITY, COUNTERINTELLIGENCE, AND INTELLIGENCE POLICIES**

**“SEC. 214.** *The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.*

**“OFFICE OF COUNTERINTELLIGENCE**

**“SEC. 215. (a)** *There is within the Department an Office of Counterintelligence.*

**“(b)(1)** *The head of the Office shall be the Director of the Office of Counterintelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.*

**“(2)** *The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.*

**“(3)** *The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.*

**“(c)(1)** *The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of disclosure or loss of classified and other sensitive information at such facilities.*

**“(2)** *The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.*

**“(3)** *The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.*

**“(d)(1)** *Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:*

**“(A)** *The Secretary.*



*“(B) The Director of Central Intelligence.*

*“(C) The Director of the Federal Bureau of Investigation.*

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

*“(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.*

*“(2) Each such report shall include for the year covered by the report the following:*

*“(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.*

*“(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including—*

*“(i) the number of violations that were investigated;*

*and*

*“(ii) the number of violations that remain unresolved.*

*“(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.*

*“(D) The adequacy of the Department’s procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.*

*“(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.*

*“(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Department of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.*

*“(4) Each report under this subsection as submitted to the committees referred to in subparagraphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.*

#### *“OFFICE OF INTELLIGENCE*

*“SEC. 216. (a) There is within the Department an Office of Intelligence.*

*“(b)(1) The head of the Office shall be the Director of the Office of Intelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.*

*“(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.*

*“(c) Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.”.*





(b) *CLERICAL AMENDMENT.*—The table of contents at the beginning of the Department of Energy Organization Act is amended by inserting after the item relating to section 213, as added by section 3203(b), the following new items:

“214. Establishment of security, counterintelligence, and intelligence policies.

“215. Office of Counterintelligence.

“216. Office of Intelligence.”.

## **Subtitle A—Establishment and Organization**

### **SEC. 3211. ESTABLISHMENT AND MISSION.**

(a) *ESTABLISHMENT.*—There is established within the Department of Energy a separately organized agency to be known as the National Nuclear Security Administration (in this title referred to as the “Administration”).

(b) *MISSION.*—The mission of the Administration shall be the following:

(1) To enhance United States national security through the military application of nuclear energy.

(2) To maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.

(3) To provide the United States Navy with safe, militarily effective nuclear propulsion plants and to ensure the safe and reliable operation of those plants.

(4) To promote international nuclear safety and non-proliferation.

(5) To reduce global danger from weapons of mass destruction.

(6) To support United States leadership in science and technology.

(c) *OPERATIONS AND ACTIVITIES TO BE CARRIED OUT CONSISTENT WITH CERTAIN PRINCIPLES.*—In carrying out the mission of the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.

### **SEC. 3212. ADMINISTRATOR FOR NUCLEAR SECURITY.**

(a) *IN GENERAL.*—(1) There is at the head of the Administration an Administrator for Nuclear Security (in this title referred to as the “Administrator”).

(2) Pursuant to subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of this Act, the Under Secretary for Nuclear Security of the Department of Energy serves as the Administrator.

(b) *FUNCTIONS.*—The Administrator has authority over, and is responsible for, all programs and activities of the Administration (except for the functions of the Deputy Administrator for Naval Reactors specified in the Executive order referred to in section 3216(b)), including the following:

(1) Strategic management.



- (2) *Policy development and guidance.*
- (3) *Budget formulation, guidance, and execution, and other financial matters.*
- (4) *Resource requirements determination and allocation.*
- (5) *Program management and direction.*
- (6) *Safeguards and security.*
- (7) *Emergency management.*
- (8) *Integrated safety management.*
- (9) *Environment, safety, and health operations.*
- (10) *Administration of contracts, including the management and operations of the nuclear weapons production facilities and the national security laboratories.*
- (11) *Intelligence.*
- (12) *Counterintelligence.*
- (13) *Personnel, including the selection, appointment, distribution, supervision, establishing of compensation, and separation of personnel in accordance with subtitle C of this title.*
- (14) *Procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code.*
- (15) *Legal matters.*
- (16) *Legislative affairs.*
- (17) *Public affairs.*
- (18) *Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.*

(c) **PROCUREMENT AUTHORITY.**—*The Administrator is the senior procurement executive for the Administration for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).*

(d) **POLICY AUTHORITY.**—*The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.*

**SEC. 3213. STATUS OF ADMINISTRATION AND CONTRACTOR PERSONNEL WITHIN DEPARTMENT OF ENERGY.**

(a) **STATUS OF ADMINISTRATION PERSONNEL.**—*Each officer or employee of the Administration, in carrying out any function of the Administration—*

(1) *shall be responsible to and subject to the authority, direction, and control of—*

(A) *the Secretary acting through the Administrator and consistent with section 202(c)(3) of the Department of Energy Organization Act;*

(B) *the Administrator; or*

(C) *the Administrator's designee within the Administration; and*

(2) *shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.*

(b) **STATUS OF CONTRACTOR PERSONNEL.**—*Each officer or employee of a contractor of the Administration, in carrying out any function of the Administration, shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the*



*Administration, except for the Secretary of Energy consistent with section 202(c)(3) of the Department of Energy Organization Act.*

*(c) CONSTRUCTION OF SECTION.—Subsections (a) and (b) may not be interpreted to in any way preclude or interfere with the communication of technical findings derived from, and in accord with, duly authorized activities between (1) the head, or any contractor employee, of a national security laboratory or of a nuclear weapons production facility, and (2) the Department of Energy, the President, or Congress.*

**SEC. 3214. DEPUTY ADMINISTRATOR FOR DEFENSE PROGRAMS.**

*(a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Programs, who is appointed by the President, by and with the advice and consent of the Senate.*

*(b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Programs shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:*

*(1) Maintaining and enhancing the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.*

*(2) Directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories.*

*(3) Directing, managing, and overseeing assets to respond to incidents involving nuclear weapons and materials.*

*(c) RELATIONSHIP TO LABORATORIES AND FACILITIES.—The head of each national security laboratory and nuclear weapons production facility shall, consistent with applicable contractual obligations, report to the Deputy Administrator for Defense Programs.*

**SEC. 3215. DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NON-PROLIFERATION.**

*(a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Nuclear Nonproliferation, who is appointed by the President, by and with the advice and consent of the Senate.*

*(b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Nuclear Nonproliferation shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:*

*(1) Preventing the spread of materials, technology, and expertise relating to weapons of mass destruction.*

*(2) Detecting the proliferation of weapons of mass destruction worldwide.*

*(3) Eliminating inventories of surplus fissile materials usable for nuclear weapons.*

*(4) Providing for international nuclear safety.*

**SEC. 3216. DEPUTY ADMINISTRATOR FOR NAVAL REACTORS.**

*(a) IN GENERAL.—(1) There is in the Administration a Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order shall serve as the Deputy Administrator for Naval Reactors.*

*(2) Within the Department of Energy, the Deputy Administrator shall report to the Secretary of Energy through the Administrator*



and shall have direct access to the Secretary and other senior officials in the Department.

(b) *DUTIES.*—The Deputy Administrator shall be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under the Naval Nuclear Propulsion Executive Order.

(c) *EFFECT ON EXECUTIVE ORDER.*—Except as otherwise specified in this section and notwithstanding any other provision of this title, the provisions of the Naval Nuclear Propulsion Executive Order remain in full force and effect until changed by law.

(d) *NAVAL NUCLEAR PROPULSION EXECUTIVE ORDER.*—As used in this section, the Naval Nuclear Propulsion Executive Order is Executive Order Number 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 42 U.S.C. 7158 note)).

**SEC. 3217. GENERAL COUNSEL.**

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.

**SEC. 3218. STAFF OF ADMINISTRATION.**

(a) *IN GENERAL.*—The Administrator shall maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties and responsibilities of the Administrator.

(b) *RESPONSIBILITIES.*—The staff of the Administration shall perform, in accordance with applicable law, such of the functions of the Administrator as the Administrator shall prescribe. The Administrator shall assign to the staff responsibility for the following functions:

(1) Personnel.

(2) Legislative affairs.

(3) Public affairs.

(4) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

## **Subtitle B—Matters Relating to Security**

**SEC. 3231. PROTECTION OF NATIONAL SECURITY INFORMATION.**

(a) *POLICIES AND PROCEDURES REQUIRED.*—The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

(b) *PROMPT REPORTING.*—The Administrator shall establish procedures to ensure prompt reporting to the Administrator of any significant problem, abuse, violation of law or Executive order, or deficiency relating to the management of classified information by personnel of the Administration.

**SEC. 3232. OFFICE OF DEFENSE NUCLEAR COUNTERINTELLIGENCE AND OFFICE OF DEFENSE NUCLEAR SECURITY.**

(a) *ESTABLISHMENT.*—(1) There are within the Administration—

(A) an Office of Defense Nuclear Counterintelligence; and

(B) an Office of Defense Nuclear Security.



(2) Each office established under paragraph (1) shall be headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for each such position.

(b) **CHIEF OF DEFENSE NUCLEAR COUNTERINTELLIGENCE.**—(1) The head of the Office of Defense Nuclear Counterintelligence is the Chief of Defense Nuclear Counterintelligence, who shall report to the Administrator and shall implement the counterintelligence policies directed by the Secretary and Administrator.

(2) The Secretary shall appoint the Chief, in consultation with the Director of the Federal Bureau of Investigation, from among individuals who have special expertise in counterintelligence. If an individual to serve as the Chief of Defense Nuclear Counterintelligence is a Federal employee of an entity other than the Administration, the service of that employee as Chief shall not result in any loss of employment status, right, or privilege by that employee.

(3) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning counterintelligence matters.

(4) The Chief shall be responsible for—

(A) the development and implementation of the counterintelligence programs of the Administration to prevent the disclosure or loss of classified or other sensitive information; and

(B) the development and administration of personnel assurance programs within the Administration.

(c) **CHIEF OF DEFENSE NUCLEAR SECURITY.**—(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

(2) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning security matters.

(3) The Chief shall be responsible for the development and implementation of security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.

#### **SEC. 3233. COUNTERINTELLIGENCE PROGRAMS.**

(a) **NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES.**—The Administrator shall, at each national security laboratory and nuclear weapons production facility, establish and maintain a counterintelligence program adequate to protect national security information at that laboratory or production facility.

(b) **OTHER FACILITIES.**—The Administrator shall, at each Administration facility not described in subsection (a) at which Restricted Data is located, assign an employee of the Office of Defense Nuclear Counterintelligence who shall be responsible for and assess counterintelligence matters at that facility.

#### **SEC. 3234. PROCEDURES RELATING TO ACCESS BY INDIVIDUALS TO CLASSIFIED AREAS AND INFORMATION OF ADMINISTRATION.**

The Administrator shall establish appropriate procedures to ensure that any individual is not permitted unescorted access to any



*classified area, or access to classified information, of the Administration until that individual has been verified to hold the appropriate security clearances.*

**SEC. 3235. GOVERNMENT ACCESS TO INFORMATION ON ADMINISTRATION COMPUTERS.**

(a) *PROCEDURES REQUIRED.*—*The Administrator shall establish procedures to govern access to information on Administration computers. Those procedures shall, at a minimum, provide that any individual who has access to information on an Administration computer shall be required as a condition of such access to provide to the Administrator written consent which permits access by an authorized investigative agency to any Administration computer used in the performance of the duties of such employee during the period of that individual's access to information on an Administration computer and for a period of three years thereafter.*

(b) *EXPECTATION OF PRIVACY IN ADMINISTRATION COMPUTERS.*—*Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no user of an Administration computer shall have any expectation of privacy in the use of that computer.*

(c) *DEFINITION.*—*For purposes of this section, the term "authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.*

**SEC. 3236. CONGRESSIONAL OVERSIGHT OF SPECIAL ACCESS PROGRAMS.**

(a) *ANNUAL REPORT ON SPECIAL ACCESS PROGRAMS.*—(1) *Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report on special access programs of the Administration.*

(2) *Each such report shall set forth—*

(A) *the total amount requested for such programs in the President's budget for the next fiscal year submitted under section 1105 of title 31, United States Code; and*

(B) *for each such program in that budget, the following:*

(i) *A brief description of the program.*

(ii) *A brief discussion of the major milestones established for the program.*

(iii) *The actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted.*

(iv) *The estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.*

(b) *ANNUAL REPORT ON NEW SPECIAL ACCESS PROGRAMS.*—(1) *Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report that, with respect to each new special access program, provides—*

(A) *notice of the designation of the program as a special access program; and*



*(B) justification for such designation.*

*(2) A report under paragraph (1) with respect to a program shall include—*

*(A) the current estimate of the total program cost for the program; and*

*(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.*

*(3) In this subsection, the term “new special access program” means a special access program that has not previously been covered in a notice and justification under this subsection.*

*(c) REPORTS ON CHANGES IN CLASSIFICATION OF SPECIAL ACCESS PROGRAMS.—(1) Whenever a change in the classification of a special access program of the Administration is planned to be made or whenever classified information concerning a special access program of the Administration is to be declassified and made public, the Administrator shall submit to the congressional defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.*

*(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.*

*(3) If the Administrator determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Administration, the Administrator may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.*

*(d) NOTICE OF CHANGE IN SAP DESIGNATION CRITERIA.—Whenever there is a modification or termination of the policy and criteria used for designating a program of the Administration as a special access program, the Administrator shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.*

*(e) WAIVER AUTHORITY.—(1) The Administrator may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Administrator determines that inclusion of that information in the report would adversely affect the national security. The Administrator may waive the report-and-wait requirement in subsection (f) if the Administrator determines that compliance with such requirement would adversely affect the national security. Any waiver under this paragraph shall be made on a case-by-case basis.*

*(2) If the Administrator exercises the authority provided under paragraph (1), the Administrator shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chair-*



man and ranking minority member of each of the congressional defense committees.

(f) **REPORT AND WAIT FOR INITIATING NEW PROGRAMS.**—A special access program may not be initiated until—

(1) the congressional defense committees are notified of the program; and

(2) a period of 30 days elapses after such notification is received.

## **Subtitle C—Matters Relating to Personnel**

### **SEC. 3241. AUTHORITY TO ESTABLISH CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL POSITIONS.**

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this title, establish not more than 300 scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitations in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to, and subject to the limitations of, the authority under section 161 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(d)) to make appointments and fix compensation with respect to officers and employees described in such section.

### **SEC. 3242. VOLUNTARY EARLY RETIREMENT AUTHORITY.**

(a) **AUTHORITY.**—An employee of the Department of Energy who is separated from the service under conditions described in subsection (b) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity in accordance with the provisions in chapter 83 or 84 of title 5, United States Code, as applicable.

(b) **CONDITIONS OF SEPARATION.**—Subsection (a) applies to an employee who—

(1) has been employed continuously by the Department of Energy for more than 30 days before the date on which the Secretary of Energy makes the determination required under paragraph (4)(A);

(2) is serving under an appointment that is not limited by time;

(3) has not received a decision notice of involuntary separation for misconduct or unacceptable performance that is pending decision; and

(4) is separated from the service voluntarily during a period with respect to which—

(A) the Secretary of Energy determines that the Department of Energy is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration; and

(B) the employee is within the scope of an offer of voluntary early retirement (as defined by organizational unit, occupational series or level, geographical location, any other similar factor that the Office of Personnel Manage-





ment determines appropriate, or any combination of such definitions of scope), as determined by the Secretary under regulations prescribed by the Office.

(c) **TREATMENT OF EMPLOYEES.**—For purposes of chapters 83 and 84 of title 5, United States Code (including for purposes of computation of an annuity under such chapters), an employee entitled to an annuity under this section shall be treated as an employee entitled to an annuity under section 8336(d) or 8414(b) of such title, as applicable.

(d) **DEFINITIONS.**—As used in this section, the terms “employee” and “annuity”—

(1) with respect to individuals covered by the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code, have the meaning of such terms as used in such chapter; and

(2) with respect to individuals covered by the Federal Employees Retirement System established in chapter 84 of such title, have the meaning of such terms as used in such chapter.

(e) **LIMITATION AND TERMINATION OF AUTHORITY.**—The authority provided in subsection (a)—

(1) may be applied with respect to a total of not more than 600 employees of the Department of Energy; and

(2) shall expire on September 30, 2003.

#### **SEC. 3243. SEVERANCE PAY.**

Section 5595 of title 5, United States Code, is amended by adding at the end the following new subsection:

“(j)(1) In the case of an employee of the Department of Energy who is entitled to severance pay under this section as a result of the establishment of the National Nuclear Security Administration, the Secretary of Energy may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

“(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Energy an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

“(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

“(C) Amounts repaid to the Department of Energy under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

“(3) If an employee fails to repay to the Department of Energy an amount required to be repaid under paragraph (2)(A), that



amount is recoverable from the employee as a debt due the United States.”

**SEC. 3244. CONTINUED COVERAGE OF HEALTH CARE BENEFITS.**

Section 8905a(d)(4)(A) of title 5, United States Code, is amended by inserting “, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration” after “reduction in force”.

## **Subtitle D—Budget and Financial Management**

**SEC. 3251. SEPARATE TREATMENT IN BUDGET.**

(a) **PRESIDENT’S BUDGET.**—In each budget submitted by the President to the Congress under section 1105 of title 31, United States Code, amounts requested for the Administration shall be set forth separately within the other amounts requested for the Department of Energy.

(b) **BUDGET JUSTIFICATION MATERIALS.**—In the budget justification materials submitted to Congress in support of each such budget, the amounts requested for the Administration shall be specified in individual, dedicated program elements.

**SEC. 3252. PLANNING, PROGRAMMING, AND BUDGETING PROCESS.**

The Administrator shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Administration comport with sound financial and fiscal management principles. Those procedures shall, at a minimum, provide for the planning, programming, and budgeting of activities of the Administration using funds that are available for obligation for a limited number of years.

**SEC. 3253. FUTURE-YEARS NUCLEAR SECURITY PROGRAM.**

(a) **SUBMISSION TO CONGRESS.**—The Administrator shall submit to Congress each year, at or about the time that the President’s budget is submitted to Congress that year under section 1105(a) of title 31, United States Code, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b) **ELEMENTS.**—Each future-years nuclear security program shall contain the following:

(1) The estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration during the five-fiscal year period covered by the program, expressed in a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31, United States Code.

(2) A description of the anticipated workload requirements for each Administration site during that five-fiscal year period.

(c) **EFFECT OF BUDGET ON STOCKPILE.**—The Administrator shall include in the materials the Administrator submits to Congress in support of the budget for any fiscal year that is submitted



by the President pursuant to section 1105 of title 31, United States Code, a description of how the funds identified for each program element in the weapons activities budget of the Administration for such fiscal year will help ensure that the nuclear weapons stockpile is safe and reliable as determined in accordance with the criteria established under 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2257; 42 U.S.C. 2121 note).

(d) **CONSISTENCY IN BUDGETING.**—(1) The Administrator shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Administrator in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as shown in the future-years nuclear security program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

(e) **TREATMENT OF MANAGEMENT CONTINGENCIES.**—Nothing in this section shall be construed to prohibit the inclusion in the future-years nuclear security program of amounts for management contingencies, subject to the requirements of subsection (d).

## ***Subtitle E—Miscellaneous Provisions***

### **SEC. 3261. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.**

(a) **COMPLIANCE REQUIRED.**—The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

(b) **PROCEDURES REQUIRED.**—The Administrator shall develop procedures for meeting such requirements.

(c) **RULE OF CONSTRUCTION.**—Nothing in this title shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.

### **SEC. 3262. COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.**

The Administrator shall establish procedures to ensure that the mission and programs of the Administration are executed in full compliance with all applicable provisions of the Federal Acquisition Regulation issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

### **SEC. 3263. SHARING OF TECHNOLOGY WITH DEPARTMENT OF DEFENSE.**

The Administrator shall, in cooperation with the Secretary of Defense, establish procedures and programs to provide for the sharing of technology, technical capability, and expertise between the



*Administration and the Department of Defense to further national security objectives.*

**SEC. 3264. USE OF CAPABILITIES OF NATIONAL SECURITY LABORATORIES BY ENTITIES OUTSIDE ADMINISTRATION.**

*The Secretary, in consultation with the Administrator, shall establish appropriate procedures to provide for the use, in a manner consistent with the national security mission of the Administration under section 3211(b), of the capabilities of the national security laboratories by elements of the Department of Energy not within the Administration, other Federal agencies, and other appropriate entities, including the use of those capabilities to support efforts to defend against weapons of mass destruction.*

## **Subtitle F—Definitions**

**SEC. 3281. DEFINITIONS.**

*For purposes of this title:*

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

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

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

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

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

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

(B) *The Pantex Plant, Amarillo, Texas.*

(C) *The Y-12 Plant, Oak Ridge, Tennessee.*

(D) *The tritium operations facilities at the Savannah River Site, Aiken, South Carolina.*

(E) *The Nevada Test Site, Nevada.*

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

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

(4) *The term “Restricted Data” has the meaning given such term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

(5) *The term “congressional defense committees” means—*

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

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



## ***Subtitle G—Amendatory Provisions, Transition Provisions, and Effective Dates***

### **SEC. 3291. FUNCTIONS TRANSFERRED.**

(a) **TRANSFERS.**—*There are hereby transferred to the Administrator all national security functions and activities performed immediately before the date of the enactment of this Act by the following elements of the Department of Energy:*

- (1) The Office of Defense Programs.*
- (2) The Office of Nonproliferation and National Security.*
- (3) The Office of Fissile Materials Disposition.*
- (4) The nuclear weapons production facilities.*
- (5) The national security laboratories.*
- (6) The Office of Naval Reactors.*

(b) **AUTHORITY TO TRANSFER ADDITIONAL FUNCTIONS.**—*The Secretary of Energy may transfer to the Administrator any other facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.*

(c) **ENVIRONMENTAL REMEDIATION AND WASTE MANAGEMENT ACTIVITIES.**—*In the case of any environmental remediation and waste management activity of any element specified in subsection (a), the Secretary of Energy may determine to transfer responsibility for that activity to another element of the Department.*

### **SEC. 3292. TRANSFER OF FUNDS AND EMPLOYEES.**

(a) **TRANSFER OF FUNDS.**—(1) *Any balance of appropriations that the Secretary of Energy determines is available and needed to finance or discharge a function, power, or duty or an activity that is transferred to the Administration shall be transferred to the Administration and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—*

*(A) be credited to any applicable appropriation account of the Administration; or*

*(B) be credited to a new account that may be established on the books of the Department of the Treasury; and shall be merged with the funds already credited to that account and accounted for as one fund.*

(2) *Balances of appropriations credited to an account under paragraph (1)(A) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.*

(b) **PERSONNEL.**—(1) *With respect to any function, power, or duty or activity of the Department of Energy that is transferred to the Administration, those employees of the element of the Department of Energy from which the transfer is made that the Secretary of Energy determines are needed to perform that function, power, or duty, or for that activity, as the case may be, shall be transferred to the Administration.*

(2) *The authorized strength in civilian employees of any element of the Department of Energy from which employees are transferred*



*under this section is reduced by the number of employees so transferred.*

**SEC. 3293. PAY LEVELS.**

(a) **UNDER SECRETARY FOR NUCLEAR SECURITY.**—Section 5314 of title 5, United States Code, is amended by striking “Under Secretary, Department of Energy” and inserting “Under Secretaries of Energy (2)”.

(b) **DEPUTY ADMINISTRATORS.**—Section 5315 of such title is amended by adding at the end the following new item:

“Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).”.

**SEC. 3294. CONFORMING AMENDMENTS.**

(a) **REDUCTION IN NUMBER OF ASSISTANT SECRETARIES OF ENERGY.**—(1) Section 5315 of title 5, United States Code, is amended by striking “(8)” after “Assistant Secretaries of Energy” and inserting “(6)”.

(2) Subsection (a) of section 203 of the Department of Energy Organization Act (42 U.S.C. 7133) is amended in the first sentence by striking “eight” and inserting “six”.

(b) **FUNCTIONS REQUIRED TO BE ASSIGNED TO ASSISTANT SECRETARIES OF ENERGY.**—Subsection (a) of section 203 of the Department of Energy Organization Act (42 U.S.C. 7133) is amended by striking paragraph (5).

(c) **OFFICE OF NAVAL REACTORS.**—Section 309 of the Department of Energy Organization Act (42 U.S.C. 7158) is amended—

(1) by striking subsection (b);

(2) by striking “(a)”; and

(3) by striking “Assistant Secretary to whom the Secretary has assigned the function listed in section 203(a)(2)(E)” and inserting “Under Secretary for Nuclear Security”.

(d) **OFFICE OF FISSILE MATERIALS DISPOSITION.**—(1) Section 212 of the Department of Energy Organization Act (42 U.S.C. 7143) is repealed.

(2) The table of contents at the beginning of such Act is amended by striking the item relating to section 212.

(e) **REPEAL OF RESTATED PROVISION RELATING TO DOE SPECIAL ACCESS PROGRAMS; CONFORMING AMENDMENT.**—(1)(A) Section 93 of the Atomic Energy Act of 1954 (42 U.S.C. 2122a) is repealed.

(B) The table of contents at the beginning of such Act is amended by striking the item relating to section 93.

(2) Clause (ii) of section 1152(g)(1)(B) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 50 U.S.C. 435 note) is amended to read as follows:

“(ii) the National Nuclear Security Administration (which is required to submit reports on special access programs under section 3237 of the National Nuclear Security Administration Act); or”.

(f) **REPEAL OF FIVE-YEAR BUDGET REQUIREMENT FOR DOE NATIONAL SECURITY PROGRAMS.**—Section 3155 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2841; 42 U.S.C. 7271b) is repealed.

**SEC. 3295. TRANSITION PROVISIONS.**

(a) **COMPLIANCE WITH FINANCIAL PRINCIPLES.**—(1) *The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with sound financial and fiscal management principles specified in section 3252 is achieved not later than October 1, 2000.*

(2) *In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with those principles not later than such date.*

(3) *Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.*

(b) **INITIAL REPORT FOR FUTURE-YEARS NUCLEAR SECURITY PROGRAM.**—*The first report under section 3253 shall be submitted in conjunction with the budget submitted for fiscal year 2001.*

(c) **PROCEDURES FOR COMPUTER ACCESS.**—*The regulations to implement the procedures under section 3235 shall be prescribed not later than 90 days after the effective date of this title.*

(d) **COMPLIANCE WITH FAR.**—(1) *The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with the Federal Acquisition Regulation specified in section 3262 is achieved not later than October 1, 2000.*

(2) *In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with the Federal Acquisition Regulation not later than such date.*

(3) *Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.*

**SEC. 3296. APPLICABILITY OF PREEXISTING LAWS AND REGULATIONS.**

*Unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effective date of this title that are applicable to functions of the Department of Energy specified in section 3291 shall continue to apply to the corresponding functions of the Administration.*

**SEC. 3297. REPORT CONTAINING IMPLEMENTATION PLAN OF SECRETARY OF ENERGY.**

*Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary's plan for the implementation of the provisions of this title.*

**SEC. 3298. CLASSIFICATION IN UNITED STATES CODE.**

*Subtitles A through F of this title (other than provisions of those subtitles amending existing provisions of law) shall be classified to the United States Code as a new chapter of title 50, United States Code.*

**SEC. 3299. EFFECTIVE DATES.**

(a) **IN GENERAL.**—*Except as provided in subsection (b), the provisions of this title shall take effect on March 1, 2000.*



*(b) EXCEPTIONS.—(1) Sections 3202, 3204, 3251, 3295, and 3297 shall take effect on the date of the enactment of this Act.*

*(2) Sections 3234 and 3235 shall take effect on the date of the enactment of this Act. During the period beginning on the date of the enactment of this Act and ending on the effective date of this title, the Secretary of Energy shall carry out those sections and any reference in those sections to the Administrator and the Administration shall be treated as references to the Secretary and the Department of Energy, respectively.*