

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.

S. 3709

To exempt from certain requirements of the Atomic Energy Act of 1954 United States exports of nuclear materials, equipment, and technology to India, and to implement the United States Additional Protocol.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LUGAR

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **TITLE I—UNITED STATES-INDIA**
4 **PEACEFUL ATOMIC ENERGY**
5 **COOPERATION**

6 **SECTION 101. SHORT TITLE.**

7 This title may be cited as the “United States-India
8 Peaceful Atomic Energy Cooperation Act”.

1 **SEC. 102. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) strong bilateral relations with India are in
4 the national interest of the United States;

5 (2) the United States and India share common
6 democratic values and the potential for increasing
7 and sustained economic engagement;

8 (3) commerce in civil nuclear energy with India
9 by the United States and other countries has the po-
10 tential to benefit the people of all countries;

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

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

24 (6) the United States should not seek to facili-
25 tate or encourage the continuation of nuclear ex-

1 ports to India by any other party if such exports are
2 terminated under United States law.

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

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

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

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

17 (A) full participation in the Proliferation
18 Security Initiative;

19 (B) formal commitment to the Statement
20 of Interdiction Principles;

21 (C) public announcement of its decision to
22 conform its export control laws, regulations,
23 and policies with the Australia Group and with
24 the Guidelines, Procedures, Criteria, and Con-
25 trols List of the Wassenaar Arrangement; and

1 (D) demonstration of satisfactory progress
2 toward implementing the decision described in
3 subparagraph (C);

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

8 (4) to ensure that any safeguards agreement or
9 Additional Protocol thereto to which India is a party
10 with the International Atomic Energy Agency
11 (IAEA) can reliably safeguard any export or reex-
12 port to India of any nuclear materials and equip-
13 ment;

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

17 (6) to act in a manner fully consistent with the
18 Guidelines for Nuclear Transfers and the Guidelines
19 for Transfers of Nuclear-Related Dual-Use Equip-
20 ment, Materials, Software and Related Technology
21 developed by the multilateral Nuclear Suppliers
22 Group and the rules and practices regarding NSG
23 decision-making;

24 (7) given the special sensitivity of equipment
25 and technologies related to the enrichment of ura-

1 nium, the reprocessing of spent nuclear fuel, and the
2 production of heavy water, to work with members of
3 the Nuclear Suppliers Group, individually and collec-
4 tively, to further restrict the transfers of such equip-
5 ment and technologies, including to India;

6 (8) to maintain the fullest possible international
7 support for, adherence to, and compliance with the
8 Nuclear Non-Proliferation Treaty; and

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

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

14 (a) **WAIVER AUTHORITY.**—If the President submits
15 a determination under section 105 to the appropriate con-
16 gressional committees and makes available to such com-
17 mittees the text of the agreement described in paragraph
18 (3) of such section, the President may—

19 (1) subject to subsection (b), exempt a proposed
20 agreement for cooperation with India arranged pur-
21 suant to section 123 of the Atomic Energy Act of
22 1954 (42 U.S.C. 2153) from the requirement of sub-
23 section a.(2) of such section;

1 (2) waive the application of section 128 of the
2 Atomic Energy Act of 1954 (42 U.S.C. 2157) with
3 respect to exports to India; and

4 (3) waive the application of any sanction with
5 respect to India under—

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

9 (B) section 129 of such Act (42 U.S.C.
10 2158) regarding any actions that occurred be-
11 fore July 18, 2005.

12 (b) **JOINT RESOLUTION OF APPROVAL REQUIRE-**
13 **MENT.**—An agreement for cooperation exempted by the
14 President pursuant to subsection (a)(1) shall be subject
15 to the second proviso in subsection d. of section 123 of
16 the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) ap-
17 plicable to agreements exempted by the President pursu-
18 ant to subsection (a) of such section.

19 **SEC. 105. DETERMINATION REGARDING UNITED STATES-**
20 **INDIA PEACEFUL ATOMIC ENERGY COOPERA-**
21 **TION.**

22 The determination referred to in section 104 is a
23 written determination by the President, which shall be ac-
24 companied by a report to the appropriate congressional
25 committees, that—

1 (1) India has provided to the IAEA and the
2 United States a credible plan to separate its civil nu-
3 clear facilities, materials, and programs from its
4 military facilities, materials, and programs;

5 (2) India has filed a complete declaration re-
6 garding its civil nuclear facilities and materials with
7 the IAEA;

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

14 (4) India and the IAEA are making substantial
15 progress toward implementing an Additional Pro-
16 tocol;

17 (5) India is working with the United States to
18 conclude a multilateral treaty on the cessation of the
19 production of fissile materials for use in nuclear
20 weapons or other nuclear explosive devices;

21 (6) India is supporting international efforts to
22 prevent the spread of enrichment and reprocessing
23 technology to any state that does not already possess
24 full-scale, functioning enrichment or reprocessing
25 plants;

1 (7) India has secured nuclear and other sen-
2 sitive materials and technology through the applica-
3 tion of comprehensive export control legislation and
4 regulations, including through effective enforcement
5 actions, and through harmonization of its control
6 lists with, and adherence to, the guidelines of the
7 Missile Technology Control Regime and the Nuclear
8 Suppliers Group; and

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

13 (A) was made by consensus; and

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

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

23 (a) PROHIBITION.—

24 (1) NUCLEAR REGULATORY COMMISSION.—Ex-
25 cept as provided in subsection (b), the Nuclear Reg-

1 ulatory Commission may not authorize pursuant to
2 part 110 of title 10, Code of Federal Regulations, li-
3 censes for the export or reexport to India of any
4 equipment, materials, or technology related to the
5 enrichment of uranium, the reprocessing of spent
6 nuclear fuel, or the production of heavy water.

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

15 (b) EXCEPTIONS.—Exports or reexports otherwise
16 prohibited under subsection (a) may be approved if—

17 (1) the end user—

18 (A) is a multinational facility participating
19 in an IAEA-approved program to provide alter-
20 natives to national fuel cycle capabilities; or

21 (B) is a facility participating in, and the
22 export or reexport is associated with, a bilateral
23 or multinational program to develop a prolifera-
24 tion-resistant fuel cycle; and

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

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

5 (a) IN GENERAL.—The President shall ensure that
6 all appropriate measures are taken to maintain account-
7 ability with respect to nuclear materials, equipment, and
8 technology sold, leased, exported, or reexported to India
9 and to ensure United States compliance with Article I of
10 the Nuclear Non-Proliferation Treaty.

11 (b) MEASURES.—The measures taken pursuant to
12 subsection (a) shall include the following:

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

20 (2) A detailed system of reporting and account-
21 ing for technology transfers, including any retrans-
22 fers in India, authorized by the Department of En-
23 ergy pursuant to section 57 b. of the Atomic Energy
24 Act of 1954 (42 U.S.C. 2077(b)). Such system shall
25 be capable of providing assurances that—

1 (A) the identified recipients of the nuclear
2 technology are authorized to receive the nuclear
3 technology;

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

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

16 (3) In the event the IAEA is unable to imple-
17 ment safeguards as required by an agreement be-
18 tween the United States and India arranged pursu-
19 ant to section 123 of the Atomic Energy Act of
20 1954 (42 U.S.C. 2153), arrangements that conform
21 with IAEA safeguards standards, principles, and
22 practices that provide assurances equivalent to that
23 intended to be secured by the system they replace,
24 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
4 that is to use, fabricate, process, or store any
5 material so transferred or any special nuclear
6 material used in or produced through the use of
7 such material and equipment;

8 (B) maintenance and disclosure of records
9 and of relevant reports for the purpose of as-
10 sisting 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 rel-
22 evant requirements, terms, and conditions of any licenses
23 issued by the United States regarding such exports, in-
24 cluding those relating to the use, retransfer, safe handling,
25 secure transit, 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 con-
4 gressional committees fully and currently informed of the
5 facts and implications of any significant nuclear activities
6 of 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
12 States and the Prime Minister of India;

13 (B) the separation plan presented in the
14 national 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
24 U.S.C. 2153) or any subsequent arrangement
25 under section 131 of such Act (42 U.S.C.
26 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,
20 and annually thereafter, the President shall submit to the
21 appropriate 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
4 Secretary of Energy for exports and reexports
5 to India under parts 110 and 810 of title 10,
6 Code 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
14 Regulations;

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 sub-
20 paragraphs (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
18 to exports or reexports of such material, equip-
19 ment, 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 docu-
24 ments referenced in subparagraphs (A) through
25 (F) of subsection (a)(1); or

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

6 (i) the steps the United States Gov-
7 ernment has taken to remedy or otherwise
8 respond to such compliance issues;

9 (ii) the responses of the Government
10 of 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
15 of the Atomic Energy Act of 1954 (42
16 U.S.C. 2158), remains in the national se-
17 curity interest 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 Ma-
25 terial Cut-off Treaty;

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

3 (C) assistance that the United States is
4 providing, or would be able to provide, to India
5 and Pakistan to promote the objectives in sub-
6 paragraph (A), consistent with its obligations
7 under international law and existing agree-
8 ments; and

9 (6) a detailed description of efforts and
10 progress made toward the achievement of India's—

11 (A) full participation in the Proliferation
12 Security Initiative;

13 (B) formal commitment to the Statement
14 of Interdiction Principles;

15 (C) public announcement of its decision to
16 conform its export control laws, regulations,
17 and policies with the Australia Group and with
18 the Guidelines, Procedures, Criteria, and Con-
19 trols List of the Wassenaar Arrangement; and

20 (D) demonstration of satisfactory progress
21 toward implementing the decision described in
22 subparagraph (C).

23 (c) SUBMITTAL WITH OTHER ANNUAL REPORTS.—

24 (1) REPORT ON PROLIFERATION PREVEN-
25 TION.—Each annual report submitted under sub-

1 section (b) after the initial report may be submitted
2 together with the annual report on proliferation pre-
3 vention required under section 601(a) of the Nuclear
4 Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)).

5 (2) REPORT ON PROGRESS TOWARD REGIONAL
6 NON-PROLIFERATION.—The information required to
7 be submitted under subsection (b)(5) after the initial
8 report may be submitted together with the annual
9 report on progress toward regional non-proliferation
10 required under section 620F(c) of the Foreign As-
11 sistance Act of 1961 (22 U.S.C. 2376(c)).

12 (d) FORM.—Each report submitted under this section
13 shall be submitted in unclassified form but may contain
14 a classified annex.

15 **SEC. 109. UNITED STATES COMPLIANCE WITH ITS NUCLEAR**
16 **NON-PROLIFERATION TREATY OBLIGATIONS.**

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

20 **SEC. 110. INOPERABILITY OF DETERMINATION AND WAIV-**
21 **ERS.**

22 A determination under section 105 and any waiver
23 under section 104 shall cease to be effective if the Presi-
24 dent determines that India has detonated a nuclear explo-
25 sive device after the date of the enactment of this Act.

1 **SEC. 111. MTCR ADHERENT STATUS.**

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

5 **SEC. 112. TECHNICAL AMENDMENT.**

6 Section 1112(c)(4) of the Arms Control and Non-
7 proliferation Act of 1999 (title XI of the Admiral James
8 W. Nance and Meg Donovan Foreign Relations Act, Fiscal
9 Years 2000 and 2001 (as enacted into law by section
10 1000(a)(7) of Public Law 106–113 and contained in ap-
11 pendix G of that Act; 113 Stat. 1501A–486)) is amend-
12 ed—

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

15 (2) by redesignating subparagraph (C) as sub-
16 paragraph (D); and

17 (3) by inserting after subparagraph (B) the fol-
18 lowing new subparagraph:

19 “(C) so much of the reports required under
20 section 108 of the United States-India Peaceful
21 Atomic Energy Cooperation Act as relates to
22 verification or compliance matters; and”.

23 **SEC. 113. DEFINITIONS.**

24 In this title:

25 (1) The term “Additional Protocol” means a
26 protocol additional to a safeguards agreement with

1 the IAEA, as negotiated between a country and the
2 IAEA based on a Model Additional Protocol as set
3 forth in IAEA information circular (INFCIRC) 540.

4 (2) The term “appropriate congressional com-
5 mittees” means the Committee on Foreign Relations
6 of the Senate and the Committee on International
7 Relations of the House of Representatives.

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

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

15 (5) The term “IAEA safeguards” has the
16 meaning given the term in section 830(3) of the Nu-
17 clear Proliferation Prevention Act of 1994 (22
18 U.S.C. 6305(3)).

19 (6) The term “nuclear materials and equip-
20 ment” has the meaning given the term in section
21 4(5) of the Nuclear Nonproliferation Act of 1978
22 (22 U.S.C. 3203(3)).

23 (7) The term “Nuclear Non-Proliferation Trea-
24 ty” means the Treaty on the Non-Proliferation of
25 Nuclear Weapons, done at Washington, London, and

1 Moscow July 1, 1968, and entered into force March
2 5, 1970 (21 UST 483).

3 (8) The terms “nuclear weapon” and “nuclear
4 explosive device” have the meaning given the term
5 “nuclear explosive device” in section 830(4) of the
6 Nuclear Proliferation Prevention Act of 1994 (22
7 U.S.C. 6305(4)).

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

11 (10) The term “source material” has the mean-
12 ing given the term in section 11 z. of the Atomic
13 Energy Act of 1954 (42 U.S.C. 2014(z)).

14 (11) The term “special nuclear material” has
15 the meaning given the term in section 11 aa. of the
16 Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

17 (12) The term “unsafeguarded nuclear fuel-
18 cycle activity” means research on, or development,
19 design, manufacture, construction, operation, or
20 maintenance of—

21 (A) any existing or future reactor, critical
22 facility, conversion plant, fabrication plant, re-
23 processing plant, plant for the separation of iso-
24 topes of source or special fissionable material,
25 or separate storage installation with respect to

1 which there is no obligation to accept IAEA
2 safeguards at the relevant reactor, facility,
3 plant, or installation that contains source or
4 special fissionable material; or

5 (B) any existing or future heavy water pro-
6 duction plant with respect to which there is no
7 obligation to accept IAEA safeguards on any
8 nuclear material produced by or used in connec-
9 tion with any heavy water produced therefrom.

10 **TITLE II—UNITED STATES ADDI-**
11 **TIONAL PROTOCOL IMPLE-**
12 **MENTATION**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “United States Addi-
15 tional Protocol Implementation Act”.

16 **SEC. 202. FINDINGS.**

17 Congress makes the following findings—

18 (1) The proliferation of nuclear weapons and
19 other nuclear explosive devices poses a grave threat
20 to the national security of the United States and its
21 vital national interests.

22 (2) The Nuclear Non-Proliferation Treaty has
23 proven critical to limiting such proliferation.

24 (3) For the Nuclear Non-Proliferation Treaty
25 to be effective, each of the non-nuclear-weapon State

1 Parties must conclude a comprehensive safeguards
2 agreement with the IAEA, and such agreements
3 must be honored and enforced.

4 (4) Recent events emphasize the urgency of
5 strengthening the effectiveness and improving the ef-
6 ficiency of the safeguards system. This can best be
7 accomplished by providing IAEA inspectors with
8 more information about, and broader access to, nu-
9 clear activities within the territory of non-nuclear-
10 weapon State Parties.

11 (5) The proposed scope of such expanded infor-
12 mation and access has been negotiated by the mem-
13 ber states of the IAEA in the form of a Model Addi-
14 tional Protocol to its existing safeguards agreements,
15 and universal acceptance of Additional Protocols by
16 non-nuclear weapons states is essential to enhancing
17 the effectiveness of the Nuclear Non-Proliferation
18 Treaty.

19 (6) On June 12, 1998, the United States, as a
20 nuclear-weapon State Party, signed an Additional
21 Protocol that is based on the Model Additional Pro-
22 tocol, but which also contains measures, consistent
23 with its existing safeguards agreements with its
24 members, that protect the right of the United States
25 to exclude the application of IAEA safeguards to lo-

1 cations and activities with direct national security
2 significance or to locations or information associated
3 with such activities.

4 (7) Implementation of the Additional Protocol
5 in the United States in a manner consistent with
6 United States obligations under the Nuclear Non-
7 Proliferation Treaty may encourage other parties to
8 the Nuclear Non-Proliferation Treaty, especially
9 non-nuclear-weapon State Parties, to conclude Addi-
10 tional Protocols and thereby strengthen the Nuclear
11 Non-Proliferation Treaty safeguards system and
12 help reduce the threat of nuclear proliferation, which
13 is of direct and substantial benefit to the United
14 States.

15 (8) Implementation of the Additional Protocol
16 by the United States is not required and is com-
17 pletely voluntary given its status as a nuclear-weap-
18 on State Party, but the United States has acceded
19 to the Additional Protocol to demonstrate its com-
20 mitment to the nuclear non-proliferation regime and
21 to make United States civil nuclear activities avail-
22 able to the same IAEA inspections as are applied in
23 the case of non-nuclear-weapon State Parties.

24 (9) In accordance with the national security ex-
25 clusion contained in Article 1.b of its Additional

1 Protocol, the United States will not allow any in-
2 spection activities, nor make any declaration of any
3 information with respect to, locations, information,
4 and activities of direct national security significance
5 to the United States.

6 (10) Implementation of the Additional Protocol
7 will conform to the principles set forth in the letter
8 of April 30, 2002, from the United States Perma-
9 nent Representative to the International Atomic En-
10 ergy Agency and the Vienna Office of the United
11 Nations to the Director General of the International
12 Atomic Energy Agency.

13 **SEC. 203. DEFINITIONS.**

14 In this title:

15 (1) **ADDITIONAL PROTOCOL.**—The term “Addi-
16 tional Protocol”, when used in the singular form,
17 means the Protocol Additional to the Agreement be-
18 tween the United States of America and the Inter-
19 national Atomic Energy Agency for the Application
20 of Safeguards in the United States of America, with
21 Annexes, signed at Vienna June 12, 1998 (T. Doc.
22 107–7).

23 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
24 **TEES.**—The term “appropriate congressional com-
25 mittees” means the Committee on Armed Services,

1 the Committee on Foreign Relations, and the Com-
2 mittee on Appropriations of the Senate and the
3 Committee on Armed Services, the Committee on
4 International Relations, and the Committee on Ap-
5 propriations of the House of Representatives.

6 (3) COMPLEMENTARY ACCESS.—The term
7 “complementary access” means the exercise of the
8 IAEA’s access rights as set forth in Articles 4 to 6
9 of the Additional Protocol.

10 (4) EXECUTIVE AGENCY.—The term “executive
11 agency” has the meaning given such term in section
12 105 of title 5, United States Code.

13 (5) FACILITY.—The term “facility” has the
14 meaning set forth in Article 18i. of the Additional
15 Protocol.

16 (6) IAEA.—The term “IAEA” means the
17 International Atomic Energy Agency.

18 (7) JUDGE OF THE UNITED STATES.—The term
19 “judge of the United States” means a United States
20 district judge, or a United States magistrate judge
21 appointed under the authority of chapter 43 of title
22 28, United States Code.

23 (8) LOCATION.—The term “location” means
24 any geographic point or area declared or identified

1 by the United States or specified by the Inter-
2 national Atomic Energy Agency.

3 (9) NUCLEAR NON-PROLIFERATION TREATY.—

4 The term “Nuclear Non-Proliferation Treaty”
5 means the Treaty on the Non-Proliferation of Nu-
6 clear Weapons, done at Washington, London, and
7 Moscow July 1, 1968, and entered into force March
8 5, 1970 (21 UST 483).

9 (10) NUCLEAR-WEAPON STATE PARTY AND
10 NON-NUCLEAR-WEAPON STATE PARTY.—The terms
11 “nuclear-weapon State Party” and “non-nuclear-
12 weapon State Party” have the meanings given such
13 terms in the Nuclear Non-Proliferation Treaty.

14 (11) PERSON.—The term “person”, except as
15 otherwise provided, means any individual, corpora-
16 tion, partnership, firm, association, trust, estate,
17 public or private institution, any State or any polit-
18 ical subdivision thereof, or any political entity within
19 a State, any foreign government or nation or any
20 agency, instrumentality or political subdivision of
21 any such government or nation, or other entity lo-
22 cated in the United States.

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

1 (13) UNITED STATES.—The term “United
2 States”, when used as a geographic reference, means
3 the several States of the United States, the District
4 of Columbia, and the commonwealths, territories,
5 and possessions of the United States and includes all
6 places under the jurisdiction or control of the United
7 States, including—

8 (A) the territorial sea and the overlying
9 airspace;

10 (B) any civil aircraft of the United States
11 or public aircraft, as such terms are defined in
12 paragraphs (17) and (41), respectively, of sec-
13 tion 40102(a) of title 49, United States Code;
14 and

15 (C) any vessel of the United States, as
16 such term is defined in section 3(b) of the Mar-
17 itime Drug Law Enforcement Act (46 U.S.C.
18 App. 1903(b)).

19 (14) WIDE-AREA ENVIRONMENTAL SAM-
20 PLING.—The term “wide-area environmental sam-
21 pling” has the meaning set forth in Article 18g. of
22 the Additional Protocol.

23 **SEC. 204. SEVERABILITY.**

24 If any provision of this title, or the application of
25 such provision to any person or circumstance, is held in-

1 valid, the remainder of this title, or the application of such
2 provision to persons or circumstances other than those as
3 to which it is held invalid, shall not be affected thereby.

4 **Subtitle A—General Provisions**

5 **SEC. 211. AUTHORITY.**

6 (a) **IN GENERAL.**—The President is authorized to
7 implement and carry out the provisions of this title and
8 the Additional Protocol and shall designate through Exec-
9 utive order which executive agency or agencies of the
10 United States, which may include but are not limited to
11 the Department of State, the Department of Defense, the
12 Department of Justice, the Department of Commerce, the
13 Department of Energy, and the Nuclear Regulatory Com-
14 mission, shall issue or amend and enforce regulations in
15 order to implement this title and the provisions of the Ad-
16 ditional Protocol.

17 (b) **INCLUDED AUTHORITY.**—For any executive agen-
18 cy designated under subsection (a) that does not currently
19 possess the authority to conduct site vulnerability assess-
20 ments and related activities, the authority provided in sub-
21 section (a) includes such authority.

22 (c) **EXCEPTION.**—The authority described in sub-
23 section (b) does not supersede or otherwise modify any
24 existing authority of any Federal department or agency
25 already having such authority.

1 **Subtitle B—Complementary Access**

2 **SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT**
3 **COMPLEMENTARY ACCESS.**

4 (a) PROHIBITION.—No complementary access to any
5 location in the United States shall take place pursuant to
6 the Additional Protocol without the authorization of the
7 United States Government in accordance with the require-
8 ments of this title.

9 (b) AUTHORITY.—

10 (1) IN GENERAL.—Complementary access to
11 any location in the United States subject to access
12 under the Additional Protocol is authorized in ac-
13 cordance with this title.

14 (2) UNITED STATES REPRESENTATIVES.—

15 (A) RESTRICTIONS.—In the event of com-
16plementary access to a privately owned or oper-
17ated location, no employee of the Environ-
18mental Protection Agency or of the Mine Safety
19and Health Administration or the Occupational
20Safety and Health Administration of the De-
21partment of Labor may participate in the ac-
22cess.

23 (B) NUMBER.—The number of designated
24 United States representatives accompanying

1 IAEA inspectors shall be kept to the minimum
2 necessary.

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

4 (a) IN GENERAL.—Each instance of complementary
5 access to a location in the United States under the Addi-
6 tional Protocol shall be conducted in accordance with this
7 subtitle.

8 (b) NOTICE.—

9 (1) IN GENERAL.—Complementary access re-
10 ferred to in subsection (a) may occur only upon the
11 issuance of an actual written notice by the United
12 States Government to the owner, operator, occupant,
13 or agent in charge of the location to be subject to
14 complementary access.

15 (2) TIME OF NOTIFICATION.—The notice under
16 paragraph (1) shall be submitted to such owner, op-
17 erator, occupant, or agent as soon as possible after
18 the United States Government has received notifica-
19 tion that the IAEA seeks complementary access. No-
20 tices may be posted prominently at the location if
21 the United States Government is unable to provide
22 actual written notice to such owner, operator, occu-
23 pant, or agent.

24 (3) CONTENT OF NOTICE.—

1 (A) IN GENERAL.—The notice required by
2 paragraph (1) shall specify—

3 (i) the purpose for the complementary
4 access;

5 (ii) the basis for the selection of the
6 facility, site, or other location for the com-
7plementary access sought;

8 (iii) the activities that will be carried
9 out during the complementary access;

10 (iv) the time and date that the com-
11plementary access is expected to begin, and
12the anticipated period covered by the com-
13plementary access; and

14 (v) the names and titles of the inspec-
15tors.

16 (4) SEPARATE NOTICES REQUIRED.—A sepa-
17rate notice shall be provided each time that com-
18plementary access is sought by the IAEA.

19 (c) CREDENTIALS.—The complementary access team
20 of the IAEA and representatives or designees of the
21 United States Government shall display appropriate iden-
22tifying credentials to the owner, operator, occupant, or
23agent in charge of the location before gaining entry in con-
24nection with complementary access.

25 (d) SCOPE.—

1 (1) IN GENERAL.—Except as provided in a war-
2 rant issued under section 223, and subject to the
3 United States Government’s rights under the Addi-
4 tional Protocol to limit complementary access, com-
5 plementary access to a location pursuant to this title
6 may extend to all activities specifically permitted for
7 such locations under Article 6 of the Additional Pro-
8 tocol.

9 (2) EXCEPTION.—Unless required by the Addi-
10 tional Protocol, no inspection under this title shall
11 extend to—

12 (A) financial data (other than production
13 data);

14 (B) sales and marketing data (other than
15 shipment data);

16 (C) pricing data;

17 (D) personnel data;

18 (E) patent data;

19 (F) data maintained for compliance with
20 environmental or occupational health and safety
21 regulations; or

22 (G) research data.

23 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECUR-
24 ITY.—In carrying out their activities, members of the
25 IAEA complementary access team and representatives or

1 designees of the United States Government shall observe
2 applicable environmental, health, safety, and security reg-
3 ulations established at the location subject to complemen-
4 tary access, including those for protection of controlled en-
5 vironments within a facility and for personal safety.

6 **SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY**
7 **ACCESS.**

8 (a) IN GENERAL.—

9 (1) PROCEDURE.—

10 (A) CONSENT.—Except as provided in
11 paragraph (2), an appropriate official of the
12 United States Government shall seek or have
13 the consent of the owner, operator, occupant, or
14 agent in charge of a location prior to entering
15 that location in connection with complementary
16 access pursuant to sections 221 and 222. The
17 owner, operator, occupant, or agent in charge of
18 the location may withhold consent for any rea-
19 son or no reason.

20 (B) ADMINISTRATIVE SEARCH WAR-
21 RANT.—In the absence of consent, the United
22 States Government may seek an administrative
23 search warrant from a judge of the United
24 States under subsection (b). Proceedings re-
25 garding the issuance of an administrative

1 search warrant shall be conducted ex parte, un-
2 less otherwise requested by the United States
3 Government.

4 (2) EXPEDITED ACCESS.—For purposes of ob-
5 taining access to a location pursuant to Article
6 4b.(ii) of the Additional Protocol in order to satisfy
7 United States obligations under the Additional Pro-
8 tocol when notice of two hours or less is required,
9 the United States Government may gain entry to
10 such location in connection with complementary ac-
11 cess, to the extent such access is consistent with the
12 Fourth Amendment to the United States Constitu-
13 tion, without obtaining either a warrant or consent.

14 (b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-
15 PLEMENTARY ACCESS.—

16 (1) OBTAINING ADMINISTRATIVE SEARCH WAR-
17 RANTS.—For complementary access conducted in the
18 United States pursuant to the Additional Protocol,
19 and for which the acquisition of a warrant is re-
20 quired, the United States Government shall first ob-
21 tain an administrative search warrant from a judge
22 of the United States. The United States Government
23 shall provide to such judge all appropriate informa-
24 tion regarding the basis for the selection of the facil-

1 ity, site, or other location to which complementary
2 access is sought.

3 (2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-
4 TIVE SEARCH WARRANTS.—A judge of the United
5 States shall promptly issue an administrative search
6 warrant authorizing the requested complementary
7 access upon an affidavit submitted by the United
8 States Government—

9 (A) stating that the Additional Protocol is
10 in force;

11 (B) stating that the designated facility,
12 site, or other location is subject to complemen-
13 tary access under the Additional Protocol;

14 (C) stating that the purpose of the com-
15 plementary access is consistent with Article 4 of
16 the Additional Protocol;

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

20 (E) containing assurances that the scope
21 of the IAEA's complementary access, as well as
22 what it may collect, shall be limited to the ac-
23 cess provided for in Article 6 of the Additional
24 Protocol;

1 (F) listing the items, documents, and areas
2 to be searched and seized;

3 (G) stating the earliest commencement and
4 the anticipated duration of the complementary
5 access period, as well as the expected times of
6 day during which such complementary access
7 will take place; and

8 (H) stating that the location to which
9 entry in connection with complementary access
10 is sought was selected either—

11 (i) because there is probable cause, on
12 the basis of specific evidence, to believe
13 that information required to be reported
14 regarding a location pursuant to regula-
15 tions promulgated under this title is incor-
16 rect or incomplete, and that the location to
17 be accessed contains evidence regarding
18 that violation; or

19 (ii) pursuant to a reasonable general
20 administrative plan based upon specific
21 neutral criteria.

22 (3) CONTENT OF WARRANTS.—A warrant
23 issued under paragraph (2) shall specify the same
24 matters required of an affidavit under that para-
25 graph. In addition, each warrant shall contain the

1 identities of the representatives of the IAEA on the
2 complementary access team and the identities of the
3 representatives or designees of the United States
4 Government required to display identifying creden-
5 tials under section 222(c).

6 **SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMEN-**
7 **TARY ACCESS.**

8 It shall be unlawful for any person willfully to fail
9 or refuse to permit, or to disrupt, delay, or otherwise im-
10 pede, a complementary access authorized by this subtitle
11 or an entry in connection with such access.

12 **Subtitle C—Confidentiality of**
13 **Information**

14 **SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMA-**
15 **TION.**

16 Information reported to, or otherwise acquired by, the
17 United States Government under this title or under the
18 Additional Protocol shall be exempt from disclosure under
19 sections 552 of title 5, United States Code.

20 **Subtitle D—Enforcement**

21 **SEC. 241. RECORDKEEPING VIOLATIONS.**

22 It shall be unlawful for any person willfully to fail
23 or refuse—

24 (1) to establish or maintain any record required
25 by any regulation prescribed under this title;

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

5 (3) to permit access to or copying of any record
6 by the United States Government in accordance with
7 any regulation prescribed under this title.

8 **SEC. 242. PENALTIES.**

9 (a) CIVIL.—

10 (1) PENALTY AMOUNTS.—Any person that is
11 determined, in accordance with paragraph (2), to
12 have violated section 224 or section 241 shall be re-
13 quired by order to pay a civil penalty in an amount
14 not to exceed \$25,000 for each violation. For the
15 purposes of this paragraph, each day during which
16 a violation of section 224 continues shall constitute
17 a separate violation of that section.

18 (2) NOTICE AND HEARING.—

19 (A) IN GENERAL.—Before imposing a pen-
20 alty against a person under paragraph (1), the
21 head of an executive agency designated under
22 section 211(a) shall provide the person with no-
23 tice of the order. If, within 15 days after receiv-
24 ing the notice, the person requests a hearing,

1 the head of the designated executive agency
2 shall initiate a hearing on the violation.

3 (B) CONDUCT OF HEARING.—Any hearing
4 so requested shall be conducted before an ad-
5 ministrative judge. The hearing shall be con-
6 ducted in accordance with the requirements of
7 section 554 of title 5, United States Code. If no
8 hearing is so requested, the order imposed by
9 the head of the designated agency shall con-
10 stitute a final agency action.

11 (C) ISSUANCE OF ORDERS.—If the admin-
12 istrative judge determines, upon the preponder-
13 ance of the evidence received, that a person
14 named in the complaint has violated section
15 224 or section 241, the administrative judge
16 shall state his findings of fact and conclusions
17 of law, and issue and serve on such person an
18 order described in paragraph (1).

19 (D) FACTORS FOR DETERMINATION OF
20 PENALTY AMOUNTS.—In determining the
21 amount of any civil penalty, the administrative
22 judge or the head of the designated agency
23 shall take into account the nature, cir-
24 cumstances, extent, and gravity of the violation
25 or violations and, with respect to the violator,

1 the ability to pay, effect on ability to continue
2 to do business, any history of such violations,
3 the degree of culpability, the existence of an in-
4 ternal compliance program, and such other
5 matters as justice may require.

6 (E) CONTENT OF NOTICE.—For the pur-
7 poses of this paragraph, notice shall be in writ-
8 ing and shall be verifiably served upon the per-
9 son or persons subject to an order described in
10 paragraph (1). In addition, the notice shall—

11 (i) set forth the time, date, and spe-
12 cific nature of the alleged violation or vio-
13 lations; and

14 (ii) specify the administrative and ju-
15 dicial remedies available to the person or
16 persons subject to the order, including the
17 availability of a hearing and subsequent
18 appeal.

19 (3) ADMINISTRATIVE APPELLATE REVIEW.—
20 The decision and order of an administrative judge
21 shall be the recommended decision and order and
22 shall be referred to the head of the designated exec-
23 utive agency for final decision and order. If, within
24 60 days, the head of the designated executive agency
25 does not modify or vacate the decision and order, it

1 shall become a final agency action under this sub-
2 section.

3 (4) JUDICIAL REVIEW.—A person adversely af-
4 fected by a final order may, within 30 days after the
5 date the final order is issued, file a petition in the
6 Court of Appeals for the District of Columbia Cir-
7 cuit or in the Court of Appeals for the district in
8 which the violation occurred.

9 (5) ENFORCEMENT OF FINAL ORDERS.—

10 (A) IN GENERAL.—If a person fails to
11 comply with a final order issued against such
12 person under this subsection and—

13 (i) the person has not filed a petition
14 for judicial review of the order in accord-
15 ance with paragraph (4), or

16 (ii) a court in an action brought under
17 paragraph (4) has entered a final judg-
18 ment in favor of the designated executive
19 agency,

20 the head of the designated executive agency
21 shall commence a civil action to seek compliance
22 with the final order in any appropriate district
23 court of the United States.

1 (B) NO REVIEW.—In any such civil action,
2 the validity and appropriateness of the final
3 order shall not be subject to review.

4 (C) INTEREST.—Payment of penalties as-
5 sessed in a final order under this section shall
6 include interest at currently prevailing rates
7 calculated from the date of expiration of the 60-
8 day period referred to in paragraph (3) or the
9 date of such final order, as the case may be.

10 (b) CRIMINAL.—Any person who violates section 224
11 or section 241 may, in addition to or in lieu of any civil
12 penalty which may be imposed under subsection (a) for
13 such violation, be fined under title 18, United States Code,
14 imprisoned for not more than five years, or both.

15 **SEC. 243. SPECIFIC ENFORCEMENT.**

16 (a) JURISDICTION.—The district courts of the United
17 States shall have jurisdiction over civil actions brought by
18 the head of an executive agency designated under section
19 211(a)—

20 (1) to restrain any conduct in violation of sec-
21 tion 224 or section 241; or

22 (2) to compel the taking of any action required
23 by or under this title or the Additional Protocol.

24 (b) CIVIL ACTIONS.—

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

3 (A) in the case of a civil action described
4 in paragraph (1) of such subsection, in the
5 United States district court for the judicial dis-
6 trict in which any act, omission, or transaction
7 constituting a violation of section 224 or section
8 241 occurred or in which the defendant is
9 found or transacts business; or

10 (B) in the case of a civil action described
11 in paragraph (2) of such subsection, in the
12 United States district court for the judicial dis-
13 trict in which the defendant is found or trans-
14 acts business.

15 (2) SERVICE OF PROCESS.—In any such civil
16 action, process shall be served on a defendant wher-
17 ever the defendant may reside or may be found.

18 **Subtitle E—Environmental**
19 **Sampling**

20 **SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD AP-**
21 **PROVAL OF WIDE-AREA ENVIRONMENTAL**
22 **SAMPLING.**

23 (a) IN GENERAL.—Not later than 30 days after the
24 date on which the Board of Governors of the IAEA ap-
25 proves wide-area environmental sampling for use as a safe-

1 guards verification tool, the President shall notify the ap-
2 propriate congressional committees.

3 (b) CONTENT.—The notification under subsection (a)
4 shall contain—

5 (1) a description of the specific methods and
6 sampling techniques approved by the Board of Gov-
7 ernors that are to be employed for purposes of wide-
8 area sampling;

9 (2) a statement as to whether or not such sam-
10 pling may be conducted in the United States under
11 the Additional Protocol; and

12 (3) an assessment of the ability of the approved
13 methods and sampling techniques to detect, identify,
14 and determine the conduct, type, and nature of nu-
15 clear activities.

16 **SEC. 252. APPLICATION OF NATIONAL SECURITY EXCLU-**
17 **SION TO WIDE-AREA ENVIRONMENTAL SAM-**
18 **PLING.**

19 In accordance with Article 1(b) of the Additional Pro-
20 tocol, the United States shall not permit any wide-area
21 environmental sampling proposed by the IAEA to be con-
22 ducted at a specified location in the United States under
23 Article 9 of the Additional Protocol unless the President
24 has determined and reported to the appropriate congres-

1 sional committees with respect to that proposed use of en-
2 vironmental sampling that—

3 (1) the proposed use of wide-area environmental
4 sampling is necessary to increase the capability of
5 the IAEA to detect undeclared nuclear activities in
6 the territory of a non-nuclear-weapon State Party;

7 (2) the proposed use of wide-area environmental
8 sampling will not result in access by the IAEA to lo-
9 cations, activities, or information of direct national
10 security significance; and

11 (3) the United States—

12 (A) has been provided sufficient oppor-
13 tunity for consultation with the IAEA if the
14 IAEA has requested complementary access in-
15 volving wide-area environmental sampling; or

16 (B) has requested under Article 8 of the
17 Additional Protocol that the IAEA engage in
18 complementary access in the United States that
19 involves the use of wide-area environmental
20 sampling.

21 **SEC. 253. APPLICATION OF NATIONAL SECURITY EXCLU-**
22 **SION TO LOCATION-SPECIFIC ENVIRON-**
23 **MENTAL SAMPLING.**

24 In accordance with Article 1(b) of the Additional Pro-
25 tocol, the United States shall not permit any location-spe-

1 cific environmental sampling in the United States under
2 Article 5 of the Additional Protocol unless the President
3 has determined and reported to the appropriate congress-
4 sional committees with respect to that proposed use of en-
5 vironmental sampling that—

6 (1) the proposed use of location-specific envi-
7 ronmental sampling is necessary to increase the ca-
8 pability of the IAEA to detect undeclared nuclear
9 activities in a non-nuclear weapons state;

10 (2) the proposed use of location-specific envi-
11 ronmental sampling will not result in access by the
12 IAEA to locations, activities, or information of direct
13 national security significance; and

14 (3) with respect to the proposed use of environ-
15 mental sampling, the United States—

16 (A) has been provided sufficient oppor-
17 tunity for consultation with the IAEA if the
18 IAEA has requested complementary access in-
19 volving location-specific environmental sam-
20 pling; or

21 (B) has requested under Article 8 of the
22 Additional Protocol that the IAEA engage in
23 complementary access in the United States that
24 involves the use of location-specific environ-
25 mental sampling.

1 **SEC. 254. RULE OF CONSTRUCTION.**

2 As used in this subtitle, the term “necessary to in-
3 crease the capability of the IAEA to detect undeclared nu-
4 clear activities in the territory of a non-nuclear-weapon
5 State Party” shall not be construed to encompass pro-
6 posed uses of environmental sampling that might assist
7 the IAEA in detecting undeclared nuclear activities in the
8 territory of a non-nuclear-weapon State Party by—

9 (1) setting a good example of cooperation in the
10 conduct of such sampling; or

11 (2) facilitating the formation of a political con-
12 sensus or political support for such sampling in the
13 territory of a non-nuclear-weapon State Party.

14 **Subtitle F—Protection of National**
15 **Security Information and Activities**

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

17 (a) LOCATIONS AND FACILITIES OF DIRECT NA-
18 TIONAL SECURITY SIGNIFICANCE.—No current or former
19 Department of Defense or Department of Energy location,
20 site, or facility of direct national security significance shall
21 be declared or be subject to IAEA inspection under the
22 Additional Protocol.

23 (b) INFORMATION OF DIRECT NATIONAL SECURITY
24 SIGNIFICANCE.—No information of direct national secu-
25 rity significance regarding any location, site, or facility as-
26 sociated with activities of the Department of Defense or

1 the Department of Energy shall be provided under the Ad-
2 ditional Protocol.

3 (c) RESTRICTED DATA.—Nothing in this title shall
4 be construed to permit the communication or disclosure
5 to the IAEA or IAEA employees of restricted data con-
6 trolled by the provisions of the Atomic Energy Act of 1954
7 (42 U.S.C. 2011 et seq.), including in particular “Re-
8 stricted Data” as defined under paragraph (1) of section
9 11 y. of such Act (42 U.S.C. 2014(y)).

10 (d) CLASSIFIED INFORMATION.—Nothing in this Act
11 shall be construed to permit the communication or dislo-
12 sure to the IAEA or IAEA employees of national security
13 information and other classified information.

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

15 (a) CERTAIN INDIVIDUALS PROHIBITED FROM OB-
16 TAINING ACCESS.—No national of a country designated
17 by the Secretary of State under section 620A of the For-
18 eign Assistance Act of 1961 (22 U.S.C. 2371) as a govern-
19 ment supporting acts of international terrorism shall be
20 permitted access to the United States to carry out an in-
21 spection activity under the Additional Protocol or a related
22 safeguards agreement.

23 (b) PRESENCE OF UNITED STATES GOVERNMENT
24 PERSONNEL.—IAEA inspectors shall be accompanied at
25 all times by United States Government personnel when in-

1 specting sites, locations, facilities, or activities in the
2 United States under the Additional Protocol.

3 (c) VULNERABILITY AND RELATED ASSESSMENTS.—

4 The President shall conduct vulnerability, counterintel-
5 ligence, and related assessments not less than every 5
6 years to ensure that information of direct national security
7 significance remains protected at all sites, locations, facili-
8 ties, and activities in the United States that are subject
9 to IAEA inspection under the Additional Protocol.

10 **Subtitle G—Reports**

11 **SEC. 271. REPORT ON INITIAL UNITED STATES DECLARA-** 12 **TION.**

13 Not later than 60 days before submitting the initial
14 United States declaration to the IAEA under the Addi-
15 tional Protocol, the President shall submit to Congress a
16 list of the sites, locations, facilities, and activities in the
17 United States that the President intends to declare to the
18 IAEA.

19 **SEC. 272. REPORT ON REVISIONS TO INITIAL UNITED** 20 **STATES DECLARATION.**

21 Not later than 60 days before submitting to the
22 IAEA any revisions to the United States declaration sub-
23 mitted under the Additional Protocol, the President shall
24 submit to Congress a list of any sites, locations, facilities,

1 or activities in the United States that the President in-
2 tends to add to or remove from the declaration.

3 **SEC. 273. CERTIFICATION REGARDING VULNERABILITY**
4 **AND RELATED ASSESSMENTS.**

5 Concurrently with the submission to Congress of the
6 initial declaration list under section 271 and each list up-
7 date under section 272, the President shall submit to Con-
8 gress a report certifying that—

9 (1) each site, location, facility, and activity in-
10 cluded in the list has been examined by each agency
11 with national security equities with respect to such
12 site, location, facility, or activity; and

13 (2) appropriate measures have been taken to
14 ensure that information of direct national security
15 significance will not be compromised at any such
16 site, location, facility, or activity in connection with
17 an IAEA inspection.

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

20 Not later than 180 days after the entry into force
21 of the Additional Protocol, the President shall submit to
22 the appropriate congressional committees a report on —

23 (1) measures that have been or should be taken
24 to achieve the adoption of additional protocols to ex-

1 isting safeguards agreements signed by non-nuclear-
2 weapon State Parties; and

3 (2) assistance provided by the United States to
4 the IAEA in order to promote the effective imple-
5 mentation of additional protocols to existing safe-
6 guards agreements signed by non-nuclear-weapon
7 State Parties and the verification of the compliance
8 of such parties with IAEA obligations.

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

10 The President shall notify Congress of any notifica-
11 tions issued by the IAEA to the United States under Arti-
12 cle 10 of the Additional Protocol.

13 **Subtitle H—Authorization of**
14 **Appropriations**

15 **SEC. 281. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as may be necessary to carry out this title.