

# National Nuclear Security Administration Act

Updated October 1, 2010

Source: Title XXXII of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65, as amended by the Energy and Water Development Appropriations Act, 2001, Pub. L. 106-377; the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398; the National Defense Authorization Act for Fiscal Year 2002, Pub. L. 107-107; the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136; the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108-375; the Energy Policy Act of 2005, Pub. L. 109-58; the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364; the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181; the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417; and the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84.

# TITLE XXXII—NATIONAL NUCLEAR SECURITY ADMINISTRATION

50 USC 2401 note

## **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.**

42 USC 7132

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

42 USC 7144

“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 COUNTERINTELLIGENCE AND INTELLIGENCE PROGRAMS AND ACTIVITIES.<sup>1</sup>**

(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

42 USC 7144a

“Sec. 214. (a) 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.

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<sup>1</sup> **Amendments** – 2006 – Sec. 214 (as added by Sec. 3204(a) of Pub. L. 106-65). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(g), designated existing provision as subsec. (a) and added subsecs. (b) and (c). Sec. 215(b) (1), Sec. 216(b) (1) (as added by Sec. 3204(a) of Pub. L. 106-65). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(f), struck out “which shall be a position in the Senior Executive Service” and inserted “who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate”.

“(b) (1) There is within the Department an Intelligence Executive Committee. The Committee shall consist of the Deputy Secretary of Energy, who shall chair the Committee, and each Under Secretary of Energy.

“(2) The Committee shall be staffed by the Director of the Office of Intelligence and the Director of the Office of Counterintelligence.

“(3) The Secretary shall use the Committee to assist in developing and promulgating the counterintelligence and intelligence policies, requirements, and priorities of the Department.

“(c) In the budget justification materials submitted to Congress in support of each budget submitted by the President to Congress under title 31, United States Code, the amounts requested for the Department for intelligence functions and the amounts requested for the Department for counterintelligence functions shall each be specified in appropriately classified individual, dedicated program elements. Within the amounts requested for counterintelligence functions, the amounts requested for the National Nuclear Security Administration shall be specified separately from the amounts requested for other elements of the Department.

#### “OFFICE OF COUNTERINTELLIGENCE

42 USC 7144b

“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, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. 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

42 USC 7144c

“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, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. 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

50 USC 2401

### 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 nonproliferation.
- (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.

50 USC 2402

### SEC. 3212. ADMINISTRATOR FOR NUCLEAR SECURITY.<sup>2</sup>

(a) **IN GENERAL.**—

- (1) There is at the head of the Administration an

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<sup>2</sup> **Amendments** – 2008 – Subsec. (b). Pub. L. 110-417, (Div. C, Title XXXI, Sec. 3111) redesignated paragraph (18) as (19) and added new paragraph (18) relating to functions of the Administrator and elimination of surplus fissile materials. 2004 – Subsec. (e). Pub. L. 108-375 (div. A, title IX, sec. 902(e)) struck out “JOINT” before “NUCLEAR WEAPONS COUNCIL” in the subsection heading and struck out “Joint” before “Nuclear Weapons Council” in the text of subsection (e).

2001 – Subsecs. (e), (f). Pub. L. 107-107 redesignated subsec. (e), relating to reorganization authority, as (f).

2000 – Subsec. (e). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3159(a)), added subsec. (e) relating to reorganization authority. Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3152(b)), added subsec. (e) relating to membership on Joint Nuclear Weapons Council.

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) Eliminating inventories of surplus fissile materials usable for nuclear weapons.
- (19) 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.

(e) **MEMBERSHIP ON NUCLEAR WEAPONS COUNCIL.**—The Administrator serves as a member of the Nuclear Weapons Council under section 179 of title 10, United States Code.

(f) **REORGANIZATION AUTHORITY.**—Except as provided by subsections (b) and (c) of section 3291:

(1) The Administrator may establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the Administration, or transfer any function of the Administration.

(2) Such authority does not apply to the abolition of organizational units or components established by law or the transfer of functions vested by law in any organizational unit or component.

50 USC 2403

### **SEC. 3213. PRINCIPAL DEPUTY ADMINISTRATOR FOR NUCLEAR SECURITY.<sup>3</sup>**

(a) **IN GENERAL.**—

(1) There is in the Administration a Principal Deputy Administrator, who is appointed by the President, by and with the advice and consent of the Senate.

(2) The Principal Deputy Administrator shall be appointed from among persons who have extensive background in organizational management and are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the Administration in a manner that advances and protects the national security of the United States.

(b) **DUTIES.**—Subject to the authority, direction, and control of the Administrator, the Principal Deputy Administrator shall perform such duties and exercise such powers as the Administrator may prescribe, including the coordination of activities among the elements of the Administration. The Principal Deputy Administrator shall act for, and exercise the powers of, the Administrator when the Administrator is disabled or the position of Administrator is vacant.

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<sup>3</sup> **Source** – Pub. L. 106-65, div. C, title XXXII, Sec. 3213, as added Pub. L. 107-107, div. C, title XXXI, Sec. 3141(a) (2), Dec. 28, 2001, 115 Stat. 1370.

**Prior Provisions** – A prior section 2403, Pub. L. 106-65, div. C, title XXXII, Sec. 3213, Oct. 5, 1999, 113 Stat. 958; Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3157), Oct. 30, 2000, 114 Stat. 1654, 1654A-468, which related to status of Administration and contractor personnel within Department of Energy, was renumbered section 3220 of Pub. L. 106-65, by Pub. L. 107-107, div. C, title XXXI, Sec. 3141(a) (1), Dec. 28, 2001, 115 Stat. 1369, and transferred to 50 USC 2410.

50 USC 2404

**SEC. 3214. DEPUTY ADMINISTRATOR FOR DEFENSE PROGRAMS.<sup>4</sup>**

- (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.

50 USC 2405

**SEC. 3215. DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION.**

- (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.

50 USC 2406

**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

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<sup>4</sup> **Amendments** – 2001 – Subsec. (c). Pub. L. 107-107 struck out heading and text of subsec. (c). Text read as follows: "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."

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 No. 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)).

50 USC 2407

#### **SEC. 3217. GENERAL COUNSEL.**

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

50 USC 2408

#### **SEC. 3218. STAFF OF ADMINISTRATION.<sup>5</sup>**

(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 the Department of Energy's Office of Intelligence and Counterintelligence.
- (5) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

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<sup>5</sup> **Amendments** – 2006 – Subsec. (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(e), added par. (4), and redesignated former par. (4) as (5).

50 USC 2409

**SEC. 3219. SCOPE OF AUTHORITY OF SECRETARY OF ENERGY TO MODIFY ORGANIZATION OF ADMINISTRATION.<sup>6</sup>**

Notwithstanding the authority granted by section 643 of the Department of Energy Organization Act (42 U.S.C. 7253) or any other provision of law, the Secretary of Energy may not establish, alter, consolidate, or discontinue any organizational unit or component, or transfer any function, of the Administration, except as authorized by subsection (b) or (c) of section 3291.

50 USC 2410

**SEC. 3220. STATUS OF ADMINISTRATION AND CONTRACTOR PERSONNEL WITHIN DEPARTMENT OF ENERGY.<sup>7</sup>**

(a) STATUS OF ADMINISTRATION PERSONNEL.—Each officer or employee 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 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.

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<sup>6</sup> **Source** – Pub. L. 106-65, div. C, title XXXII, Sec. 3219, as added Pub. L. 106-377, Sec. 1(a) (2) (title III, Sec. 314(a)), Oct. 27, 2000, 114 Stat. 1441, 1441A-81.

<sup>7</sup> **Amendments** – 2009-Subsec. (e). Pub. L. 111-84, div. C, title XXXI, Sec. 3121, repealed sunset provision for consolidation of counterintelligence programs created by Pub. L. 109-364, div. C, title XXXI, Sec. 3117(a) (2) (B). 2006 – Subsec. (e). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(d), added subsec. (e) relating to status of Intelligence and Counterintelligence personnel.

Subsec. (e). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(a) (2) (B), imposed sunset provision effective September 30, 2010 stating: “(B) subsection (e) of section 3220 of the National Nuclear Security Administration Act (50 U.S.C. 2410), as added by this section, is repealed.”

2000 – Subsec. (a). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3157(1)), struck out "Administration, in carrying out any function of the" after "employee of the" in introductory provisions. Subsec. (b). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3157(2)), struck out ", in carrying out any function of the Administration," after "contractor of the Administration".

Subsec. (d). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3157(3)), added subsec. (d).

(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.

(d) PROHIBITION ON DUAL OFFICE HOLDING.—Except in accordance with sections 3212(a) (2) and 3216(a) (1):

(1) An individual may not concurrently hold or carry out the responsibilities of—

(A) a position within the Administration; and

(B) a position within the Department of Energy not within the Administration.

(2) No funds appropriated or otherwise made available for any fiscal year may be used to pay, to an individual who concurrently holds or carries out the responsibilities of a position specified in paragraph (1) (A) and a position specified in paragraph (1) (B), the basic pay, salary, or other compensation relating to any such position.

(e) STATUS OF INTELLIGENCE AND COUNTERINTELLIGENCE PERSONNEL.—Notwithstanding the restrictions of subsections (a) and (b), each officer or employee of the Administration, or of a contractor of the Administration, who is carrying out activities related to intelligence or counterintelligence shall, in carrying out those activities, be subject to the authority, direction, and control of the Secretary of Energy or the Secretary's delegate.

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

50 USC 2421

### **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 SECURITY.<sup>8</sup>**

(a) ESTABLISHMENT.—There is within the Administration an Office of Defense Nuclear Security, headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for such position.

(b) 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.

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<sup>8</sup> **Amendments** – 2006 – Heading. Pub. L. 109-364, div. C, title XXXI, Sec. 3117(b) (1) (A), struck out “Office of Defense Nuclear Counterintelligence and” in the heading.

Subsec. (a). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(b) (1) (B), added subsec. (a), and struck out text of former subsec. (a), which read as follows: “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.”

Subsec. (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(b) (1) (C) & (D), redesignated subsec. (c) as (b) and struck out text of former subsec. (b), which read as follows: “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.”

50 USC 2423

**SEC. 3233. COUNTERINTELLIGENCE PROGRAMS.<sup>9</sup>**

(a) NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES.—The Secretary of Energy 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 Secretary of Energy shall, at each Administration facility not described in subsection (a) at which Restricted Data is located, assign an employee of the Office of Counterintelligence of the Department of Energy who shall be responsible for and assess counterintelligence matters at that facility.

50 USC 2424

**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.

50 USC 2425

**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

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<sup>9</sup> **Amendments** – 2009- Subsec. (a), (b). Pub. L. 111-84, div. C, title XXXI, Sec. 3121, repealed sunset provision (i) in each of subsections (a) and (b), striking ‘The Secretary of Energy shall’; and (ii) in subsection (b), striking ‘Office of Counterintelligence of the Department of Energy’ and inserting ‘Administration’” as required by Pub. L. 109-364, div. C, title XXXI, Sec. 3117(a) (2) (B).

2006 – Subsecs. (a), (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(c) (1), struck out “The Administrator shall” and inserted “The Secretary of Energy shall”.

Subsecs (a), (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(a)(2)(C) provides, effective September 30, 2010: “(C) section 3233 of the National Nuclear Security Administration Act (50 U.S.C. 2423) is amended— (i) in each of subsections (a) and (b), by striking ‘The Secretary of Energy shall’; and (ii) in subsection (b), by striking ‘Office of Counterintelligence of the Department of Energy’ and inserting ‘Administration’.”Subsec. (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(c) (2), struck out “Office of Defense Nuclear Counterintelligence” and inserted “Office of Counterintelligence of the Department of Energy”.

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.

50 USC 2426

### **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 chairman 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**

50 USC 2441

#### **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.

50 USC 2442

**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 Management 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:

5 USC 5595

“(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.**

5 USC 8905a

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**

50 USC 2451

**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.

50 USC 2452

**SEC. 3252. PLANNING, PROGRAMMING, AND BUDGETING PROCESS.<sup>10</sup>**

(a) PROCEDURES REQUIRED – 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.

(b) ANNUAL PLAN FOR OBLIGATION OF FUNDS.—

(1) Each year, the Administrator shall prepare a plan for the obligation of the amounts that, in the President's budget submitted to Congress that year under section 1105(a) of title 31, United States Code, are proposed to be appropriated for the Administration for the fiscal year that begins in that year (in

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<sup>10</sup> **Amendments** – 2000 – Pub. L. 106-398 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

this section referred to as the “budget year”) and the two succeeding fiscal years.

(2) For each program element and construction line item of the Administration, the plan shall provide the goal of the Administration for the obligation of those amounts for that element or item for each fiscal year of the plan, expressed as a percentage of the total amount proposed to be appropriated in that budget for that element or item.

(c) **SUBMISSION OF PLAN AND REPORT.**—The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress under section 1105(a) of title 31, United States Code, each of the following:

(1) The plan required by subsection (b) prepared with respect to that budget.

(2) A report on the plans prepared with respect to the preceding years' budgets, which shall include, for each goal provided in those plans—

(A) the assessment of the Administrator as to whether or not that goal was met; and

(B) if that assessment is that the goal was not met—

(i) the reasons why that goal was not met; and

(ii) the plan of the Administrator for meeting or, if necessary, adjusting that goal.

50 USC 2453

## **SEC. 3253. FUTURE-YEARS NUCLEAR SECURITY PROGRAM.<sup>11</sup>**

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<sup>11</sup> **Amendments** – 2008 Subsec. (b). Pub. L. 110-181, Div C, Title XXXI, Subtitle C, Sec. 3123, added subsec. (b)(6) relating to plan for the physical and cyber security threats to the nuclear weapons complex.

2006 – Subsec. (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3111(b), added par. (5) relating to plan for the transformation of the nuclear weapons complex.

2000 – Subsec. (b). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3154(a)), added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: "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."

Subsec. (c). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3154(b) (1), (2)), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "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 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 section 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)."

(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) A detailed description of the program elements (and the projects, activities, and construction projects associated with each such program element) during the applicable five-fiscal year period for at least each of the following:

(A) For defense programs—

(i) directed stockpile work;

(ii) campaigns;

(iii) readiness in technical base and facilities; and

(iv) secure transportation asset.

(B) For defense nuclear nonproliferation—

(i) nonproliferation and verification, research, and development;

(ii) arms control; and

(iii) fissile materials disposition.

(C) For naval reactors, naval reactors operations and maintenance.

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support each program element specified pursuant to paragraph (1).

(3) A detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal year period will help ensure that the nuclear weapons stockpile is safe and reliable, as determined in accordance with the criteria established under section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note).

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

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Subsec. (d). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3154(b) (2), (3)), redesignated subsec. (e) as (d) and substituted "subsection (c)" for "subsection (d)". Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106-398, Sec. 1 (div. C, title XXXI, Sec. 3154(b) (2)), redesignated subsec. (e) as (d).

period.

(5) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support the programs required to implement the plan to transform the nuclear weapons complex under section 4214 of the Atomic Energy Defense Act, together with a detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal-year period will help ensure that those programs are implemented. The statement shall assume year-to-year funding profiles that account for increases only for projected inflation.

(6) A plan, developed in consultation with the Director of the Office of Health, Safety, and Security of the Department of Energy, for the research and development, deployment, and lifecycle sustainment of the technologies employed within the nuclear weapons complex to address physical and cyber security threats during the applicable five-fiscal year period, together with—

(A) for each site in the nuclear weapons complex, a description of the technologies deployed to address the physical and cyber security threats posed to that site;

(B) for each site and for the nuclear weapons complex, the methods used by the National Nuclear Security Administration to establish priorities among investments in physical and cyber security technologies; and

(C) a detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal year period will help carry out that plan.

(c) 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.

(d) 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 (c).

50 USC 2454

**SEC. 3254. SEMIANNUAL FINANCIAL REPORTS ON DEFENSE NUCLEAR NONPROLIFERATION PROGRAMS.**<sup>12</sup>

(a) SEMIANNUAL REPORTS REQUIRED.—The Administrator shall submit to the Committees on Armed Services of the Senate and the House of Representatives a semiannual report on the amounts available for the defense nuclear nonproliferation programs of the Administration. Each such report shall cover a half of a fiscal year (in this section referred to as a “fiscal half”) and shall be submitted not later than 30 days after the end of that fiscal half.

(b) CONTENTS.—Each report for a fiscal half shall, for each such defense nuclear nonproliferation program for which amounts are available for the fiscal year that includes that fiscal half, set forth the following:

(1) The aggregate amount available for such program as of the beginning of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

(2) The aggregate amount newly made available for such program during such fiscal half and, within such amount, the amount made available by appropriations, by transfers, by reprogrammings, and by other means.

(3) The aggregate amount available for such program as of the end of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

50 USC 2455

**SEC. 3255. BIENNIAL PLAN AND BUDGET ASSESSMENT ON THE MODERNIZATION AND REFURBISHMENT OF THE NUCLEAR SECURITY COMPLEX.**<sup>13</sup>

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<sup>12</sup> Source – Pub. L. 106-65, div. D, title XXXII, Sec. 3254, as added Pub. L. 108-136, div. C, title XXXI, Sec. 3121(a), Nov. 24, 2003.

<sup>13</sup> Source – Pub. L. 111-84, div. C, title XXXI, Sec. 3116(a), Oct. 28, 2009.

(a) Nuclear Security Complex Modernization and Refurbishment Plan and Assessment.--The Administrator for Nuclear Security shall include with the nuclear security budget materials submitted for each odd-numbered fiscal year—

- (1) the plan for the modernization and refurbishment of the nuclear security complex described under subsection (b); and
- (2) an assessment by the Administrator of whether both the budget for such fiscal year and the future-years nuclear security program submitted to Congress in relation to such budget under section 3253 provide for funding of the nuclear security complex at a level that is sufficient for the modernization and refurbishment of the nuclear security complex in accordance with the plan described under subsection (b).

(b) Plan Elements.—

(1) The plan required under subsection (a)(1) shall be designed so that the nuclear security complex is capable of supporting—

- (A) the national security strategy of the United States, as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a), except that, if at the time such plan is submitted with the nuclear security budget materials a national security strategy report required under such section 108 has not been submitted to Congress, then such plan shall be designed so that the modernization and refurbishment of the nuclear security complex provided for under such plan is capable of supporting the nuclear security complex recommended in the report of the most recent Quadrennial Defense Review; and
- (B) the nuclear posture of the United States as set forth in the most recent Nuclear Posture Review.

(2) The plan required under subsection (a)(1) shall include the following:

- (A) A description of the modernization and refurbishment measures the Administrator determines necessary to meet the requirements of the national security strategy of the United States or the most recent Quadrennial Defense Review, whichever is applicable under paragraph (1)(A), and the Nuclear Posture Review.
- (B) A schedule for implementing those measures determined necessary under subparagraph (A) during the 10 years following the date of the plan.
- (C) The estimated levels of annual funds the Administrator determines necessary to carry out the

program, including a discussion of the criteria, evidence, and strategies on which such estimated levels of annual funds are based.

(c) Budget Assessment.--If the Administrator determines a budget request is insufficient for the modernization and refurbishment of the nuclear security complex provided for in the plan required under subsection (a)(1), the Administrator shall include with the nuclear security budget materials for such fiscal year a further assessment that describes and discusses the risks and implications associated with the ability of the nuclear security complex to support the annual certification of the nuclear stockpile of the United States and maintain its long-term safety, security, and reliability. Such assessment shall be coordinated in advance with the Secretary of Defense and the Commander of the United States Strategic Command.

(d) Definitions.--In this section:

(1) The term 'nuclear security complex' means the physical facilities, technology, and human capital of--

(A) the national security laboratories;

(B) the Pantex Plant;

(C) the Y-12 National Security Complex;

(D) the Kansas City Plant;

(E) the Savannah River Site; and

(F) the Nevada test site.

(2) The term 'budget', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31, United States Code.

(3) The term 'nuclear security budget materials', with respect to a fiscal year, means the materials submitted to Congress by the Administrator for Nuclear Security in support of the budget for that fiscal year.

(4) The term 'Quadrennial Defense Review' means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of title 10, United States Code.

## **Subtitle E—Miscellaneous Provisions**

50 USC 2461

### **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.

50 USC 2462

**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.).

50 USC 2463

**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.

50 USC 2464

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

50 USC 2471

**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**

50 USC 2481

### **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.

50 USC 2482

## **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.

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**SEC. 3293. PAY LEVELS.**<sup>14</sup>

5 USC 5314

(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 (3)”.

(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.**<sup>15</sup>

(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 “(7)”.

(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 “7”.

(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

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<sup>14</sup> **Amendment** - Subsec. (a). Pub. L. 109-58, Title X, Sec 1006(c) (2) substituted “Under Secretaries of Energy (3)” for “Under Secretaries of Energy (2)”.

<sup>15</sup> **Amendments** – Subsec. (a)(1). Pub. L. 109-58, Title X, Sec 1006(c) (3) struck out “Assistant Secretaries of Energy (6)” and inserted “Assistant Secretaries of Energy (7) in 5 USC 5315.

Subsec (a) (2). Publ. L. 109-58, Title X, Sec. 1006(b)(1) substituted “7 Assistant Secretaries” for “six Assistant Secretaries” in the first sentence of subsection (a) of section 203 of the Department of Energy Organization Act (42 U.S.C. 7133).

(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 3236 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.

50 USC 2483

**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.

50 USC 2484

**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.

50 USC 2401 note

**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.

50 USC 2401 note

**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.