

In the Senate of the United States,

November 16, 2006.

Resolved, That the bill from the House of Representatives (H.R. 5682) entitled “An Act to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***TITLE I—UNITED STATES-INDIA***
2 ***PEACEFUL ATOMIC ENERGY***
3 ***COOPERATION***

4 ***SECTION 101. SHORT TITLE.***

5 *This title may be cited as the “United States-India*
6 *Peaceful Atomic Energy Cooperation Act”.*

7 ***SEC. 102. SENSE OF CONGRESS.***

8 *It is the sense of Congress that—*

9 *(1) strong bilateral relations with India are in*
10 *the national interest of the United States;*

1 (2) *the United States and India share common*
2 *democratic values and the potential for increasing*
3 *and sustained economic engagement;*

4 (3) *commerce in civil nuclear energy with India*
5 *by the United States and other countries has the po-*
6 *tential to benefit the people of all countries;*

7 (4) *such commerce also represents a significant*
8 *change in United States policy regarding commerce*
9 *with countries not parties to the Nuclear Non-Pro-*
10 *liferation Treaty, which remains the foundation of the*
11 *international non-proliferation regime;*

12 (5) *any commerce in civil nuclear energy with*
13 *India by the United States and other countries must*
14 *be achieved in a manner that minimizes the risk of*
15 *nuclear proliferation or regional arms races and*
16 *maximizes India's adherence to international non-*
17 *proliferation regimes, including, in particular, the*
18 *Guidelines of the Nuclear Suppliers Group (NSG);*
19 *and*

20 (6) *the United States should not seek to facilitate*
21 *or encourage the continuation of nuclear exports to*
22 *India by any other party if such exports are termi-*
23 *nated under United States law.*

1 **SEC. 103. DECLARATION OF POLICY CONCERNING UNITED**
2 **STATES-INDIA PEACEFUL ATOMIC ENERGY**
3 **COOPERATION.**

4 *It shall be the policy of the United States with respect*
5 *to any peaceful atomic energy cooperation between the*
6 *United States and India—*

7 *(1) to achieve as quickly as possible a cessation*
8 *of the production by India and Pakistan of fissile*
9 *materials for nuclear weapons and other nuclear ex-*
10 *plosive devices;*

11 *(2) to achieve as quickly as possible the Govern-*
12 *ment of India's adherence to, and cooperation in, the*
13 *full range of international non-proliferation regimes*
14 *and activities, including India's—*

15 *(A) full participation in the Proliferation*
16 *Security Initiative;*

17 *(B) formal commitment to the Statement of*
18 *Interdiction Principles;*

19 *(C) public announcement of its decision to*
20 *conform its export control laws, regulations, and*
21 *policies with the Australia Group and with the*
22 *Guidelines, Procedures, Criteria, and Controls*
23 *List of the Wassenaar Arrangement; and*

24 *(D) demonstration of satisfactory progress*
25 *toward implementing the decision described in*
26 *subparagraph (C);*

1 (3) to ensure that India remains in full compli-
2 ance with its non-proliferation, arms control, and
3 disarmament agreements, obligations, and commit-
4 ments;

5 (4) to ensure that any safeguards agreement or
6 Additional Protocol thereto to which India is a party
7 with the International Atomic Energy Agency
8 (IAEA) can reliably safeguard any export or reexport
9 to India of any nuclear materials and equipment;

10 (5) to meet the requirements set forth in sub-
11 sections a.(1) and a.(3)–a.(9) of section 123 of the
12 Atomic Energy Act of 1954 (42 U.S.C. 2153);

13 (6) to act in a manner fully consistent with the
14 Guidelines for Nuclear Transfers and the Guidelines
15 for Transfers of Nuclear-Related Dual-Use Equip-
16 ment, Materials, Software and Related Technology de-
17 veloped by the multilateral Nuclear Suppliers Group
18 and the rules and practices regarding NSG decision-
19 making;

20 (7) given the special sensitivity of equipment
21 and technologies related to the enrichment of ura-
22 nium, the reprocessing of spent nuclear fuel, and the
23 production of heavy water, to work with members of
24 the Nuclear Suppliers Group, individually and collec-

1 *tively, to further restrict the transfers of such equip-*
2 *ment and technologies, including to India;*

3 *(8) to maintain the fullest possible international*
4 *support for, adherence to, and compliance with the*
5 *Nuclear Non-Proliferation Treaty; and*

6 *(9) that exports of nuclear fuel to India should*
7 *not contribute to, or in any way encourage, increases*
8 *in the production by India of fissile material for non-*
9 *civilian purposes.*

10 **SEC. 104. WAIVERS FOR COOPERATION WITH INDIA.**

11 *(a) WAIVER AUTHORITY.—If the President submits a*
12 *determination under section 105 to the appropriate congres-*
13 *sional committees and makes available to such committees*
14 *the text of the agreement described in paragraph (3) of such*
15 *section, the President may—*

16 *(1) subject to subsection (b), exempt a proposed*
17 *agreement for cooperation with India arranged pur-*
18 *suant to section 123 of the Atomic Energy Act of*
19 *1954 (42 U.S.C. 2153) from the requirement of sub-*
20 *section a.(2) of such section;*

21 *(2) waive the application of section 128 of the*
22 *Atomic Energy Act of 1954 (42 U.S.C. 2157) with re-*
23 *spect to exports to India; and*

24 *(3) waive the application of any sanction with*
25 *respect to India under—*

1 (A) section 129 a.(1)(D) of the Atomic En-
2 ergy Act of 1954 (42 U.S.C. 2158(a)(1)(D)); and

3 (B) section 129 of such Act (42 U.S.C.
4 2158) regarding any actions that occurred before
5 July 18, 2005.

6 (b) *JOINT RESOLUTION OF APPROVAL REQUIRE-*
7 *MENT.—An agreement for cooperation exempted by the*
8 *President pursuant to subsection (a)(1) shall be subject to*
9 *the second proviso in subsection d. of section 123 of the*
10 *Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) applicable*
11 *to agreements exempted by the President pursuant to sub-*
12 *section (a) of such section.*

13 **SEC. 105. DETERMINATION REGARDING UNITED STATES-**
14 **INDIA PEACEFUL ATOMIC ENERGY COOPERA-**
15 **TION.**

16 *The determination referred to in section 104 is a writ-*
17 *ten determination by the President, which shall be accom-*
18 *panied by a report to the appropriate congressional com-*
19 *mittees, that—*

20 (1) *India has provided to the IAEA and the*
21 *United States a credible plan to separate its civil nu-*
22 *clear facilities, materials, and programs from its*
23 *military facilities, materials, and programs;*

1 (2) *India has filed a complete declaration re-*
2 *garding its civil nuclear facilities and materials with*
3 *the IAEA;*

4 (3) *an agreement between India and the IAEA*
5 *requiring the application of safeguards in perpetuity*
6 *in accordance with IAEA standards, principles, and*
7 *practices to civil nuclear facilities, programs, and*
8 *materials described in paragraph (2) has entered into*
9 *force;*

10 (4) *India and the IAEA are making substantial*
11 *progress toward implementing an Additional Pro-*
12 *tol;*

13 (5) *India is working with the United States to*
14 *conclude a multilateral treaty on the cessation of the*
15 *production of fissile materials for use in nuclear*
16 *weapons or other nuclear explosive devices;*

17 (6) *India is supporting international efforts to*
18 *prevent the spread of enrichment and reprocessing*
19 *technology to any state that does not already possess*
20 *full-scale, functioning enrichment or reprocessing*
21 *plants;*

22 (7) *India has secured nuclear and other sensitive*
23 *materials and technology through the application of*
24 *comprehensive export control legislation and regula-*
25 *tions, including through effective enforcement actions,*

1 *and through harmonization of its control lists with,*
2 *and adherence to, the guidelines of the Missile Tech-*
3 *nology Control Regime and the Nuclear Suppliers*
4 *Group;*

5 *(8) India is fully and actively participating in*
6 *United States and international efforts to dissuade,*
7 *sanction, and contain Iran for its nuclear program*
8 *consistent with United Nations Security Council reso-*
9 *lutions; and*

10 *(9) the Nuclear Suppliers Group has decided to*
11 *permit civil nuclear commerce with India pursuant*
12 *to a decision taken by the Nuclear Suppliers Group*
13 *that—*

14 *(A) was made by consensus; and*

15 *(B) does not permit nuclear commerce with*
16 *any non-nuclear weapon state other than India*
17 *that does not have IAEA safeguards on all nu-*
18 *clear materials and all peaceful nuclear activi-*
19 *ties within the territory of such state, under its*
20 *jurisdiction, or carried out under its control*
21 *anywhere.*

22 **SEC. 106. PROHIBITION ON CERTAIN EXPORTS AND REEX-**
23 **PORTS.**

24 *(a) PROHIBITION.—*

1 (1) *NUCLEAR REGULATORY COMMISSION.*—*Ex-*
2 *cept as provided in subsection (b), the Nuclear Regu-*
3 *latory Commission may not authorize pursuant to*
4 *part 110 of title 10, Code of Federal Regulations, li-*
5 *censes for the export or reexport to India of any*
6 *equipment, materials, or technology related to the en-*
7 *richment of uranium, the reprocessing of spent nu-*
8 *clear fuel, or the production of heavy water.*

9 (2) *SECRETARY OF ENERGY.*—*Except as pro-*
10 *vided in subsection (b), the Secretary of Energy may*
11 *not authorize pursuant to part 810 of title 10, Code*
12 *of Federal Regulations, licenses for the export or reex-*
13 *port to India of any equipment, materials, or tech-*
14 *nology to be used for the enrichment of uranium, the*
15 *reprocessing of spent nuclear fuel, or the production*
16 *of heavy water.*

17 (b) *EXCEPTIONS.*—*Exports or reexports otherwise pro-*
18 *hibited under subsection (a) may be approved if—*

19 (1) *the end user—*

20 (A) *is a multinational facility partici-*
21 *parting in an IAEA-approved program to provide*
22 *alternatives to national fuel cycle capabilities; or*

23 (B) *is a facility participating in, and the*
24 *export or reexport is associated with, a bilateral*

1 *or multinational program to develop a prolifera-*
2 *tion-resistant fuel cycle; and*

3 *(2) the President determines that the export or*
4 *reexport will not improve India's ability to produce*
5 *nuclear weapons or fissile material for military uses.*

6 **SEC. 107. END-USE MONITORING PROGRAM.**

7 *(a) IN GENERAL.—The President shall ensure that all*
8 *appropriate measures are taken to maintain accountability*
9 *with respect to nuclear materials, equipment, and tech-*
10 *nology sold, leased, exported, or reexported to India and to*
11 *ensure United States compliance with Article I of the Nu-*
12 *clear Non-Proliferation Treaty.*

13 *(b) MEASURES.—The measures taken pursuant to sub-*
14 *section (a) shall include the following:*

15 *(1) Obtaining and implementing assurances and*
16 *conditions pursuant to the export licensing authori-*
17 *ties of the Nuclear Regulatory Commission and the*
18 *Department of Commerce and the authorizing au-*
19 *thorities of the Department of Energy, including, as*
20 *appropriate, conditions regarding end-use moni-*
21 *toring.*

22 *(2) A detailed system of reporting and account-*
23 *ing for technology transfers, including any retransfers*
24 *in India, authorized by the Department of Energy*
25 *pursuant to section 57 b. of the Atomic Energy Act*

1 *of 1954 (42 U.S.C. 2077(b)). Such system shall be ca-*
2 *pable of providing assurances that—*

3 *(A) the identified recipients of the nuclear*
4 *technology are authorized to receive the nuclear*
5 *technology;*

6 *(B) the nuclear technology identified for*
7 *transfer will be used only for peaceful safe-*
8 *guarded nuclear activities and will not be used*
9 *for any military or nuclear explosive purpose;*
10 *and*

11 *(C) the nuclear technology identified for*
12 *transfer will not be retransferred without the*
13 *prior consent of the United States, and facilities,*
14 *equipment, or materials derived through the use*
15 *of transferred technology will not be transferred*
16 *without the prior consent of the United States.*

17 *(3) In the event the IAEA is unable to imple-*
18 *ment safeguards as required by an agreement between*
19 *the United States and India arranged pursuant to*
20 *section 123 of the Atomic Energy Act of 1954 (42*
21 *U.S.C. 2153), arrangements that conform with IAEA*
22 *safeguards standards, principles, and practices that*
23 *provide assurances equivalent to that intended to be*
24 *secured by the system they replace, including—*

1 (A) review in a timely fashion of the design
2 of any equipment transferred pursuant to the
3 agreement for cooperation, or of any facility that
4 is to use, fabricate, process, or store any material
5 so transferred or any special nuclear material
6 used in or produced through the use of such ma-
7 terial and equipment;

8 (B) maintenance and disclosure of records
9 and of relevant reports for the purpose of assist-
10 ing in ensuring accountability for material
11 transferred pursuant to the agreement and any
12 source or special nuclear material used in or
13 produced through the use of any material and
14 equipment so transferred; and

15 (C) access to places and data necessary to
16 account for the material referred to in subpara-
17 graph (B) and to inspect any equipment or fa-
18 cility referred to in subparagraph (A).

19 (c) *IMPLEMENTATION.*—The measures described in
20 subsection (b) shall be implemented to provide reasonable
21 assurances that the recipient is complying with the relevant
22 requirements, terms, and conditions of any licenses issued
23 by the United States regarding such exports, including those
24 relating to the use, retransfer, safe handling, secure transit,
25 and storage of such exports.

1 **SEC. 108. IMPLEMENTATION AND COMPLIANCE.**

2 (a) *INFORMATION ON NUCLEAR ACTIVITIES OF*
3 *INDIA.*—*The President shall keep the appropriate congres-*
4 *sional committees fully and currently informed of the facts*
5 *and implications of any significant nuclear activities of*
6 *India, including—*

7 (1) *any material non-compliance on the part of*
8 *the Government of India with—*

9 (A) *the non-proliferation commitments un-*
10 *dertaken in the Joint Statement of July 18,*
11 *2005, between the President of the United States*
12 *and the Prime Minister of India;*

13 (B) *the separation plan presented in the na-*
14 *tional parliament of India on March 7, 2006,*
15 *and in greater detail on May 11, 2006;*

16 (C) *a safeguards agreement between the*
17 *Government of India and the IAEA;*

18 (D) *an Additional Protocol between the*
19 *Government of India and the IAEA;*

20 (E) *a peaceful nuclear cooperation agree-*
21 *ment between the Government of India and the*
22 *United States Government pursuant to section*
23 *123 of the Atomic Energy Act of 1954 (42 U.S.C.*
24 *2153) or any subsequent arrangement under sec-*
25 *tion 131 of such Act (42 U.S.C. 2160);*

1 (F) *the terms and conditions of any ap-*
2 *proved licenses; and*

3 (G) *United States laws and regulations re-*
4 *garding the export or reexport of nuclear mate-*
5 *rial or dual-use material, equipment, or tech-*
6 *nology;*

7 (2) *the construction of a nuclear facility in*
8 *India after the date of the enactment of this Act;*

9 (3) *significant changes in the production by*
10 *India of nuclear weapons or in the types or amounts*
11 *of fissile material produced; and*

12 (4) *changes in the purpose or operational status*
13 *of any unsafeguarded nuclear fuel cycle activities in*
14 *India.*

15 (b) *IMPLEMENTATION AND COMPLIANCE REPORT.—*
16 *Not later than 180 days after the date on which an agree-*
17 *ment between the Government of India and the United*
18 *States Government pursuant to section 123 of the Atomic*
19 *Energy Act of 1954 (42 U.S.C. 2153) enters into force, and*
20 *annually thereafter, the President shall submit to the appro-*
21 *priate congressional committees a report including—*

22 (1) *a description of any additional nuclear fa-*
23 *cilities and nuclear materials that the Government of*
24 *India has placed or intends to place under IAEA*
25 *safeguards;*

1 (2) *a comprehensive listing of—*

2 (A) *all licenses that have been approved by*
3 *the Nuclear Regulatory Commission and the Sec-*
4 *retary of Energy for exports and reexports to*
5 *India under parts 110 and 810 of title 10, Code*
6 *of Federal Regulations;*

7 (B) *any licenses approved by the Depart-*
8 *ment of Commerce for the export or reexport to*
9 *India of commodities, related technology, and*
10 *software which are controlled for nuclear non-*
11 *proliferation reasons on the Nuclear Referral*
12 *List of the Commerce Control List maintained*
13 *under part 774 of title 15, Code of Federal Regu-*
14 *lations;*

15 (C) *any other United States authorizations*
16 *for the export or reexport to India of nuclear*
17 *materials and equipment; and*

18 (D) *with respect to each such license or*
19 *other form of authorization described in subpara-*
20 *graphs (A), (B), and (C)—*

21 (i) *the number or other identifying in-*
22 *formation of each license or authorization;*

23 (ii) *the name or names of the author-*
24 *ized end user or end users;*

1 (iii) *the name of the site, facility, or*
2 *location in India to which the export or re-*
3 *export was made;*

4 (iv) *the terms and conditions included*
5 *on such licenses and authorizations;*

6 (v) *any post-shipment verification pro-*
7 *cedures that will be applied to such exports*
8 *or reexports; and*

9 (vi) *the term of validity of each such*
10 *license or authorization;*

11 (3) *any significant nuclear commerce between*
12 *India and other countries, including any such trade*
13 *that—*

14 (A) *does not comply with applicable guide-*
15 *lines or decisions of the Nuclear Suppliers*
16 *Group; or*

17 (B) *would not meet the standards applied to*
18 *exports or reexports of such material, equipment,*
19 *or technology of United States origin;*

20 (4) *either—*

21 (A) *a certification that India is in full com-*
22 *pliance with the commitments and obligations*
23 *contained in the agreements and other documents*
24 *referenced in subparagraphs (A) through (F) of*
25 *subsection (a)(1); or*

1 (B) if the President cannot make such cer-
2 tification, an identification and assessment of all
3 compliance issues arising with regard to the ad-
4 herence by India to its commitments and obliga-
5 tions, including—

6 (i) the steps the United States Govern-
7 ment has taken to remedy or otherwise re-
8 spond to such compliance issues;

9 (ii) the responses of the Government of
10 India to such steps; and

11 (iii) an assessment of the implications
12 of any continued noncompliance, including
13 whether nuclear commerce with India, if
14 not already terminated under section 129 of
15 the Atomic Energy Act of 1954 (42 U.S.C.
16 2158), remains in the national security in-
17 terest of the United States;

18 (5) a detailed description of—

19 (A) United States efforts to promote na-
20 tional or regional progress by India and Paki-
21 stan in disclosing, securing, capping, and reduc-
22 ing their fissile material stockpiles, pending cre-
23 ation of a world-wide fissile material cut-off re-
24 gime, including the institution of a Fissile Mate-
25 rial Cut-off Treaty;

1 (B) the reactions of India and Pakistan to
2 such efforts; and

3 (C) assistance that the United States is pro-
4 viding, or would be able to provide, to India and
5 Pakistan to promote the objectives in subpara-
6 graph (A), consistent with its obligations under
7 international law and existing agreements;

8 (6) an estimate of—

9 (A) the amount of uranium mined in India
10 during the previous year;

11 (B) the amount of such uranium that has
12 likely been used or allocated for the production
13 of nuclear explosive devices; and

14 (C) the rate of production in India of—

15 (i) fissile material for nuclear explosive
16 devices; and

17 (ii) nuclear explosive devices;

18 (7) an analysis as to whether imported uranium
19 has affected the rate of production in India of nuclear
20 explosive devices; and

21 (8) a detailed description of efforts and progress
22 made toward the achievement of India's—

23 (A) full participation in the Proliferation
24 Security Initiative;

1 (B) formal commitment to the Statement of
2 Interdiction Principles;

3 (C) public announcement of its decision to
4 conform its export control laws, regulations, and
5 policies with the Australia Group and with the
6 Guidelines, Procedures, Criteria, and Controls
7 List of the Wassenaar Arrangement; and

8 (D) demonstration of satisfactory progress
9 toward implementing the decision described in
10 subparagraph (C).

11 (c) *SUBMITTAL WITH OTHER ANNUAL REPORTS.*—

12 (1) *REPORT ON PROLIFERATION PREVENTION.*—
13 Each annual report submitted under subsection (b)
14 after the initial report may be submitted together
15 with the annual report on proliferation prevention re-
16 quired under section 601(a) of the Nuclear Non-Pro-
17 liferation Act of 1978 (22 U.S.C. 3281(a)).

18 (2) *REPORT ON PROGRESS TOWARD REGIONAL*
19 *NON-PROLIFERATION.*—The information required to be
20 submitted under subsection (b)(5) after the initial re-
21 port may be submitted together with the annual re-
22 port on progress toward regional non-proliferation re-
23 quired under section 620F(c) of the Foreign Assist-
24 ance Act of 1961 (22 U.S.C. 2376(c)).

1 (d) *FORM.*—Each report submitted under this section
2 shall be submitted in unclassified form but may contain
3 a classified annex.

4 **SEC. 109. UNITED STATES COMPLIANCE WITH ITS NUCLEAR**
5 **NON-PROLIFERATION TREATY OBLIGATIONS.**

6 This title shall not be deemed to constitute authority
7 for any action in violation of any obligation of the United
8 States under the Nuclear Non-Proliferation Treaty.

9 **SEC. 110. INOPERABILITY OF DETERMINATION AND WAIV-**
10 **ERS.**

11 A determination under section 105 and any waiver
12 under section 104 shall cease to be effective if the President
13 determines that India has detonated a nuclear explosive de-
14 vice after the date of the enactment of this Act.

15 **SEC. 111. MTCR ADHERENT STATUS.**

16 Congress finds that India is not an MTCR adherent
17 for the purposes of Section 73 of the Arms Export Control
18 Act (22 U.S.C. 2797b).

19 **SEC. 112. TECHNICAL AMENDMENT.**

20 Section 1112(c)(4) of the Arms Control and Non-
21 proliferation Act of 1999 (title XI of the Admiral James
22 W. Nance and Meg Donovan Foreign Relations Act, Fiscal
23 Years 2000 and 2001 (as enacted into law by section
24 1000(a)(7) of Public Law 106–113 and contained in appen-
25 dix G of that Act; 113 Stat. 1501A–486)) is amended—

1 (1) *in subparagraph (B), by striking “and” after*
2 *the semicolon at the end;*

3 (2) *by redesignating subparagraph (C) as sub-*
4 *paragraph (D); and*

5 (3) *by inserting after subparagraph (B) the fol-*
6 *lowing new subparagraph:*

7 *“(C) so much of the reports required under*
8 *section 108 of the United States-India Peaceful*
9 *Atomic Energy Cooperation Act as relates to*
10 *verification or compliance matters; and”.*

11 **SEC. 113. DEFINITIONS.**

12 *In this title:*

13 (1) *The term “Additional Protocol” means a*
14 *protocol additional to a safeguards agreement with*
15 *the IAEA, as negotiated between a country and the*
16 *IAEA based on a Model Additional Protocol as set*
17 *forth in IAEA information circular (INFCIRC) 540.*

18 (2) *The term “appropriate congressional com-*
19 *mittees” means the Committee on Foreign Relations*
20 *of the Senate and the Committee on International Re-*
21 *lations of the House of Representatives.*

22 (3) *The term “atomic energy” has the meaning*
23 *given the term in section 11 c. of the Atomic Energy*
24 *Act of 1954 (42 U.S.C. 2014(c)).*

1 (4) *The term “dual-use material, equipment, or*
2 *technology” means those items controlled by the De-*
3 *partment of Commerce pursuant to section 309(c) of*
4 *the Nuclear Nonproliferation Act of 1978.*

5 (5) *The term “IAEA safeguards” has the mean-*
6 *ing given the term in section 830(3) of the Nuclear*
7 *Proliferation Prevention Act of 1994 (22 U.S.C.*
8 *6305(3)).*

9 (6) *The term “nuclear materials and equipment”*
10 *has the meaning given the term in section 4(5) of the*
11 *Nuclear Nonproliferation Act of 1978 (22 U.S.C.*
12 *3203(3)).*

13 (7) *The term “Nuclear Non-Proliferation Trea-*
14 *ty” means the Treaty on the Non-Proliferation of Nu-*
15 *clear Weapons, done at Washington, London, and*
16 *Moscow July 1, 1968, and entered into force March*
17 *5, 1970 (21 UST 483).*

18 (8) *The terms “nuclear weapon” and “nuclear*
19 *explosive device” have the meaning given the term*
20 *“nuclear explosive device” in section 830(4) of the*
21 *Nuclear Proliferation Prevention Act of 1994 (22*
22 *U.S.C. 6305(4)).*

23 (9) *The terms “reprocessing” and “reprocess”*
24 *refer to the separation of nuclear materials from fis-*
25 *sion products in spent nuclear fuel.*

1 (10) *The term “source material” has the mean-*
2 *ing given the term in section 11 z. of the Atomic En-*
3 *ergy Act of 1954 (42 U.S.C. 2014(z)).*

4 (11) *The term “special nuclear material” has the*
5 *meaning given the term in section 11 aa. of the Atom-*
6 *ic Energy Act of 1954 (42 U.S.C. 2014(aa)).*

7 (12) *The term “unsafeguarded nuclear fuel-cycle*
8 *activity” means research on, or development, design,*
9 *manufacture, construction, operation, or maintenance*
10 *of—*

11 (A) *any existing or future reactor, critical*
12 *facility, conversion plant, fabrication plant, re-*
13 *processing plant, plant for the separation of iso-*
14 *topes of source or special fissionable material, or*
15 *separate storage installation with respect to*
16 *which there is no obligation to accept IAEA safe-*
17 *guards at the relevant reactor, facility, plant, or*
18 *installation that contains source or special fis-*
19 *sionable material; or*

20 (B) *any existing or future heavy water pro-*
21 *duction plant with respect to which there is no*
22 *obligation to accept IAEA safeguards on any nu-*
23 *clear material produced by or used in connection*
24 *with any heavy water produced therefrom.*

1 **SEC. 114. UNITED STATES POLICY REGARDING THE PROVI-**
2 **SION OF NUCLEAR POWER REACTOR FUEL**
3 **RESERVE TO INDIA.**

4 *It is the policy of the United States that any nuclear*
5 *power reactor fuel reserve provided to the Government of*
6 *India for use in safeguarded civilian nuclear facilities*
7 *should be commensurate with reasonable reactor operating*
8 *requirements.*

9 **SEC. 115. UNITED STATES-INDIA SCIENTIFIC COOPERATIVE**
10 **THREAT REDUCTION PROGRAM.**

11 *(a) ESTABLISHMENT.—The Secretary of Energy, act-*
12 *ing through the Administrator of the National Nuclear Se-*
13 *curity Administration, shall establish a cooperative threat*
14 *reduction program to pursue jointly with scientists from*
15 *the United States and India a program to further common*
16 *nonproliferation goals, including scientific research and de-*
17 *velopment efforts related to nuclear nonproliferation, with*
18 *an emphasis on nuclear safeguards (in this section referred*
19 *to as the “program”).*

20 *(b) CONSULTATION.—The program shall be carried out*
21 *in consultation with the Secretary of State and the Sec-*
22 *retary of Defense.*

23 *(c) NATIONAL ACADEMIES RECOMMENDATIONS.—*

24 *(1) IN GENERAL.—The Secretary of Energy shall*
25 *enter into an agreement with the National Academies*

1 to develop recommendations for the implementation of
2 the program.

3 (2) *RECOMMENDATIONS.*—The agreement entered
4 into under paragraph (1) shall provide for the prepa-
5 ration by qualified individuals with relevant expertise
6 and knowledge and the communication to the Sec-
7 retary of Energy each fiscal year of—

8 (A) recommendations for research and re-
9 lated programs designed to overcome existing
10 technological barriers to nuclear nonprolifera-
11 tion; and

12 (B) an assessment of whether activities and
13 programs funded under this section are achiev-
14 ing the goals of the activities and programs.

15 (3) *PUBLIC AVAILABILITY.*—The recommenda-
16 tions and assessments prepared under this subsection
17 shall be made publicly available.

18 (d) *CONSISTENCY WITH NUCLEAR NON-PROLIFERA-*
19 *TION TREATY.*—All United States activities related to the
20 program shall be consistent with United States obligations
21 under the Nuclear Non-Proliferation Treaty.

22 (e) *AUTHORIZATION OF APPROPRIATIONS.*—There are
23 authorized to be appropriated such sums as may be nec-
24 essary to carry out this section for each of fiscal years 2007
25 through 2011.

1 **TITLE II—UNITED STATES ADDI-**
2 **TIONAL PROTOCOL IMPLE-**
3 **MENTATION**

4 **SEC. 201. SHORT TITLE.**

5 *This title may be cited as the “United States Addi-*
6 *tional Protocol Implementation Act”.*

7 **SEC. 202. FINDINGS.**

8 *Congress makes the following findings—*

9 *(1) The proliferation of nuclear weapons and*
10 *other nuclear explosive devices poses a grave threat to*
11 *the national security of the United States and its*
12 *vital national interests.*

13 *(2) The Nuclear Non-Proliferation Treaty has*
14 *proven critical to limiting such proliferation.*

15 *(3) For the Nuclear Non-Proliferation Treaty to*
16 *be effective, each of the non-nuclear-weapon State*
17 *Parties must conclude a comprehensive safeguards*
18 *agreement with the IAEA, and such agreements must*
19 *be honored and enforced.*

20 *(4) Recent events emphasize the urgency of*
21 *strengthening the effectiveness and improving the effi-*
22 *ciency of the safeguards system. This can best be ac-*
23 *complished by providing IAEA inspectors with more*
24 *information about, and broader access to, nuclear ac-*

1 *tivities within the territory of non-nuclear-weapon*
2 *State Parties.*

3 (5) *The proposed scope of such expanded infor-*
4 *mation and access has been negotiated by the member*
5 *states of the IAEA in the form of a Model Additional*
6 *Protocol to its existing safeguards agreements, and*
7 *universal acceptance of Additional Protocols by non-*
8 *nuclear weapons states is essential to enhancing the*
9 *effectiveness of the Nuclear Non-Proliferation Treaty.*

10 (6) *On June 12, 1998, the United States, as a*
11 *nuclear-weapon State Party, signed an Additional*
12 *Protocol that is based on the Model Additional Pro-*
13 *tol, but which also contains measures, consistent*
14 *with its existing safeguards agreements with its mem-*
15 *bers, that protect the right of the United States to ex-*
16 *clude the application of IAEA safeguards to locations*
17 *and activities with direct national security signifi-*
18 *cance or to locations or information associated with*
19 *such activities.*

20 (7) *Implementation of the Additional Protocol in*
21 *the United States in a manner consistent with United*
22 *States obligations under the Nuclear Non-Prolifera-*
23 *tion Treaty may encourage other parties to the Nu-*
24 *clear Non-Proliferation Treaty, especially non-nu-*
25 *clear-weapon State Parties, to conclude Additional*

1 *Protocols and thereby strengthen the Nuclear Non-*
2 *Proliferation Treaty safeguards system and help re-*
3 *duce the threat of nuclear proliferation, which is of*
4 *direct and substantial benefit to the United States.*

5 *(8) Implementation of the Additional Protocol by*
6 *the United States is not required and is completely*
7 *voluntary given its status as a nuclear-weapon State*
8 *Party, but the United States has acceded to the Addi-*
9 *tional Protocol to demonstrate its commitment to the*
10 *nuclear non-proliferation regime and to make United*
11 *States civil nuclear activities available to the same*
12 *IAEA inspections as are applied in the case of non-*
13 *nuclear-weapon State Parties.*

14 *(9) In accordance with the national security ex-*
15 *clusion contained in Article 1.b of its Additional Pro-*
16 *tol, the United States will not allow any inspection*
17 *activities, nor make any declaration of any informa-*
18 *tion with respect to, locations, information, and ac-*
19 *tivities of direct national security significance to the*
20 *United States.*

21 *(10) Implementation of the Additional Protocol*
22 *will conform to the principles set forth in the letter*
23 *of April 30, 2002, from the United States Permanent*
24 *Representative to the International Atomic Energy*
25 *Agency and the Vienna Office of the United Nations*

1 *to the Director General of the International Atomic*
2 *Energy Agency.*

3 **SEC. 203. DEFINITIONS.**

4 *In this title:*

5 (1) *ADDITIONAL PROTOCOL.—The term “Addi-*
6 *tional Protocol”, when used in the singular form,*
7 *means the Protocol Additional to the Agreement be-*
8 *tween the United States of America and the Inter-*
9 *national Atomic Energy Agency for the Application*
10 *of Safeguards in the United States of America, with*
11 *Annexes, signed at Vienna June 12, 1998 (T. Doc.*
12 *107–7).*

13 (2) *APPROPRIATE CONGRESSIONAL COMMIT-*
14 *TEES.—The term “appropriate congressional commit-*
15 *tees” means the Committee on Armed Services, the*
16 *Committee on Foreign Relations, and the Committee*
17 *on Appropriations of the Senate and the Committee*
18 *on Armed Services, the Committee on International*
19 *Relations, and the Committee on Appropriations of*
20 *the House of Representatives.*

21 (3) *COMPLEMENTARY ACCESS.—The term “com-*
22 *plementary access” means the exercise of the IAEA’s*
23 *access rights as set forth in Articles 4 to 6 of the Ad-*
24 *ditional Protocol.*

1 (4) *EXECUTIVE AGENCY.*—*The term “executive*
2 *agency” has the meaning given such term in section*
3 *105 of title 5, United States Code.*

4 (5) *FACILITY.*—*The term “facility” has the*
5 *meaning set forth in Article 18i. of the Additional*
6 *Protocol.*

7 (6) *IAEA.*—*The term “IAEA” means the Inter-*
8 *national Atomic Energy Agency.*

9 (7) *JUDGE OF THE UNITED STATES.*—*The term*
10 *“judge of the United States” means a United States*
11 *district judge, or a United States magistrate judge*
12 *appointed under the authority of chapter 43 of title*
13 *28, United States Code.*

14 (8) *LOCATION.*—*The term “location” means any*
15 *geographic point or area declared or identified by the*
16 *United States or specified by the International Atom-*
17 *ic Energy Agency.*

18 (9) *NUCLEAR NON-PROLIFERATION TREATY.*—
19 *The term “Nuclear Non-Proliferation Treaty” means*
20 *the Treaty on the Non-Proliferation of Nuclear Weap-*
21 *ons, done at Washington, London, and Moscow July*
22 *1, 1968, and entered into force March 5, 1970 (21*
23 *UST 483).*

24 (10) *NUCLEAR-WEAPON STATE PARTY AND NON-*
25 *NUCLEAR-WEAPON STATE PARTY.*—*The terms “nu-*

1 *clear-weapon State Party” and “non-nuclear-weapon*
2 *State Party” have the meanings given such terms in*
3 *the Nuclear Non-Proliferation Treaty.*

4 (11) *PERSON.*—*The term “person”, except as*
5 *otherwise provided, means any individual, corpora-*
6 *tion, partnership, firm, association, trust, estate, pub-*
7 *lic or private institution, any State or any political*
8 *subdivision thereof, or any political entity within a*
9 *State, any foreign government or nation or any agen-*
10 *cy, instrumentality or political subdivision of any*
11 *such government or nation, or other entity located in*
12 *the United States.*

13 (12) *SITE.*—*The term “site” has the meaning set*
14 *forth in Article 18b. of the Additional Protocol.*

15 (13) *UNITED STATES.*—*The term “United*
16 *States”, when used as a geographic reference, means*
17 *the several States of the United States, the District of*
18 *Columbia, and the commonwealths, territories, and*
19 *possessions of the United States and includes all*
20 *places under the jurisdiction or control of the United*
21 *States, including—*

22 (A) *the territorial sea and the overlying air-*
23 *space;*

24 (B) *any civil aircraft of the United States*
25 *or public aircraft, as such terms are defined in*

1 paragraphs (17) and (41), respectively, of section
2 40102(a) of title 49, United States Code; and

3 (C) any vessel of the United States, as such
4 term is defined in section 3(b) of the Maritime
5 Drug Law Enforcement Act (46 U.S.C. App.
6 1903(b)).

7 (14) *WIDE-AREA ENVIRONMENTAL SAMPLING.*—
8 The term “wide-area environmental sampling” has
9 the meaning set forth in Article 18g. of the Additional
10 Protocol.

11 **SEC. 204. SEVERABILITY.**

12 If any provision of this title, or the application of such
13 provision to any person or circumstance, is held invalid,
14 the remainder of this title, or the application of such provi-
15 sion to persons or circumstances other than those as to
16 which it is held invalid, shall not be affected thereby.

17 ***Subtitle A—General Provisions***

18 **SEC. 211. AUTHORITY.**

19 (a) *IN GENERAL.*—The President is authorized to im-
20 plement and carry out the provisions of this title and the
21 Additional Protocol and shall designate through Executive
22 order which executive agency or agencies of the United
23 States, which may include but are not limited to the De-
24 partment of State, the Department of Defense, the Depart-
25 ment of Justice, the Department of Commerce, the Depart-

1 *ment of Energy, and the Nuclear Regulatory Commission,*
2 *shall issue or amend and enforce regulations in order to*
3 *implement this title and the provisions of the Additional*
4 *Protocol.*

5 (b) *INCLUDED AUTHORITY.*—*For any executive agency*
6 *designated under subsection (a) that does not currently pos-*
7 *sess the authority to conduct site vulnerability assessments*
8 *and related activities, the authority provided in subsection*
9 *(a) includes such authority.*

10 (c) *EXCEPTION.*—*The authority described in sub-*
11 *section (b) does not supersede or otherwise modify any exist-*
12 *ing authority of any Federal department or agency already*
13 *having such authority.*

14 ***Subtitle B—Complementary Access***

15 ***SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT*** 16 ***COMPLEMENTARY ACCESS.***

17 (a) *PROHIBITION.*—*No complementary access to any*
18 *location in the United States shall take place pursuant to*
19 *the Additional Protocol without the authorization of the*
20 *United States Government in accordance with the require-*
21 *ments of this title.*

22 (b) *AUTHORITY.*—

23 (1) *IN GENERAL.*—*Complementary access to any*
24 *location in the United States subject to access under*

1 *the Additional Protocol is authorized in accordance*
2 *with this title.*

3 (2) *UNITED STATES REPRESENTATIVES.—*

4 (A) *RESTRICTIONS.—In the event of com-*
5 *plementary access to a privately owned or oper-*
6 *ated location, no employee of the Environmental*
7 *Protection Agency or of the Mine Safety and*
8 *Health Administration or the Occupational Safe-*
9 *ty and Health Administration of the Department*
10 *of Labor may participate in the access.*

11 (B) *NUMBER.—The number of designated*
12 *United States representatives accompanying*
13 *IAEA inspectors shall be kept to the minimum*
14 *necessary.*

15 **SEC. 222. PROCEDURES FOR COMPLEMENTARY ACCESS.**

16 (a) *IN GENERAL.—Each instance of complementary*
17 *access to a location in the United States under the Addi-*
18 *tional Protocol shall be conducted in accordance with this*
19 *subtitle.*

20 (b) *NOTICE.—*

21 (1) *IN GENERAL.—Complementary access re-*
22 *ferred to in subsection (a) may occur only upon the*
23 *issuance of an actual written notice by the United*
24 *States Government to the owner, operator, occupant,*

1 *or agent in charge of the location to be subject to com-*
2 *plementary access.*

3 (2) *TIME OF NOTIFICATION.*—*The notice under*
4 *paragraph (1) shall be submitted to such owner, oper-*
5 *ator, occupant, or agent as soon as possible after the*
6 *United States Government has received notification*
7 *that the IAEA seeks complementary access. Notices*
8 *may be posted prominently at the location if the*
9 *United States Government is unable to provide actual*
10 *written notice to such owner, operator, occupant, or*
11 *agent.*

12 (3) *CONTENT OF NOTICE.*—

13 (A) *IN GENERAL.*—*The notice required by*
14 *paragraph (1) shall specify—*

15 (i) *the purpose for the complementary*
16 *access;*

17 (ii) *the basis for the selection of the fa-*
18 *cility, site, or other location for the com-*
19 *plementary access sought;*

20 (iii) *the activities that will be carried*
21 *out during the complementary access;*

22 (iv) *the time and date that the com-*
23 *plementary access is expected to begin, and*
24 *the anticipated period covered by the com-*
25 *plementary access; and*

1 (v) the names and titles of the inspec-
2 tors.

3 (4) *SEPARATE NOTICES REQUIRED.*—A separate
4 notice shall be provided each time that complemen-
5 tary access is sought by the IAEA.

6 (c) *CREDENTIALS.*—The complementary access team of
7 the IAEA and representatives or designees of the United
8 States Government shall display appropriate identifying
9 credentials to the owner, operator, occupant, or agent in
10 charge of the location before gaining entry in connection
11 with complementary access.

12 (d) *SCOPE.*—

13 (1) *IN GENERAL.*—Except as provided in a war-
14 rant issued under section 223, and subject to the
15 United States Government's rights under the Addi-
16 tional Protocol to limit complementary access, com-
17 plementary access to a location pursuant to this title
18 may extend to all activities specifically permitted for
19 such locations under Article 6 of the Additional Pro-
20 tocol.

21 (2) *EXCEPTION.*—Unless required by the Addi-
22 tional Protocol, no inspection under this title shall ex-
23 tend to—

24 (A) financial data (other than production
25 data);

1 (B) sales and marketing data (other than
2 shipment data);

3 (C) pricing data;

4 (D) personnel data;

5 (E) patent data;

6 (F) data maintained for compliance with
7 environmental or occupational health and safety
8 regulations; or

9 (G) research data.

10 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECUR-
11 RITY.—In carrying out their activities, members of the
12 IAEA complementary access team and representatives or
13 designees of the United States Government shall observe ap-
14 plicable environmental, health, safety, and security regula-
15 tions established at the location subject to complementary
16 access, including those for protection of controlled environ-
17 ments within a facility and for personal safety.

18 **SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY**
19 **ACCESS.**

20 (a) IN GENERAL.—

21 (1) PROCEDURE.—

22 (A) CONSENT.—Except as provided in
23 paragraph (2), an appropriate official of the
24 United States Government shall seek or have the
25 consent of the owner, operator, occupant, or

1 *agent in charge of a location prior to entering*
2 *that location in connection with complementary*
3 *access pursuant to sections 221 and 222. The*
4 *owner, operator, occupant, or agent in charge of*
5 *the location may withhold consent for any reason*
6 *or no reason.*

7 *(B) ADMINISTRATIVE SEARCH WARRANT.—*

8 *In the absence of consent, the United States Gov-*
9 *ernment may seek an administrative search war-*
10 *rant from a judge of the United States under*
11 *subsection (b). Proceedings regarding the*
12 *issuance of an administrative search warrant*
13 *shall be conducted ex parte, unless otherwise re-*
14 *quested by the United States Government.*

15 *(2) EXPEDITED ACCESS.—For purposes of ob-*
16 *taining access to a location pursuant to Article 4b.(ii)*
17 *of the Additional Protocol in order to satisfy United*
18 *States obligations under the Additional Protocol when*
19 *notice of two hours or less is required, the United*
20 *States Government may gain entry to such location*
21 *in connection with complementary access, to the ex-*
22 *tent such access is consistent with the Fourth Amend-*
23 *ment to the United States Constitution, without ob-*
24 *taining either a warrant or consent.*

1 **(b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-**
2 **PLEMENTARY ACCESS.—**

3 **(1) OBTAINING ADMINISTRATIVE SEARCH WAR-**
4 **RANTS.—***For complementary access conducted in the*
5 *United States pursuant to the Additional Protocol,*
6 *and for which the acquisition of a warrant is re-*
7 *quired, the United States Government shall first ob-*
8 *tain an administrative search warrant from a judge*
9 *of the United States. The United States Government*
10 *shall provide to such judge all appropriate informa-*
11 *tion regarding the basis for the selection of the facil-*
12 *ity, site, or other location to which complementary ac-*
13 *cess is sought.*

14 **(2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-**
15 **TIVE SEARCH WARRANTS.—***A judge of the United*
16 *States shall promptly issue an administrative search*
17 *warrant authorizing the requested complementary ac-*
18 *cess upon an affidavit submitted by the United States*
19 *Government—*

20 **(A) stating that the Additional Protocol is**
21 **in force;**

22 **(B) stating that the designated facility, site,**
23 **or other location is subject to complementary ac-**
24 **cess under the Additional Protocol;**

1 (C) stating that the purpose of the com-
2 plementary access is consistent with Article 4 of
3 the Additional Protocol;

4 (D) stating that the requested complemen-
5 tary access is in accordance with Article 4 of the
6 Additional Protocol;

7 (E) containing assurances that the scope of
8 the IAEA's complementary access, as well as
9 what it may collect, shall be limited to the access
10 provided for in Article 6 of the Additional Pro-
11 tocol;

12 (F) listing the items, documents, and areas
13 to be searched and seized;

14 (G) stating the earliest commencement and
15 the anticipated duration of the complementary
16 access period, as well as the expected times of
17 day during which such complementary access
18 will take place; and

19 (H) stating that the location to which entry
20 in connection with complementary access is
21 sought was selected either—

22 (i) because there is probable cause, on
23 the basis of specific evidence, to believe that
24 information required to be reported regard-
25 ing a location pursuant to regulations pro-

1 *mulgated under this title is incorrect or in-*
2 *complete, and that the location to be*
3 *accessed contains evidence regarding that*
4 *violation; or*

5 *(ii) pursuant to a reasonable general*
6 *administrative plan based upon specific*
7 *neutral criteria.*

8 *(3) CONTENT OF WARRANTS.—A warrant issued*
9 *under paragraph (2) shall specify the same matters*
10 *required of an affidavit under that paragraph. In ad-*
11 *dition, each warrant shall contain the identities of the*
12 *representatives of the IAEA on the complementary ac-*
13 *cess team and the identities of the representatives or*
14 *designees of the United States Government required to*
15 *display identifying credentials under section 222(c).*

16 **SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMEN-**
17 **TARY ACCESS.**

18 *It shall be unlawful for any person willfully to fail*
19 *or refuse to permit, or to disrupt, delay, or otherwise im-*
20 *pede, a complementary access authorized by this subtitle or*
21 *an entry in connection with such access.*

1 **Subtitle C—Confidentiality of**
2 **Information**

3 **SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMA-**
4 **TION.**

5 *Information reported to, or otherwise acquired by, the*
6 *United States Government under this title or under the Ad-*
7 *ditional Protocol shall be exempt from disclosure under sec-*
8 *tions 552 of title 5, United States Code.*

9 **Subtitle D—Enforcement**

10 **SEC. 241. RECORDKEEPING VIOLATIONS.**

11 *It shall be unlawful for any person willfully to fail*
12 *or refuse—*

13 (1) *to establish or maintain any record required*
14 *by any regulation prescribed under this title;*

15 (2) *to submit any report, notice, or other infor-*
16 *mation to the United States Government in accord-*
17 *ance with any regulation prescribed under this title;*

18 *or*

19 (3) *to permit access to or copying of any record*
20 *by the United States Government in accordance with*
21 *any regulation prescribed under this title.*

22 **SEC. 242. PENALTIES.**

23 (a) *CIVIL.—*

24 (1) *PENALTY AMOUNTS.—Any person that is de-*
25 *termined, in accordance with paragraph (2), to have*

1 *violated section 224 or section 241 shall be required*
2 *by order to pay a civil penalty in an amount not to*
3 *exceed \$25,000 for each violation. For the purposes of*
4 *this paragraph, each day during which a violation of*
5 *section 224 continues shall constitute a separate vio-*
6 *lation of that section.*

7 (2) *NOTICE AND HEARING.—*

8 (A) *IN GENERAL.—Before imposing a pen-*
9 *alty against a person under paragraph (1), the*
10 *head of an executive agency designated under*
11 *section 211(a) shall provide the person with no-*
12 *tice of the order. If, within 15 days after receiv-*
13 *ing the notice, the person requests a hearing, the*
14 *head of the designated executive agency shall ini-*
15 *tiate a hearing on the violation.*

16 (B) *CONDUCT OF HEARING.—Any hearing*
17 *so requested shall be conducted before an admin-*
18 *istrative judge. The hearing shall be conducted in*
19 *accordance with the requirements of section 554*
20 *of title 5, United States Code. If no hearing is*
21 *so requested, the order imposed by the head of the*
22 *designated agency shall constitute a final agency*
23 *action.*

24 (C) *ISSUANCE OF ORDERS.—If the adminis-*
25 *trative judge determines, upon the preponderance*

1 *of the evidence received, that a person named in*
2 *the complaint has violated section 224 or section*
3 *241, the administrative judge shall state his*
4 *findings of fact and conclusions of law, and issue*
5 *and serve on such person an order described in*
6 *paragraph (1).*

7 *(D) FACTORS FOR DETERMINATION OF PEN-*
8 *ALTY AMOUNTS.—In determining the amount of*
9 *any civil penalty, the administrative judge or*
10 *the head of the designated agency shall take into*
11 *account the nature, circumstances, extent, and*
12 *gravity of the violation or violations and, with*
13 *respect to the violator, the ability to pay, effect*
14 *on ability to continue to do business, any history*
15 *of such violations, the degree of culpability, the*
16 *existence of an internal compliance program,*
17 *and such other matters as justice may require.*

18 *(E) CONTENT OF NOTICE.—For the pur-*
19 *poses of this paragraph, notice shall be in writ-*
20 *ing and shall be verifiably served upon the per-*
21 *son or persons subject to an order described in*
22 *paragraph (1). In addition, the notice shall—*

23 *(i) set forth the time, date, and specific*
24 *nature of the alleged violation or violations;*
25 *and*

1 (ii) *specify the administrative and ju-*
2 *dicial remedies available to the person or*
3 *persons subject to the order, including the*
4 *availability of a hearing and subsequent*
5 *appeal.*

6 (3) *ADMINISTRATIVE APPELLATE REVIEW.—The*
7 *decision and order of an administrative judge shall be*
8 *the recommended decision and order and shall be re-*
9 *ferred to the head of the designated executive agency*
10 *for final decision and order. If, within 60 days, the*
11 *head of the designated executive agency does not mod-*
12 *ify or vacate the decision and order, it shall become*
13 *a final agency action under this subsection.*

14 (4) *JUDICIAL REVIEW.—A person adversely af-*
15 *ected by a final order may, within 30 days after the*
16 *date the final order is issued, file a petition in the*
17 *Court of Appeals for the District of Columbia Circuit*
18 *or in the Court of Appeals for the district in which*
19 *the violation occurred.*

20 (5) *ENFORCEMENT OF FINAL ORDERS.—*

21 (A) *IN GENERAL.—If a person fails to com-*
22 *ply with a final order issued against such person*
23 *under this subsection and—*

1 (i) *the person has not filed a petition*
2 *for judicial review of the order in accord-*
3 *ance with paragraph (4), or*

4 (ii) *a court in an action brought under*
5 *paragraph (4) has entered a final judgment*
6 *in favor of the designated executive agency,*
7 *the head of the designated executive agency shall*
8 *commence a civil action to seek compliance with*
9 *the final order in any appropriate district court*
10 *of the United States.*

11 (B) *NO REVIEW.*—*In any such civil action,*
12 *the validity and appropriateness of the final*
13 *order shall not be subject to review.*

14 (C) *INTEREST.*—*Payment of penalties as-*
15 *essed in a final order under this section shall*
16 *include interest at currently prevailing rates cal-*
17 *culated from the date of expiration of the 60-day*
18 *period referred to in paragraph (3) or the date*
19 *of such final order, as the case may be.*

20 (b) *CRIMINAL.*—*Any person who violates section 224*
21 *or section 241 may, in addition to or in lieu of any civil*
22 *penalty which may be imposed under subsection (a) for such*
23 *violation, be fined under title 18, United States Code, im-*
24 *prisoned for not more than five years, or both.*

1 **SEC. 243. SPECIFIC ENFORCEMENT.**

2 (a) *JURISDICTION.*—*The district courts of the United*
3 *States shall have jurisdiction over civil actions brought by*
4 *the head of an executive agency designated under section*
5 *211(a)—*

6 (1) *to restrain any conduct in violation of sec-*
7 *tion 224 or section 241; or*

8 (2) *to compel the taking of any action required*
9 *by or under this title or the Additional Protocol.*

10 (b) *CIVIL ACTIONS.*—

11 (1) *IN GENERAL.*—*A civil action described in*
12 *subsection (a) may be brought—*

13 (A) *in the case of a civil action described in*
14 *paragraph (1) of such subsection, in the United*
15 *States district court for the judicial district in*
16 *which any act, omission, or transaction consti-*
17 *tuting a violation of section 224 or section 241*
18 *occurred or in which the defendant is found or*
19 *transacts business; or*

20 (B) *in the case of a civil action described in*
21 *paragraph (2) of such subsection, in the United*
22 *States district court for the judicial district in*
23 *which the defendant is found or transacts busi-*
24 *ness.*

1 (2) *SERVICE OF PROCESS.*—*In any such civil ac-*
2 *tion, process shall be served on a defendant wherever*
3 *the defendant may reside or may be found.*

4 ***Subtitle E—Environmental***
5 ***Sampling***

6 ***SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD AP-***
7 ***PROVAL OF WIDE-AREA ENVIRONMENTAL***
8 ***SAMPLING.***

9 (a) *IN GENERAL.*—*Not later than 30 days after the*
10 *date on which the Board of Governors of the IAEA approves*
11 *wide-area environmental sampling for use as a safeguards*
12 *verification tool, the President shall notify the appropriate*
13 *congressional committees.*

14 (b) *CONTENT.*—*The notification under subsection (a)*
15 *shall contain—*

16 (1) *a description of the specific methods and*
17 *sampling techniques approved by the Board of Gov-*
18 *ernors that are to be employed for purposes of wide-*
19 *area sampling;*

20 (2) *a statement as to whether or not such sam-*
21 *pling may be conducted in the United States under*
22 *the Additional Protocol; and*

23 (3) *an assessment of the ability of the approved*
24 *methods and sampling techniques to detect, identify,*

1 *requested complementary access involving wide-*
2 *area environmental sampling; or*

3 *(B) has requested under Article 8 of the Ad-*
4 *ditional Protocol that the IAEA engage in com-*
5 *plementary access in the United States that in-*
6 *volves the use of wide-area environmental sam-*
7 *pling.*

8 **SEC. 253. APPLICATION OF NATIONAL SECURITY EXCLU-**
9 **SION TO LOCATION-SPECIFIC ENVIRON-**
10 **MENTAL SAMPLING.**

11 *In accordance with Article 1(b) of the Additional Pro-*
12 *tol, the United States shall not permit any location-spe-*
13 *cific environmental sampling in the United States under*
14 *Article 5 of the Additional Protocol unless the President has*
15 *determined and reported to the appropriate congressional*
16 *committees with respect to that proposed use of environ-*
17 *mental sampling that—*

18 *(1) the proposed use of location-specific environ-*
19 *mental sampling is necessary to increase the capa-*
20 *bility of the IAEA to detect undeclared nuclear activi-*
21 *ties in a non-nuclear weapons state;*

22 *(2) the proposed use of location-specific environ-*
23 *mental sampling will not result in access by the*
24 *IAEA to locations, activities, or information of direct*
25 *national security significance; and*

1 (3) *with respect to the proposed use of environ-*
2 *mental sampling, the United States—*

3 (A) *has been provided sufficient opportunity*
4 *for consultation with the IAEA if the IAEA has*
5 *requested complementary access involving loca-*
6 *tion-specific environmental sampling; or*

7 (B) *has requested under Article 8 of the Ad-*
8 *ditional Protocol that the IAEA engage in com-*
9 *plementary access in the United States that in-*
10 *volves the use of location-specific environmental*
11 *sampling.*

12 **SEC. 254. RULE OF CONSTRUCTION.**

13 *As used in this subtitle, the term “necessary to increase*
14 *the capability of the IAEA to detect undeclared nuclear ac-*
15 *tivities in the territory of a non-nuclear-weapon State*
16 *Party” shall not be construed to encompass proposed uses*
17 *of environmental sampling that might assist the IAEA in*
18 *detecting undeclared nuclear activities in the territory of*
19 *a non-nuclear-weapon State Party by—*

20 (1) *setting a good example of cooperation in the*
21 *conduct of such sampling; or*

22 (2) *facilitating the formation of a political con-*
23 *sensus or political support for such sampling in the*
24 *territory of a non-nuclear-weapon State Party.*

1 ***Subtitle F—Protection of National***
2 ***Security Information and Activities***

3 ***SEC. 261. PROTECTION OF CERTAIN INFORMATION.***

4 (a) *LOCATIONS AND FACILITIES OF DIRECT NATIONAL*
5 *SECURITY SIGNIFICANCE.*—*No current or former Depart-*
6 *ment of Defense or Department of Energy location, site, or*
7 *facility of direct national security significance shall be de-*
8 *clared or be subject to IAEA inspection under the Addi-*
9 *tional Protocol.*

10 (b) *INFORMATION OF DIRECT NATIONAL SECURITY*
11 *SIGNIFICANCE.*—*No information of direct national security*
12 *significance regarding any location, site, or facility associ-*
13 *ated with activities of the Department of Defense or the De-*
14 *partment of Energy shall be provided under the Additional*
15 *Protocol.*

16 (c) *RESTRICTED DATA.*—*Nothing in this title shall be*
17 *construed to permit the communication or disclosure to the*
18 *IAEA or IAEA employees of restricted data controlled by*
19 *the provisions of the Atomic Energy Act of 1954 (42 U.S.C.*
20 *2011 et seq.), including in particular “Restricted Data” as*
21 *defined under paragraph (1) of section 11 y. of such Act*
22 *(42 U.S.C. 2014(y)).*

23 (d) *CLASSIFIED INFORMATION.*—*Nothing in this Act*
24 *shall be construed to permit the communication or disclo-*

1 *sure to the IAEA or IAEA employees of national security*
2 *information and other classified information.*

3 **SEC. 262. IAEA INSPECTIONS AND VISITS.**

4 (a) *CERTAIN INDIVIDUALS PROHIBITED FROM OB-*
5 *TAINING ACCESS.*—*No national of a country designated by*
6 *the Secretary of State under section 620A of the Foreign*
7 *Assistance Act of 1961 (22 U.S.C. 2371) as a government*
8 *supporting acts of international terrorism shall be per-*
9 *mitted access to the United States to carry out an inspec-*
10 *tion activity under the Additional Protocol or a related*
11 *safeguards agreement.*

12 (b) *PRESENCE OF UNITED STATES GOVERNMENT PER-*
13 *SONNEL.*—*IAEA inspectors shall be accompanied at all*
14 *times by United States Government personnel when inspect-*
15 *ing sites, locations, facilities, or activities in the United*
16 *States under the Additional Protocol.*

17 (c) *VULNERABILITY AND RELATED ASSESSMENTS.*—
18 *The President shall conduct vulnerability, counterintel-*
19 *ligence, and related assessments not less than every 5 years*
20 *to ensure that information of direct national security sig-*
21 *nificance remains protected at all sites, locations, facilities,*
22 *and activities in the United States that are subject to IAEA*
23 *inspection under the Additional Protocol.*

1 ***Subtitle G—Reports***

2 **SEC. 271. REPORT ON INITIAL UNITED STATES DECLARA-**
3 **TION.**

4 *Not later than 60 days before submitting the initial*
5 *United States declaration to the IAEA under the Additional*
6 *Protocol, the President shall submit to Congress a list of*
7 *the sites, locations, facilities, and activities in the United*
8 *States that the President intends to declare to the IAEA.*

9 **SEC. 272. REPORT ON REVISIONS TO INITIAL UNITED**
10 **STATES DECLARATION.**

11 *Not later than 60 days before submitting to the IAEA*
12 *any revisions to the United States declaration submitted*
13 *under the Additional Protocol, the President shall submit*
14 *to Congress a list of any sites, locations, facilities, or activi-*
15 *ties in the United States that the President intends to add*
16 *to or remove from the declaration.*

17 **SEC. 273. CERTIFICATION REGARDING VULNERABILITY AND**
18 **RELATED ASSESSMENTS.**

19 *Concurrently with the submission to Congress of the*
20 *initial declaration list under section 271 and each list up-*
21 *date under section 272, the President shall submit to Con-*
22 *gress a report certifying that—*

23 (1) *each site, location, facility, and activity in-*
24 *cluded in the list has been examined by each agency*

1 *with national security equities with respect to such*
2 *site, location, facility, or activity; and*

3 *(2) appropriate measures have been taken to en-*
4 *sure that information of direct national security sig-*
5 *nificance will not be compromised at any such site,*
6 *location, facility, or activity in connection with an*
7 *IAEA inspection.*

8 **SEC. 274. REPORT ON EFFORTS TO PROMOTE THE IMPLE-**
9 **MENTATION OF ADDITIONAL PROTOCOLS.**

10 *Not later than 180 days after the entry into force of*
11 *the Additional Protocol, the President shall submit to the*
12 *appropriate congressional committees a report on—*

13 *(1) measures that have been or should be taken*
14 *to achieve the adoption of additional protocols to ex-*
15 *isting safeguards agreements signed by non-nuclear-*
16 *weapon State Parties; and*

17 *(2) assistance provided by the United States to*
18 *the IAEA in order to promote the effective implemen-*
19 *tation of additional protocols to existing safeguards*
20 *agreements signed by non-nuclear-weapon State Par-*
21 *ties and the verification of the compliance of such*
22 *parties with IAEA obligations.*

1 **SEC. 275. NOTICE OF IAEA NOTIFICATIONS.**

2 *The President shall notify Congress of any notifica-*
3 *tions issued by the IAEA to the United States under Article*
4 *10 of the Additional Protocol.*

5 ***Subtitle H—Authorization of***
6 ***Appropriations***

7 **SEC. 281. AUTHORIZATION OF APPROPRIATIONS.**

8 *There are authorized to be appropriated such sums as*
9 *may be necessary to carry out this title.*

Attest:

Secretary.

109TH CONGRESS
2^D SESSION

H. R. 5682

AMENDMENT