

NUCLEAR WASTE POLICY ACT OF 1997

MARCH 20, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 104]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 104) to amend the Nuclear Waste Policy Act of 1982, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Beginning on page 21, strike line 12 and all that follows through page 24, line 5, and insert the following:

“SEC. 202. TRANSPORTATION PLANNING.

“(a) TRANSPORTATION READINESS.—The Secretary—

“(1) shall take such actions as are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities and from the mainline transportation facilities to the interim storage facility or repository, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas, beginning not later than November 30, 1999; and

“(2) not later than November 30, 1999, shall, in consultation with the Secretary of Transportation and affected States and tribes, develop and implement a comprehensive management plan that ensures that safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site beginning not later than that date.

“(b) TRANSPORTATION PLANNING—

“(1) IN GENERAL.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary’s transportation institutional plans to ensure that in-

stitutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility not later than November 30, 1999.

“(2) MATTERS TO BE ADDRESSED.—Among other things, planning under paragraph (1) shall provide a schedule and process for addressing and implementing, as necessary—

- “(A) transportation routing plans;
- “(B) transportation contracting plans;
- “(C) transportation training in accordance with section 203;
- “(D) public education regarding transportation of spent nuclear fuel and high level radioactive waste; and
- “(E) transportation tracking programs.

“(c) SHIPPING CAMPAIGN TRANSPORTATION PLANS.—

“(1) IN GENERAL.—The Secretary shall develop a transportation plan for the implementation of each shipping campaign (as that term is defined by the Secretary) from each site at which high-level nuclear waste is stored, in accordance with the requirements stated in Department of Energy Order No. 460.2 and the Program Manager’s Guide.

“(2) REQUIREMENTS.—A shipping campaign transportation plan shall—

- “(A) be fully integrated with State, and tribal government notification, inspection, and emergency response plans along the preferred shipping route or State-designated alternative route identified under subsection (b); and
- “(B) be consistent with the principles and procedures developed for the safe transportation of transuranic waste to the Waste Isolation Pilot Plant (unless the Secretary demonstrates that a specific principle or procedure is inconsistent with a provision of this Act).

“(d) SAFE SHIPPING ROUTES AND MODES.—

“(1) IN GENERAL.—The Secretary shall evaluate the relative safety of the proposed shipping routes and shipping modes from each shipping origin to the interim storage facility or repository compared with the safety of alternative modes and routes.

“(2) CONSIDERATIONS.—The evaluation under paragraph (1) shall be conducted in a manner consistent with regulations promulgated by the Secretary of Transportation under authority of chapter 51 of title 49, United States Code, and the Nuclear Regulatory Commission under authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as applicable.

“(3) DESIGNATION OF PREFERRED SHIPPING ROUTE AND MODE.—Following the evaluation under paragraph (1), the Secretary shall designate preferred shipping routes and modes from each civilian nuclear power reactor and Department of Energy facility that stores spent nuclear fuel or other high-level defense waste.

“(4) SELECTION OF PRIMARY SHIPPING ROUTE.—If the Secretary designates more than 1 preferred route under paragraph (3), the Secretary shall select a primary route after considering, at a minimum, historical accident rates, population, significant hazards, shipping time, shipping distance, and mitigating measures such as limits on the speed of shipments.

“(5) USE OF PRIMARY SHIPPING ROUTE AND MODE.—Except in cases of emergency, for all shipments conducted under this Act, the Secretary shall cause the primary shipping route and mode or State-designated alternative route under chapter 51 of title 49, United States Code, to be used. If a route is designated as a primary route for any reactor or Department of Energy facility, the Secretary may use that route to transport spent nuclear fuel or high-level radioactive waste from any other reactor or Department of Energy facility.

“(6) TRAINING AND TECHNICAL ASSISTANCE.—Following selection of the primary shipping routes, or State-designated alternative routes, the Secretary shall focus training and technical assistance under section 203(c) on those routes.

“(7) PREFERRED RAIL ROUTES.—

“(A) REGULATION.—Not later than 1 year after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary of Transportation, pursuant to authority under other provisions of law, shall promulgate a regulation establishing procedures for the selection of preferred routes for the transportation of spent nuclear fuel and nuclear waste by rail.

“(B) INTERIM PROVISION.—During the period beginning on the date of enactment of the Nuclear Waste Policy Act of 1997 and ending on the date of issuance of a final regulation under subparagraph (A), rail transportation of spent nuclear fuel and high-level radioactive waste shall be conducted in

accordance with regulatory requirements in effect on that date and with this section.

“SEC. 203. TRANSPORTATION REQUIREMENTS.

“(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

“(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and tribal governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

“(c) TECHNICAL ASSISTANCE.—

“(1) IN GENERAL.—

“(A) STATES AND INDIAN TRIBES.—As provided in paragraph (3), the Secretary shall provide technical assistance and funds to States and Indian tribes for training of public safety officials of appropriate units of State, local, and tribal government. A State shall allocate to local governments within the State a portion any funds that the Secretary provides to the State for technical assistance and funding.

“(B) EMPLOYEE ORGANIZATIONS.—The Secretary shall provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation.

“(C) TRAINING.—Training under this section—

“(i) shall cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations;

“(ii) shall be consistent with any training standards established by the Secretary of Transportation under subsection (g); and

“(iii) shall include—

“(I) a training program applicable to persons responsible for responding to emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste;

“(II) instruction of public safety officers in procedures for the command and control of the response to any incident involving the waste; and

“(III) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving spent nuclear fuel or high-level radioactive waste being transported.

“(2) NO SHIPMENTS IN NO TRAINING.—(A) There will be no shipments of spent nuclear fuel and high-level radioactive waste through the jurisdiction of any State or the reservation lands of any Indian Tribe eligible for grants under paragraph (3)(B) unless technical assistance and funds to implement procedures for safe routine transportation and for dealing with emergency response situations under paragraph (1)(A) have been available to a State or Indian Tribe for at least two years prior to any shipment. *Provided, however,* the Secretary may ship spent nuclear fuel and high-level radioactive waste if technical assistance or funds have not been made available due to (1) an emergency, including the sudden and unforeseen closure of a highway or rail line or the sudden and unforeseen need to remove spent fuel from a reactor because of an accident, or (2) the refusal to accept technical assistance by a State or Indian Tribe, or (3) fraudulent actions which violate federal law governing the expenditure of federal funds.

“(B) In the event the Secretary is required to transport spent fuel or high level radioactive waste through a jurisdiction prior to 2 years after the provision of technical assistance or funds to such jurisdiction, the Secretary shall, prior to such shipment, hold meetings in each state and Indian reservation through which the shipping route passes in order to present initial shipment plans and receive comments. Department of Energy personnel trained in emergency response shall escort each shipment. Funds and all Department of Energy training resources shall be made available to States and Indian Tribes along the shipping route no later than three months prior to the commencement of ship-

ments, *Provided, however*, that in no event shall such shipments exceed 1,000 metric tons per year, and *provided further*, that no such shipments shall be conducted more than four years after the effective date of the Nuclear Waste Policy Act of 1997.

“(3) GRANTS.—

“(A) IN GENERAL.—To implement this section, grants shall be made under section 401(c)(2).

“(B) GRANTS FOR DEVELOPMENT OF PLANS.—

“(i) IN GENERAL.—The Secretary shall make a grant of at least \$150,000 to each State through the jurisdiction of which and each federally recognized Indian tribe through the reservation lands of which a shipment of spent nuclear fuel or high-level radioactive waste will be made under this Act for the purpose of developing a plan to prepare for such shipments.

“(ii) LIMITATION.—A grant shall be made under clause (i) only to a State or a federally recognized Indian tribe that has the authority to respond to incidents involving shipments of hazardous material.

“(C) GRANTS FOR IMPLEMENTATION OF PLANS.—

“(i) IN GENERAL.—Annual implementation grants shall be made to States and Indian tribes that have developed a plan to prepare for shipments under this Act under subparagraph (B). The Secretary, in submitting annual departmental budget to Congress for funding of implementation grants under this section, shall be guided by the State and tribal plans developed under subparagraph (B). As part of the Department of Energy’s annual budget request, the Secretary shall report to Congress on—

“(I) the funds requested by states and federally recognized Indian tribes to implement this subsection;

“(II) the amount requested by the President for implementation; and

“(III) the rationale for any discrepancies between the amounts requested by States and federally recognized Indian tribes and the amounts requested by the President.

“(ii) ALLOCATION.—Of funds available for grants under this subparagraph for any fiscal year—

“(I) 25 percent shall be allocated by the Secretary to ensure minimum funding and program capability levels in all States and Indian tribes based on plans developed under subparagraph (B); and

“(II) 75 percent shall be allocated to States and Indian tribes in proportions to the number of shipment miles that are projected to be made in total shipments under this Act through each jurisdiction.

“(4) AVAILABILITY OF FUNDS FOR SHIPMENTS.—Funds under paragraph (1) shall be provided for shipments to an interim storage facility or repository, regardless of whether the interim storage facility or repository is operated by a private entity or by the Department of Energy.

2. On page 24, line 16, strike “1986” and insert “1997”.

3. On page 29, line 8 after the period insert: “The President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for construction of an interim storage facility.”.

4. On page 33, beginning on line 22, strike “once the Secretary has achieved” and insert “in each year in which the actual emplacement rate is greater than”.

5. On page 34, line 6, strike “annual” and insert “actual”.

6. On page 34, after line 21, insert the following new sentence: “Provided, however, that the Secretary shall accept not less than 5% of the total quantity of spent fuel accepted in any one year from the categories of radioactive materials described in subparagraphs (B) and (C).”.

7. On page 59, lines 8 and 12, strike “2002” and insert “2003”.

8. On page 87, line 2, strike “The Board” and all that follows down to the end of line 9 and insert the following:

“The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

“(1) site characterization activities; and

“(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

9. On page 87, line 17, strike “The Secretary” and all that follows through “per calendar year.”.

10. On page 88, lines 1 and 2, strike “that is generally available to the public”.

11. On page 88, strike lines 4 through 7, and insert the following:

“(2) AVAILABILITY OF DRAFTS.—Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.”.

12. On page 91, strike lines 10 through 12 and insert the following: “Notwithstanding section 401(d), and subject to section 401(e), there are authorized to be appropriated for expenditures from amounts in the Nuclear Waste Fund under section 401(c) such sums as may be necessary to carry out the provisions of this title.”.

13. Beginning on page 92, strike line 18 through line 3 on page 93, and renumber the subsequent paragraphs accordingly.

PURPOSE OF THE MEASURE

S. 104, as reported by the Committee, would amend the Nuclear Waste Policy Act of 1982 (NWPA of 1982) to direct the Secretary of Energy to develop an integrated management system for spent nuclear fuel and high-level nuclear waste. The bill provides for the construction and operation of a centralized interim storage facility and completion of siting and licensing activities with regard to a permanent geologic repository at Yucca Mountain.

SUMMARY OF MAJOR PROVISIONS

The bill provides for enactment of the Nuclear Waste Policy Act of 1997, as a replacement for the NWPA of 1982, as amended. Title I establishes the obligation of the Secretary of Energy (Secretary) to develop an integrated management system under which the Secretary shall accept, transport, store, and dispose of spent nuclear fuel and high-level radioactive waste. Title I also provides that nothing in the bill is intended to modify any right of a contract holder under the NWPA of 1982, or modify obligations imposed on the Federal government by the U.S. District Court of Idaho in *United States v. Batt* (No. 91-0054-S-EIJ).

Title II requires the Secretary to commence emplacement of spent nuclear fuel and high level waste in an interim storage facility no later than November 30, 1999, with certain contingencies that could delay the commencement of facility operations by approximately one year. The Secretary is required to apply to the Commission for authorization to construct a repository by December 31, 2001.

Title III continues the Nuclear Waste Fund, as established under the NWPA of 1982, and provides for the collection of the fee as a “user fee” beginning in fiscal year 2004. Titles IV and V of the bill

continues various provisions of the NWPA of 1982, including the activities of the Office of Civilian Radioactive Waste Management and the Nuclear Waste Technical Review Board.

BACKGROUND AND NEED

Nuclear power plants, which provide 20% of the United States' electric generating capacity, burn small uranium pellets which are loaded into rods within the reactor. Approximately every 18 months, a reactor is refueled, at which time between one-fourth and one-third of the reactor's fuel, which has become inefficient, or "spent," is removed. All nuclear reactors were designed with on-site storage pools that were intended to serve as temporary storage while the highly radioactive fuel cooled before transport to a permanent storage site. However, because no permanent storage site exists, the reactors have been forced to retain spent fuel in their storage pools indefinitely. A typical nuclear plant produces about 30 tons of spent fuel a year. At this time, over 30,000 metric tons of spent fuel is now in temporary storage at nuclear power plants at 75 sites across the country. The fuel is very dense: all of the spent fuel produced by all of America's nuclear plants over the last 30 years would cover only an area the size of a football field to a depth of about three yards.

In addition to the commercial nuclear power industry, the Federal government has produced spent nuclear fuel and high-level nuclear waste through defense and research activities. Research reactors owned by the Department of Energy (DOE) and universities produce spent nuclear fuel that is currently stored at DOE sites across the country. However, most of the fuel at DOE sites is from reactors at the Hanford and Savannah River Sites that produced materials for DOE's nuclear weapons program. These reactors are no longer operating. The fuel from the weapons facilities was intended to be processed to extract weapons-grade materials, and as a result, most must be stabilized in some manner before it can be safely stored for long periods of time.

Also, since 1957, spent nuclear fuel from nuclear-powered naval vessels and naval reactor prototypes has been transported to the Naval Reactors Facility at the Idaho National Engineering Laboratory (INEL) for testing and examination, where it is then stored by DOE. In the course of litigation over the State of Idaho's attempt to stop the importation of further waste into the state, a court order was issued on December 22, 1993 that allowed only a limited number of shipments of spent fuel to Idaho pending the completion of an environmental impact statement (EIS) by DOE. In April, 1995, DOE completed an EIS that confirmed DOE's plan to store spent naval fuel at INEL. The State of Idaho contested the adequacy of the EIS and objected to further shipments. On October 16, 1995, the State of Idaho, DOE and the Navy entered into a settlement agreement that allows limited shipments of navy fuel to Idaho in return for DOE's commitment to remove the fuel by January 1, 2035.

High-level nuclear waste has also been produced by defense activities. High-level waste is the highly radioactive waste material that results from the chemical reprocessing of spent nuclear fuel and irradiated targets. Government operations from 1944 to the

present have generated approximately 398,700 cubic meters of high-level waste at four sites—the Hanford Site, INEL, the Savannah River Site, and the West Valley Demonstration Project. The Hanford facility alone has 61 million gallons of high-level radioactive waste in 177 tanks. DOE plans to stabilize these wastes by transforming them into a glass-like material, through a process called vitrification. DOE estimates that, depending upon canister design and waste composition, approximately 30,000 canisters of vitrified high-level waste may require disposal.

The Nuclear Waste Policy Act and amendments

In 1982, Congress adopted the Nuclear Waste Policy Act (NWPA), which required the DOE to design and implement a system to dispose of spent nuclear fuel in a permanent geologic repository. The NWPA required DOE to begin accepting spent fuel from commercial reactors at a repository by 1998. In 1985, the President determined that defense-related spent fuel held by DOE could be emplaced within the permanent repository. To fund the project, Congress ordered that the Department of Energy collect a fee of one mill (one-tenth of one cent) per kilowatt hour on electricity generated by nuclear energy. The fee is collected by utilities from their ratepayers in their monthly bills and placed into a special “Nuclear Waste Fund” in the Treasury. The Fund receives over half a billion dollars per year from collections and \$300 million per year in interest on the unobligated balance. To date, more than \$12 billion in fees and interest has been placed in the Fund. In addition, funds are appropriated annually from the Defense Programs budget at DOE to the nuclear waste disposal program to pay for the disposal of defense spent fuel and waste.

By 1987, DOE has focused on potential sites for a geologic repository in Texas, the State of Washington, and Yucca Mountain, Nevada, as well as several sites in the eastern U.S. In the Nuclear Waste Policy Amendments Act (NWPAA), Congress reaffirmed that DOE should construct a geologic repository, and instructed DOE to study the suitability of only the Yucca Mountain site. Due to litigation over the attempts of the State of Nevada to stop the study of Yucca Mountain, DOE was unable to begin site characterization activities until 1991. Although the management of the Yucca Mountain site characterization program has been frequently criticized in the past, management reforms in recent years have produced a much more efficient program. For example, despite a reduction in funding, the tunneling operation at the Exploratory Studies Facility in Yucca Mountain is more than three months ahead of the original schedule. DOE expects to have the five mile loop of tunnel completed in late March, as compared to the original deadline of midsummer.

Although DOE will have spent almost \$6 billion through the second quarter of fiscal year 1997 on the program, DOE has conceded that the 1998 deadline for the acceptance of spent nuclear fuel will not be met. In May of 1996, DOE issued a draft “Civilian Radioactive Waste Management Program Plan” that calls for a complete viability assessment of the Yucca Mountain Repository site in 1998, the recommendation of a repository site to the President in 2001,

and the submission of a repository license application to the Nuclear Regulatory Commission in 2002.

Budget issues

Although the Nuclear Waste Fund has a balance of over \$6 billion that was collected from ratepayers for precisely this purpose, the money is considered to be “on-budget,” and as such, is subject to discretionary spending caps under Gramm-Rudman-Hollings. Thus, any increases over past spending levels will require spending reductions in other DOE programs under the spending cap. In its fiscal year 1995 budget request, DOE proposed that future contributions to the Nuclear Waste Fund be set aside in a special “off-budget” fund for the program, with one-half of those funds available as a permanent appropriation each year. This proposal, which would have required legislative action, was not adopted by the Congress. Although the appropriations committees expressed strong concerns regarding the management of the program, they increased funding for the program in FY 1995.

In its FY 96 Budget Request, DOE proposed again that a mandatory appropriation be established from the Nuclear Waste Fund of \$431.6 million per year and requested no money from the Fund under DOE discretionary funding. DOE did request an additional \$200 million from Defense Programs for the defense share of the project, resulting in a total proposed funding level of \$630 million. The change to mandatory funding was not adopted by the Congress. The Energy and Water Appropriations bill that was passed on October 31, 1995 provides \$400 million from DOE discretionary funding for the entire DOE civilian nuclear waste program. Of the \$400 million, \$85 million is set aside for construction of an interim storage facility, but is “fenced” and cannot be spent until authorizing legislation is passed. An amendment by Senator Johnston that would have authorized the construction of an interim storage facility in Nevada was rejected by the Energy and Water Conferees, primarily because of President Clinton’s threat that he would veto a bill that contained such a provision.

In the fiscal year 1997 Energy and Water Appropriations Act, \$382,000,000 was appropriated for the program. The Act contained language requiring DOE to issue a viability assessment of the potential permanent repository site at Yucca Mountain by September 30, 1998, and described the contents of that assessment.

Interim storage

As it became clear that a permanent repository would not be open by the 1998 deadline, the 1987 NWPA established the Office of the Nuclear Waste Negotiator, which was established to find a volunteer state or Indian tribe to host a temporary storage facility, referred to as a “monitored retrievable storage” facility or “MRS.” Although several Indian tribes applied for study grants, due to state and Congressional intervention in the process, the program was unable to make progress in siting an MRS. Although funds had been appropriated for the Office through the end of FY ’95, under the terms of the NWPA, the Office terminated on December 22, 1994. In any case, because the NWPA links the siting of an MRS to the siting of the permanent repository, DOE cannot select

an MRS site until the Secretary has recommended that a permanent repository be built at Yucca Mountain, and cannot begin construction of an MRS until the NRC has issued a construction authorization for the permanent repository. The NWPA also prohibits the construction of the MRS in Nevada.

Twenty-three reactors will run out of room in their spent fuel storage pools by 1998, the deadline for the acceptance of waste by DOE. By 2010, DOE's rather optimistic target date for opening a permanent repository, an additional 55 reactors will be out of space. Thus, many utilities with limited space in their storage pools have begun to search for alternative storage facilities. At this time, seven utilities have on-site dry canister storage at their reactors. In 1994, Northern States Power Company (NSP) was forced to apply for approval from the Minnesota State Legislature for on-site dry storage for its spent nuclear fuel. Although NSP eventually won permission to store the spent fuel on-site, it was only after a long high-profile battle in the state legislature. During the debate, NSP, along with 33 other utility and 2 contractor partners, began negotiations with the Mescalero Indian Tribe regarding the siting of a privately funded MRS on tribal lands. In a tribal referendum, the Mescaleros rejected the proposal. However, subsequently, more than one-half of the registered voters on the reservation signed a petition to schedule a new referendum in which the proposal was accepted. Although these negotiations do not appear to be proceeding at this time, a similar group of utilities is attempting to negotiate a similar deal with the Skull Valley Goshute Tribe in Utah. A privately funded MRS could be constructed as long as the facility met Nuclear Regulatory Commission certification standards.

In the meantime, many state regulators have become quite angry with the current situation in which they are required to collect money from state ratepayers to fund a DOE waste program which will not accept waste any time in the foreseeable future, while, at the same time, the utilities are faced with growing expenses for on-site storage or for a private MRS. When DOE admitted that it would be unable to take spent fuel in 1998, a group of state regulatory agencies, nuclear utilities and state Attorneys General joined together to form the Nuclear Waste Strategy Coalition and sue DOE for breaching the contracts entered into under the NWPA. On July 23, 1996, the U.S. Court of Appeals for the District of Columbia Circuit ruled that section 302(a)(5)(B) of the Nuclear Waste Policy Act "creates an obligation in DOE, reciprocal to the utilities obligation to pay, to start disposing of the [spent nuclear fuel] no later than January 31, 1998." The Court found that it was premature to determine the appropriate remedy, as DOE had not yet defaulted upon its obligation. DOE did not appeal the Court's decision. On December 17, 1996, DOE sent a letter to all nuclear plant owners, indicating that DOE would be unable to fulfill its obligation. On January 31, 1997, in light of the contents of this letter, a new lawsuit was filed against DOE. The petitioners requested that the Court issue a declaration that the utilities are authorized to place their fees into escrow until DOE begins taking spent nuclear fuel. They also requested that the Court issue a writ of mandamus ordering DOE to develop a program to take spent nuclear fuel by January 31, 1998.

Outside of the lawsuit, many state commissions are investigating the possibility of either refusing to allow the passthrough of the Nuclear Waste Fee in utility rates or placing the fee into escrow rather than forwarding it to the Federal government.

In 1995, the County Commission of Lincoln County, Nevada, a county adjacent to the Yucca Mountain site, passed a resolution inviting DOE to build a spent fuel cask handling facility and temporary storage facility in Lincoln County in return for specified payments and benefits to the county. Under the proposal, spent fuel casks would be removed from the Union Pacific Railroad line in Elgin, Nevada, and stored there. If Yucca Mountain is deemed a suitable site for a permanent repository, under the proposal, a heavy-haul road would be constructed to truck the casks of spent fuel to the Yucca Mountain site. The state government in Nevada, which has been constant in its objections to the Yucca Mountain project, filed civil and criminal lawsuits against the Lincoln County Commissioners for making the proposal. These lawsuits have since been settled.

The multipurpose canister

For some time, DOE has discussed the concept of a "multipurpose canister" (MPC), which would be a thin-walled canister in which spent fuel assemblies would be sealed. The canister may be placed in different overpacks, depending upon the function required, such as a steel cask for transport. In 1994, DOE made the decision to design and develop an MPC that will meet NRC standards for storage and transport. This decision appears to have been prompted by increasing pressure to fulfill DOE's contractual commitment to begin accepting spent fuel in 1998. The MPC would be intended to be used for on-site dry storage by those reactors that are running out of space in their spent fuel pools. In April, 1995, a contract was awarded to Westinghouse Electric Corporation for the first design phase of the MPC program. Because of reduced funding in subsequent years, the second (NRC certification) and third (fabrication and deployment) phases of the MPC project will not proceed at this time. Instead, in December, 1996, DOE issued a "Draft Request for Proposals" with regard to competitive proposals for the provision of acceptance, transportation and delivery services, including the provision of storage and transportation casks from the private sector. Several private vendors are in various states of the development and certification process for "dual purpose" canisters and casks, i.e., ones that can be used for both transportation and storage.

Permanent disposal vs. retrievability

The Energy Policy Act of 1992 required a review by the National Academy of Sciences (NAS) of technical bases for public health and safety standards applicable to a repository at Yucca Mountain. Based upon this report, the Environmental Protection Agency is required to set standards for disposal of spent fuel at Yucca Mountain. Specifically, the NAS was asked to determine whether it is possible to predict whether a geologic repository will be unbreached for a 10,000 year period. The NAS report was issued in August, 1995, and among other things, concluded that although the phys-

ical and geologic processes at Yucca Mountain are predictable enough to allow the future performance of the repository to be assessed, the time of maximum releases from a repository may be well after the 10,000 year time frame. Finally, the NAS panel concluded that risk-based standard for releases is called for, but that it is up to policy-makers to decide what level of risk is acceptable for people in the “critical group” living near the repository.

In light of the anticipated difficulty of meeting standards for the permanent disposal of waste, some have suggested that a disposal site be designed to allow “extended retrievability” rather than permanent disposal. A retrievable facility would allow a shorter licensing period, and allow the spent fuel to be retrieved and moved to another location for storage or processing. However, the NWPA authorizes only the construction of a permanent geologic repository.

LEGISLATIVE HISTORY

Last year, S. 1271, the “Nuclear Waste Policy Act of 1996,” introduced by Senator Craig, was reported by the Committee with an amendment in the nature of a substitute on March 29, 1996 (S. Rept. 104–248). For procedural reasons, on July 9, S. 1936, a bill containing the text of S. 1271 as reported out of Committee, was introduced and placed on the Senate Legislative Calendar. The Senate passed S. 1936 on July 31, 1996 by a 63 to 37 vote. The President threatened to veto the legislation. No further action was taken on the legislation by the House. As introduced, S. 104 was identical to S. 1936, as it passed the Senate in the 104th Congress.

S. 104 was introduced on January 21, 1997 by Senator Murkowski for himself, Senator Craig, Senator Grams, Senator Kempthorne, Senator Abraham, Senator Helms, Senator Thurmond, Senator Kyl, Senator Hollings, Senator Mack, Senator Faircloth, Senator Hatch, Senator Warner, Senator Bond, Senator Robert Smith, Senator Roberts, Senator Santorum, Senator Lott, and Senator Jeffords. The bill was referred to the Committee on Energy and Natural Resources. After introduction, Senator Cochran, Senator Thomas, Senator Robb, Senator Brownback, Senator Burns, and Senator Ashcroft were added as co-sponsors.

On Wednesday, February 5, 1997, the Senate Committee on Energy and Natural Resources held a hearing regarding S. 104, the “Nuclear Waste Policy Act of 1997.”

The Committee on Energy and Natural Resources met in open business session on March 12 and 13, 1997, to consider S. 104, and on March 13, 1997, by a majority vote ordered favorably reported S. 104, as amended

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on March 13, 1997, by majority vote of a quorum present recommends that the Senate pass S. 104, if amended as described herein.

During the Committee’s consideration of the bill, roll call votes were taken on amendments offered to the bill. These votes were taken in open business session, have been announced publicly by the Committee, and are included in the minutes of the session.

The rollcall vote on the motion to report S. 104, as amended, was 15 yeas, 5 nays as follows:

YEAS	NAYS
Murkowski	Bumpers
Domenici ¹	Ford
Nickles	Bingaman
Craig	Akaka ¹
Campbell ¹	Dorgan
Thomas	
Kyl ¹	
Grams	
Smith ¹	
Gorton	
Burns	
Graham ¹	
Wyden	
Johnson	
Landrieu	

COMMITTEE AMENDMENTS

During the consideration of S. 104, the Committee adopted amendments as described herein.

Amendment Number 1. The amendment strengthens the transportation provisions of sections 202 and 203 of S. 104 by requiring the Secretary to consult with States and Indian Tribes along shipping routes in the development of a comprehensive management plan to ensure the safe transportation of spent nuclear fuel and high-level radioactive waste. Section 202, as amended, directs the Secretary to apply the same types of transportation preparations as have been developed for the shipment of plutonium-contaminated waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico. This includes a requirement that the shipping campaign plans be fully integrated with state and tribal government notification, inspection and emergency response plans. In recognition of the tremendous public concern about radioactive material shipments, the Secretary and States have worked cooperatively to develop the WIPP transportation system over the past seven years. This transport safety system has been successfully applied to several nuclear material shipping campaigns in recent years.

Section 202 is amended to result in the use of the safest shipping routes and modes and allow training and other emergency response preparations to be focused on these routes. The Secretary is required to evaluate the relative safety of alternative shipping routes and shipping modes. Such evaluation must be consistent with applicable Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) regulations. Because there are no existing rail routing regulations governing shipment of spent nuclear fuel and high-level radioactive waste, the Secretary of Transportation is directed to promulgate procedures for identifying preferred rail routes for these shipments. Where DOT and NRC rules would allow multiple potential routes to be used or in the absence of DOT

¹ Indicates voted by proxy.

rail routing rules, the Secretary is directed to designate a primary route, after considering, at a minimum, historical accident rates, population, significant hazards, shipping time, shipping distance, and mitigating measures. The Secretary is directed to sue the primary route, or state-designated alternative route, and to focus training and technical assistance on those states and tribes along the primary route. This will result in more efficient use of funds and other resources.

Section 203 is amended to provide a method by which states and Indian Tribes can receive funds and technical assistance to ensure an appropriate level of planning and emergency response preparedness. The Secretary is required to provide such assistance along shipping routes. The Secretary is further required to make planning grants of at least \$150,000 to each State and Tribes through whose jurisdiction shipments will be made. Grants are to be made only to States or Federally recognized Indian Tribes that have the authority to respond to incidents involving shipments of hazardous materials. The Secretary is required to provide annual implementation grants to States and Tribes which have prepared plans. In requesting funds for implementation grants, the Secretary shall be guided by the State and tribal plans and shall explain the rationale for any differences between the funds requested by the Secretary and the funds identified in States and tribal plans as necessary to prepare for shipments. Twenty-five percent of the implementation grants shall be allocated by the Secretary to ensure minimum funding and program levels for all States and Tribes based on the state and Tribal plans. Seventy-five percent of the implementation grant funds shall be allocated in proportion to the number of shipment miles in a State or Tribal reservation compared with the total shipment miles. Funds and technical assistance are to be provided for shipments to an interim storage facility or repository regardless of whether the facility is operated by the U.S. Department of Energy or a private entity.

The amendment also provides that the Secretary may not ship along a route unless technical assistance and funds have been made available to the State or Indian Tribe for at least two years prior to shipment. States and tribes need adequate time to evaluate training and technical assistance needs along the selected routes, to organize local responders and others who need training, and to provide such training. The Secretary may ship without providing assistance to States and tribes in the event of an emergency, or the refusal of a State or Indian Tribe to accept assistance, or if funds are not available for training due to fraudulent actions. If the Secretary is required to ship through the jurisdiction of a State or Indian Tribe without providing assistance two years in advance, Department of Energy personnel trained in emergency response must escort each shipment and the Secretary must make funds and Departmental training resources available to the States or Indian Tribes at least 90 days before commencing shipments. The amendment provides that such shipments shall not exceed 1,000 metric tons per year, and shall not be counted more than four years after enactment of the Nuclear Waste Policy Act of 1997.

Amendment Number 2. This amendment corrects a typographical error that resulted in a reference to the "Nuclear Waste Policy Act

of 1986,” which does not exist. The reference is corrected to be to the “Nuclear Waste Policy Act of 1997”.

Amendment Number 3. The amendment amends section 204(b) to provide that, in the event the Yucca Mountain site is found not to be a viable site for a permanent repository, the President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for construction of an interim storage facility for commercial spent nuclear fuel. Hanford currently has over 2,000 metric tons of badly corroded spent nuclear fuel stored in aging facilities which have leaked at least twice in the past. Millions of gallons of highly radioactive liquid waste is stored in underground tanks, many of which have also leaked and which are beyond their design life. Construction of an interim storage facility at Hanford for commercial spent nuclear fuel would divert management and staff time away from Hanford’s waste management mission and increase the complexity of managing the dangerous wastes that are already onsite.

Amendments 4–6. As amended, section 204(e)(3) provides that, once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to contracts executed prior to the date of enactment of the Act, the Secretary shall accept additional fuel and waste, including that from Department of Energy activities, naval reactors, research reactors, and shutdown commercial reactors, in an amount not less than 25% of the difference between the contractual acceptance rate and annual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 507(a)(2) of the Act. Provided, however, that a portion of the waste (not less than 5%) that is accepted for emplacement by the Secretary in any given year will be spent nuclear fuel of military origin and/or Department of Energy spent nuclear fuel and high-level radioactive waste. This provision corrects possible emplacement scenarios under other provisions of the bill which would have precluded emplacement of any military or DOE waste unless the Department achieved certain triggering acceptance rates. This provision is not intended, however, to direct the storage of any spent nuclear fuel or high-level radioactive waste at the interim storage facility unless its storage is within the scope of the Nuclear Regulatory Commission license issued for the interim storage facility.

Under some limited circumstances, this 5 percent requirement might reduce the Secretary’s ability to also accept material from permanently closed plants under section 204(e)(3). On this point, the Committee notes that the Secretary may use the existing authority within the Standard Contract to accept on a priority basis such spent fuel and waste from permanently closed plants so as to alleviate or otherwise avoid this circumstance. The early acceptance of spent nuclear fuel and waste from permanently closed plants will be cost effective for such utilities, and also add operational benefits and financial savings to the overall program by assuring a consistent and uniform supply of material at the interim facility.

Amendment Number 7. In the Nuclear Waste Policy Act of 1982 (NWPA of 1982), Congress required the Department of Energy to fund the program by collecting a fee on each kilowatt hour of elec-

tricity generated by nuclear energy. The fee is connected by utilities from their ratepayers in their monthly bills and placed into a special "Nuclear Waste Fund" in the Treasury. It is currently set at one mill (one-tenth of one cent) per kilowatt hour, and results in payments of over half a billion dollars per year from collections and \$300 million per year in interest on the unobligated balance. To date, more than \$12 billion in fees and interest have been placed in the Fund, and about \$6 billion has been spent. Under this system, the fees collected that are not appropriated to the nuclear waste program are used to offset other government spending. Thus, there is no actual Nuclear Waste "Fund," and there is a disincentive to appropriate money to the program.

To address this problem, after October 1, 2002, S. 104 requires that the fee be collected as a "user fee," i.e., the fees collected each year shall equal the level of appropriations for that year. Because the collection of the current fee is not tied to appropriations, for budgetary purposes, it is scored as "mandatory income." Because they are set at the level of appropriations for each fiscal year, user fees are scored as "discretionary income." Thus, under the Budget Act, the transition to a user fee requires that the lost mandatory income be "offset" by other mandatory income within the 10-year budget "window." S. 104 provides an offset for four years by collecting the "one-time" fee required to be paid under the NWPA of 1982 early, and thus institutes the user fee on October 1, 2002. Because the fiscal year 1998 Budget Resolution has not yet been adopted, we are still operating under the fiscal year 1997 Budget window. S. 104, as written, is consistent with Budget Act requirements. However, when Congress adopts a new budget resolution this year, the 10-year budget window will move out one year. Thus, in anticipation of this change, amendment number 6 changes the date of transition from the current nuclear waste fee to a "user fee" from October 1, 2002 to October 1, 2003.

Amendment Number 8. The amendment amends section 603 of S. 104, to retain current law with respect to the charter of the Nuclear Waste Technical Review Board.

Amendment Number 9. The amendment makes a change suggested by the Nuclear Waste Technical Review Board at the Committee's February 5, 1997, hearing. The amendment eliminates the limitation on the number of days the Secretary of Energy, or his designee, may be required to appear before the Board.

Amendments Number 10-11. Amendment 9 strikes the paragraph that provides that the information provided to the Board by the Department of Energy "may" include "drafts of products and documentation of work in progress." Amendment 10 inserts the language in the existing Nuclear Waste Policy Act of 1982, which provides that information "shall" include such materials.

Amendment Number 12. This amendment strikes the provisions of S. 104 that provides for funding for the Nuclear Waste Technical Review from general appropriations, and inserts a provision authorizing funds to be appropriated from the Nuclear Waste Fund.

Amendment Number 13. The amendment eliminates the provision in S. 104 that requires the General Accounting Office to conduct an annual audit of the Office of Civilian Radioactive Waste Management. The section to be eliminated carries over language

from the Nuclear Waste Policy Act of 1982, as originally enacted. However, that section has since been amended by Public Law 104-66, which makes the audits optional. GAO supports the elimination of the requirement. GAO reports regarding the Department of Energy's nuclear waste program may be requested by the Committee as needed.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE AND TABLE OF CONTENTS

The title of the Act is the “Nuclear Waste Policy Act of 1997.”

SECTION 2.—DEFINITIONS

This section reenacts many of the definitions that were included in the Nuclear Waste Policy Act of 1982, with modifications where necessary to reflect provisions of the Nuclear Waste Policy Act of 1997, and eliminates those definitions that are no longer necessary. New definitions are provided for “Accept,” “Acceptance,” “Affected Indian Tribe,” “Contracts,” “Contract Holders,” “Disposal System,” “Emplacement Schedule,” “Integrated Management System,” “Interim Storage Facility,” “Interim Storage Facility Site,” “Metric Tons Uranium,” “Program Approach,” “Withdrawal,” and “Yucca Mountain Site.” The definitions are self-explanatory.

TITLE I—OBLIGATIONS

SECTION 101.—OBLIGATIONS OF THE SECRETARY OF ENERGY

Subsection (a) establishes the obligation of the Secretary to develop and operate an integrated management system for the storage and permanent disposal of spent nuclear fuel and high-level radioactive waste. Subsection (b) requires the Secretary to commence storage of spent nuclear fuel and high-level waste at an interim storage facility developed under the Act beginning not later than November 30, 1999. Under subsections (c) and (d), the Secretary is required to develop the remaining components of the integrated management system, including the procurement of all systems and components necessary to transport spent nuclear fuel and high-level waste to the integrated management system facilities.

Subsection (e) requires the Secretary, in administering the integrated management system, to the maximum extent possible, to utilize, employ, procure and contract with the private sector to fulfill the Secretary's obligations and requirements under the Act. This section is intended to ensure that the integrated management system is operated, to the maximum extent possible, in an efficient and cost-effective manner, and benefits from private sector management practices, operations, procedures, and labor practices.

Subsection (f) provides that nothing in the Nuclear Waste Policy Act of 1997 is intended to or shall be construed to modify any right of a contract holder under section 302(a) of the NWPA of 1982, or under a contract executed thereunder prior to the date of enactment of this Act; or (2) obligations imposed on the Federal Government by the U.S. District Court of Idaho in *United States v. Batt* (No. 91-0054-S-EJL). This section is intended to make clear that the enactment of this Act will not have any effect on the outcome

of the lawsuits currently pending in the United States Court of Appeals for the District of Columbia or any subsequent litigation regarding the obligations of the Department or the rights of contract holders under the contracts executed under the NWPA of 1982. The rights of the plaintiffs in those cases, including utility contract holders and state government representatives, will be determined by the court and will not be impacted by the enactment of this Act. Nor is the enactment of this Act intended to impact the obligations and rights established in the court's order in *United States v. Batt*.

Subsection (g) provides that subject to any valid existing rights under subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level waste under this Act. This section does not address the liability of the United States for the failure to meet any deadline for the acceptance of spent nuclear fuel or high-level waste established under the NWPA of 1982 or the contracts executed thereunder, but rather is focused solely on the liability of the United States under the specific provisions of this Act.

TITLE II—INTEGRATED MANAGEMENT SYSTEM

SECTION 201.—INTERMODAL TRANSFER

Subsection (a) requires the Secretary to utilize heavy-haul truck transport to move fuel and waste from the mainline rail line at Caliente, Nevada to the interim storage facility site. Subsection (b) requires the Secretary to develop the capability to commence rail to truck intermodal transfer at Caliente no later than November 30, 1999.

Subsection (c) requires the Secretary to acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente. Subsection (d) also requires Secretary to acquire and develop on behalf of, and dedicate to, the City of Caliente parcels of land and rights-of-way as required to facilitate replacement of land and city wastewater disposal activities necessary to commence intermodal transfer pursuant to this Act. Such replacement shall occur no later than November 30, 1999.

Subsection (e) requires Secretary, within 6 months of enactment, to publish a legal description of the sites and rights-of-way to be acquired and to file copies of a map of such sites and rights-of-way with specified Federal, State, and local entities. Under subsection (f), the Secretary is required to make improvements to existing roadways selected for heavy-haul truck transport between Caliente and the interim storage facility site as necessary to facilitate year-round safe transport of fuel and waste.

Subsection (g) requires the Commission to enter a Memorandum of Understanding with the city of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. It also provides that reasonable expenses of such representation shall be paid by the secretary. Subsection (h) requires Secretary to offer to enter into a benefits agreement with city of Caliente and Lincoln County, Nevada concerning the Integrated Management System. It provides

that the agreement shall contain such terms and conditions, including financial and institutional arrangements, as the parties determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of Lincoln County, Nevada.

Subsection (i) provides that, in addition to any benefits provided Lincoln County under the agreement, the Secretary shall make payments in accordance with the schedule provided in the bill and prevents the Secretary from restricting the purposes for which the payments under the schedule may be used. This section specifies other required terms of the agreement, including dates for payments and governing law.

Subsection (j) provides that, with one exception, 120 days after enactment of the Act, all right, title and interest of the United States in thousands of acres of specifically designated property are conveyed by operation of law to Lincoln County, including all improvements thereon and all necessary easements. Pursuant to the exception, any designated property that is subject to a Federal grazing permit or lease or a similar Federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to terminate legally such permit or lease under applicable law, unless Lincoln County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance. It also provides that, upon request of Lincoln County, the Secretary of the Interior shall provide evidence of title transfer.

SECTION 202.—TRANSPORTATION PLANNING

This section requires the Secretary to take those actions necessary to ensure the ability to transport fuel and waste from sites designated by contract holders to an interim storage facility or repository developed under the Act. In addition, this section specifies regulatory requirements governing such transportation that are intended to augment the existing regulatory regime governing radioactive materials transportation and further protect the public safety.

Subsection (a)(1) requires the Secretary to take those actions necessary to ensure the ability to transport safely fuel and waste from facilities designated by contract holders (e.g., an at-reactor storage facility or an away from reactor storage facility) to mainline transportation facilities, and thereafter from the mainline transportation facilities to the interim storage facility or repository. This subsection further requires that all such transportation shall take place using routes that minimize, to the maximum practicable extent consistent with Federal requirements, transportation of fuel and waste through populated areas. Such transportation shall commence no later than November 30, 1999, which is the date specified in the Act for the commencement of operations at an interim storage facility.

Subsection (a)(2) requires the Secretary, no later than November 30, 1999, in consultation with the Secretary of Transportation and affected States and Tribes, to develop and implement a comprehensive management plan that ensures the safe transportation of fuel

and waste from sites designated by contract holders to the interim storage facility beginning no later than November 30, 1999. The management plan would address, among other things, transportation logistical issues, schedules, routes, and other transportation requirements specified in this Act.

Subsection (b) requires the Secretary, in conjunction with the development of the management plan, to update and modify, as necessary, the Secretary's institutional plans to ensure the resolution of outstanding institutional issues on a schedule that supports the commencement of transportation of fuel and waste to the interim storage facility by November 30, 1999. Specific institutional issues that should be addressed and implemented are identified, including transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, public education regarding transportation of fuel and waste, and transportation tracking programs.

Subsection (c)(1) requires the Secretary to develop a transportation plan for the implementation of each "shipping campaign" as that term is defined by the Secretary, from each site at which fuel and waste is stored. The transportation plan must be developed in accordance with DOE Order No. 460.2, which specifies DOE policies and requirements governing materials transportation and packaging operations, and which generally requires compliance with all applicable Federal, state, local and tribal requirements governing materials transportation that are consistent with Federal requirements. The transportation plan must also be consistent with the requirements stated in the Program Manager's Guide.

Subsection (c)(2) specifies additional requirements that the shipping campaign transportation plan must satisfy. Specifically, subsection (c)(2)(A) requires that the transportation plan be fully integrated with State and tribal government notification, inspection and emergency response plans along the primary route (including any portion thereof that is a State-designated alternative route selected in accordance with DOT regulations) designated by the Secretary in accordance with subsection (d). Subsection (c)(2)(B) requires that the transportation plan be consistent with the principles and procedures developed for the safe transportation of transuranic waste to the Waste Isolation Pilot Plant, unless the Secretary demonstrates that a specific principle or procedure is inconsistent with a provision of this Act. Although the Committee believes that the principles and procedures developed by DOE, in conjunction with affected jurisdictions, for the shipment of waste to WIPP provide an excellent model for the development of similar principles and procedures governing shipments of fuel and waste under this Act, it also recognizes that there are differences between the WIPP program and the Integrated Management System in terms of the materials to be shipped and the governing regulatory regime. Accordingly, this subsection directs the Secretary to develop a shipping campaign transportation plan that is consistent with the principles and procedures governing shipments to the WIPP, but provides the Secretary the discretion to deviate from the WIPP procedures if the Secretary demonstrates that a specific WIPP principle or procedure is inconsistent with a provision of this Act.

Subsection (d) provides standards and procedures that the Secretary must comply with in selecting shipping routes and modes. This section is intended to enhance the safety of the transportation by both rail and highway of spent nuclear fuel and high-level radioactive waste under this Act. These additional requirements are intended to be consistent with and supplement the existing regulatory regime governing fuel and waste shipments by the Secretary under this Act.

Subsection (d)(1) requires the Secretary to evaluate the relative safety of proposed shipping routes and shipping modes from each origin point to the interim storage facility or repository with the safety of alternative modes and routes.

Subsection (d)(2) requires that the evaluation of proposed routes and modes be conducted consistent with applicable DOT and NRC regulations. This provision makes clear that any proposed route or mode selected by DOT must meet all applicable DOT and NRC regulations.

Subsection (d)(3) requires the Secretary, following the evaluation of proposed routes and modes, to designate preferred shipping routes and modes from each origin point of fuel and waste (including reactor sites and DOE facilities) to the interim storage facility or repository. These preferred routes and modes also must comply with DOT and NRC regulations.

Pursuant to subsection (c)(4), if the Secretary designates more than one preferred shipping route, the Secretary must conduct an evaluation to support the selection of a primary route from among the preferred routes. The evaluation must consider, at a minimum, historical accident rates, population, significant hazards, shipping time, shipping distance, and mitigating measures such as limits on the speed of shipments.

Subsection (d)(5) makes clear that, following selection of a primary shipping route (which, with respect to highway routes, would include any alternative route designated by a State in accordance with applicable DOT requirements) and mode, the Secretary must use such primary route and mode except in cases of emergency. In addition, if the Secretary selects a primary route for any reactor or DOE facility, the Secretary may use that primary route to transport fuel and waste from any other reactor or DOE facility.

Subsection (d)(6) requires the Secretary to focus training and technical assistance required under section 203(c) on primary shipping routes. Again, with respect to primary highway routes, such training and assistance shall also be provided along the State-designated alternative portion of the route.

Subsection (d)(7) requires the Secretary of Transportation, within one year of the date of enactment of the Act, to exercise authority under existing law to promulgate a regulation establishing procedures for the selection of preferred routes for the transportation of fuel and waste by rail. The Committee believes that a Federal rail routing regulation, similar to the DOT's regulation governing the selection of highway routes for shipments of fuel and waste, would provide necessary guidance to the Secretary in selecting and evaluating potential rail routes and further enhance the safety of these shipments. However, recognizing that the current regulatory regime does provide requirements governing the rail transportation

of fuel and waste, and that this regime has proven successful in ensuring safe rail transportation of these materials, this section provides that during the period following the date of enactment of the Act and the issuance of a final rail routing regulation, transportation of fuel and waste shall be conducted in accordance with the regulatory requirements in effect on the date of enactment and the requirements of this Act.

SECTION 203.—TRANSPORTATION REQUIREMENTS

Subsections (a) and (b) of section 203 reenact, with some conforming modifications, the provisions in the NWPA of 1982, as amended, requiring NRC certification of packages used for shipments of fuel and waste under this Act, and the required provision of advance notification to States and Tribal government of shipments in accordance with NRC regulations.

Subsection (c)(1)(A) reenacts, with some modifications, the provisions of the NWPA of 1982, as amended, requiring the Secretary to provide technical and financial assistance to States and Indian Tribes for training of public safety officials of appropriate units of State, local, and tribal government. This provision clarifies that the assistance and funds shall be made available directly to States and Tribes, and that States shall allocate a portion of any funds provided to local governments. Technical assistance and funds must be provided pursuant to the grant provision of subsection (c)(3).

Subsection (c)(2)(B) requires that the Secretary also provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs workers who are or will be directly engaged in the transportation of fuel and waste, or emergency response or post-emergency response with respect to such transportation.

Subsection (c)(1)(C) specifies the scope and content of the training that must be provided under this section, and requires that the training be consistent with training standards established by the Secretary of Transportation under subsection (g) of this section. The training must cover procedures required for the safe routine transportation of fuel and waste, as well as procedures for dealing with emergency response situations. In addition, the training must include a training program for responding to emergency situations occurring during the removal and transportation of fuel and waste, the instruction of public safety officers in procedures for the command and control of the response, and instruction of radiological protection and emergency medical personnel in response procedures.

Subsection (c)(2) provides that, with certain specified exceptions, there shall be no shipments of fuel or waste through the jurisdiction of any State or reservation lands of any Tribe eligible for grants under subsection (c)(3) unless technical assistance and funds for dealing with safe routing transportation and emergency response situations have been available to the State or Tribe for at least two years prior to the shipments. This provision is consistent with DOE's current plans, which recommend that technical assist-

ance and funds be provided to States and Tribes approximately two years prior to shipment. Under the exceptions, DOE may ship fuel and waste where technical assistance and funds have not been available for two years prior to the shipment where such shipment is necessary due to an emergency (including the sudden and unforeseen closure of a highway or rail line or the sudden and unforeseen need to remove fuel from a reactor); the State or Tribe's refusal to accept technical assistance; or fraudulent actions which violate federal law governing the expenditure of federal funds.

Subsection (c)(2) provides conditions that must be satisfied in the event transportation of fuel and waste takes place pursuant to one of the exceptions. The Secretary shall, prior to the shipment, hold meetings in each State or Indian reservation through which the shipping route passes in order to present initial shipment plans and receive comments; shipments shall be escorted by DOE personnel trained in emergency response; and funds and DOE training resources shall be made available to States and Tribes along the route no later than three months prior to the shipments. This subsection further provides that such shipments shall not exceed 1,000 MTU per year, and that no such shipments shall take place more than four years after the effective date of the Act.

Subsection (c)(3) covers the provision of grants to implement this section, which shall be made available under section 401(c)(2) of the Act. Subsection (c)(3)(B) provides that the Secretary shall make a grant of at least \$150,000 to each State through the jurisdiction of which and each Federally recognized Tribe through the reservation lands of which a shipment of fuel or waste will be made under this Act for the purpose of developing a plan to prepare for such shipments. Any such grant shall be made only to a State or Federally recognized Tribe that has the authority to respond to incidents involving shipments of hazardous material.

Subsection (c)(3)(C) provides for grants to implement the plans developed by the States and tribes with the grants provided under subsection (c)(3)(B). Subsection (c)(3)(C)(i) provides that annual implementation grants shall be made to States and tribes that have developed a plan for shipments. The Secretary is required, in submitting annual department budgets to Congress for the funding of implementation grants, to be guided by the State and Tribal plans. In addition, as part of the DOE's annual budget requests, the Secretary shall report to Congress on the amount of funds requested by the States and Tribes, the amount requested by the President for implementation, and the rational for any discrepancies between the two amounts.

Subsection (c)(3)(C)(ii) specifies the manner in which the Secretary is to allocate funds made available for grants in any fiscal year: 25% shall be allocated to ensure minimum funding and program capability levels in all States and Tribes based on the plans developed by such States and Tribes and 75% shall be allocated to States and Tribes in proportion to the number of shipment miles projected to be made in total shipments through each jurisdiction.

Subsection (c)(4) clarifies and provides that funds available under paragraph (1) shall be made available to prepare for shipments to an interim storage facility or repository, regardless of

whether the interim storage facility or repository is operated by a private entity or the DOE.

Subsection (d) requires that the Secretary conduct a program to educate the public regarding the transportation of fuel and waste, with an emphasis upon those States, units of local government, and Tribes through whose jurisdiction the Secretary plans to transport substantial amount of fuel or waste.

Subsection (e) specifies that any person that transports spent nuclear fuel or high-level waste pursuant to this Act under contract to the Secretary, shall comply with all requirements governing such transportation issued by Federal, State and local governments, and Indian tribes to the same extent that any person engaging in that transportation that is in or affects interstate commerce would be required to comply with such requirements, as required by 49 U.S.C. sec. 5126. That statutory provision is a section of the Hazardous Materials Transportation Act that requires any person under contract with the Federal Government that transports hazardous materials to comply with Federal, State and local, and tribal requirements (except a requirement preempted by Federal law) in the same way as a private party would comply.

Subsection (f) provides that any person engaged in the interstate commerce of spent nuclear fuel or high-level waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protections provisions of 49 U.S.C. 20109 and 49 U.S.C. 31105. Those sections protect employees of carriers (49 U.S.C. 20109) and motor carriers (49 U.S.C. 31105) from retaliation for the refusal to work, providing certain conditions are satisfied, when confronted by a hazardous condition related to performance of the employee's duties.

Subsection (g)(1) requires the Secretary of Transportation, no later than 12 months following enactment of NWPA of 1997, pursuant to authority under other provisions of law, to promulgate training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level waste. The training standards must specify minimum training standards applicable to workers, including managerial personnel. In addition, the regulation shall require that the employee possess evidence of satisfaction of the applicable training standard before the employee may be employed in the removal and transportation of fuel and waste.

Subsection (g)(2) authorizes the Secretary of Transportation to refrain from promulgating such training regulations if the Secretary determines that regulations promulgated by the Commission establish adequate training standards for such workers. The DOT and NRC are directed to work through their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

Subsection (g)(3) specified the minimum provisions required to be included in the training standards including a specified minimum number of hours of offsite instruction and actual field experience; a requirement that onsite managerial personnel receive the same training as workers as well as specialized training related to their managerial responsibilities; and provisions applicable to persons re-

sponsible for responding to and cleaning up emergency situations occurring during the removal and transportation of fuel and waste.

SECTION 204.—INTERIM STORAGE

Subsection (a) instructs the Secretary to design, construct and operate a facility for the interim storage of spent fuel and high-level waste at the interim storage facility site, if the requirements of subsection (b) are met. Section 2 of the Act defines interim storage facility site as the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and withdrawn and reserved in accordance with the Act for the location of the interim storage facility. Procedures for withdrawal and reservation are specified in section 207.

Subsection (a) also provides that the interim storage facility shall be subject to licensing by the Commission pursuant to regulations governing the licensing of independent spent fuel storage installations (ISFSIs), which regulations shall be amended by the Commission as necessary to implement the provisions of the Nuclear Waste Policy Act of 1997. The intent of this provision is that the Secretary be treated in like manner as a private applicant for an ISFSI license.

Section (b) requires the Secretary to proceed forthwith with all activities necessary to begin accepting fuel and waste at the interim storage facility at the Yucca Mountain site by November 30, 1999, with the proviso that construction shall not begin on an interim storage facility at Yucca Mountain before December 31, 1998. The bill provides for the delivery of an assessment of the viability of the Yucca Mountain site to the President and Congress by the Secretary six months before the construction can begin on the interim facility. If, based upon the information before him, the President determines, in his discretion, that Yucca Mountain is not suitable for development as a repository, then the Secretary shall cease work on both the interim and permanent repository programs at the Yucca Mountain site. The bill further provides that, if the President makes such a determination, he shall have 18 months to designate an interim storage facility site. If the President fails to designate a site, or if a site he has designated has not been approved by Congress within two years of his determination, the Secretary is instructed to construct an interim storage facility at the Yucca Mountain Site. This provision ensures that the construction of an interim storage facility at the Yucca Mountain site will not occur before the President and Congress have had an ample opportunity to review the technical assessment of the suitability of the Yucca Mountain site for a permanent repository and to designate an alternative site for interim storage based upon that technical information. However, the Committee believes that the Hanford Nuclear Reservation in the State of Washington would be an inappropriate location for interim storage of additional commercial spent nuclear fuel and additional high-level waste. Therefore, this subsection also explicitly prohibits the President from selecting this site as an alternative to the Nevada Test Site.

Subsection (c) requires that the design of the interim storage facility provide for the use of storage technologies licensed, approved, or certified by the Commission for use at the interim storage facil-

ity as necessary to ensure compatibility between the interim storage facility and contract holders' spent fuel and facilities. It also requires the Secretary to consent to an amendment to the contracts to provide for reimbursement to contract holders for transportable storage systems purchased by contract holders if the Secretary determines that it is cost-effective to use such systems as part of the integrated management system, but precludes the Secretary from expending funds to modify contract holder storage or transport systems or to seek additional regulatory approvals to use such systems. The intent of this requirement is to ensure that the interim storage facility design is compatible with transportable storage technologies currently being deployed at civilian nuclear power reactors and at any private storage facilities, and transportation technologies that may be used to transport spent nuclear fuel from such reactors to the interim storage facility.

Subsection (d) requires that the interim storage facility be licensed in two phases in order to commence operations no later than November 30, 1999. It requires the Secretary, no later than 12 months after the date of enactment of the Act, to submit to the NRC an application for a license for the first phase of the interim storage facility. It specifies that the first phase license shall have a term of 20 years, which shall be renewable for additional terms upon application by the Secretary, and a capacity of not more than 15,000 MTU. It requires the NRC to issue a final decision on the Secretary's license application within 16 months of application submittal.

Subsection (d)(2) requires that the Environmental Report and Safety Analysis Report submitted in support of the first phase license application be consistent with the scope of authority requested in the license application. The first phase storage facility will be a simple storage facility, consisting primarily of a concrete pad and storage systems similar to those used at licensed ISFSIs at reactor sites.

Subsection (d)(3) requires the Secretary to submit a license application for the second phase facility no later than 30 months after enactment. This subsection specifies that the second phase facility license shall authorize a storage capacity of 40,000 MTU. If the license for the permanent repository is not submitted by February 1, 2002, or fuel receipt operations do not begin at the repository by January 17, 2010, the Act authorizes storage capacity of 60,000 MTU for the interim facility. It also requires that the second phase of the interim storage facility commence operation by Dec. 31, 2002, shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application by the Secretary.

Subsection (e)(1) permits the Secretary to commence site preparation as soon as practicable following the date of enactment of the Act, and to commence construction of each phase of the interim storage facility subsequent to submittal of license application, but authorizes NRC to issue an order requiring the Secretary to suspend construction based on a finding of unreasonable risk to public health and safety and the environment. This provision must be read in conjunction with section 204(b)(1), which prohibits any site specific construction activities prior to December 31, 1998.

Notwithstanding any otherwise applicable licensing requirement, subsection (e)(2) authorizes the Secretary to utilize any facility owned by the Federal Government on the date of enactment of the Act within the boundaries of the interim storage facility site during the first phase of the interim facility. This provision is intended to authorize the Secretary to use the existing Engine-Maintenance and Disassembly (E-MAD) facility to handle individual spent fuel assemblies.

Subsection (e)(3) provides that, subject to the establishment of criteria and grant of authority necessary to store additional fuel and waste, including spent fuel from naval reactors, once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to contracts executed prior to the date of enactment of the Act, the Secretary shall accept additional fuel and waste, in an amount not less than 25% of the difference between the contractual acceptance rate and the actual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 407(a) of the Act. Provided, however, that a portion of the waste (not less than 5%) that is accepted for emplacement by the Secretary in any given year will be spent nuclear fuel of military origin and/or Department of Energy spent nuclear fuel and high-level radioactive waste. This provision corrects possible emplacement scenarios under other provisions of the bill which would have precluded emplacement of any military or DOE waste unless the Department achieved certain triggering acceptance rates. This provision is not intended, however, to direct the storage of any spent nuclear fuel or high-level radioactive waste at the interim storage facility unless its storage is within the scope of the Nuclear Regulatory Commission license issued for the interim storage facility.

Under some limited circumstances, this 5 percent requirement might reduce the Secretary's ability to also accept material from permanently closed plants under section 204(e)(3). On this point, the Committee notes that the Secretary may use the existing authority within the Standard Contract to accept on a priority basis such spent fuel and waste from permanently closed plants so as to alleviate or otherwise avoid this circumstance. The early acceptance of spent nuclear fuel and waste from permanently closed plants will be cost effective for such utilities, and also add operational benefits and financial savings to the overall program by assuring a consistent and uniform supply of material at the interim facility.

Subsection (f) clarifies that the Secretary's and President's actions in connection with the selection of an interim storage facility site, the submittal of any license application and supporting documentation, the construction of a facility, and the use of any facility at the site owned by the Federal Government, are preliminary decision making activities, and therefore not subject to judicial review, and do not require any NEPA documentation. This subsection requires NRC to prepare an EIS in connection with any licensing decision, and specifies that the EIS need not consider matters decided by the Act, including, need for an interim facility, time of availability, and site. This subsection directs NRC to ensure that the scope of the EIS is consistent with the licensing action. Subsection (g)

specifies that judicial review of the NRC's EIS shall be consolidated with judicial review of its licensing action, and precludes a reviewing court from enjoining facility construction or operation except in conjunction with final decision on licensing action.

These provisions reflect the decision to treat the Secretary like a private applicant for an ISFSI license. A private applicant is required to submit an environmental report in support of a license application that contains data that will be utilized by the Commission in preparing the EIS. The Secretary is required to prepare an environmental report in accordance with the regulations governing preparation of an environmental report by a private party. The responsibility to prepare an EIS appropriately lies with the Commission, the objective licensing agency, as opposed to the Secretary. Because the site for the interim storage facility has been selected by Congress, the Secretary's only role in site selection is to choose the specific location for the facility within the boundaries of the site selected by Congress. The purpose of NEPA analyses is to aid agency decisions and since the Congress will have made certain decisions regarding the interim storage facility, as reflected in the Act, no purpose would be served by NEPA analyses of these decisions. Thus, an EIS is not necessary to support the Secretary's site selection process.

Subsection (h) protects the NRC's Waste Confidence decision by providing that the Secretary's obligation to construct and operate an interim storage facility in accordance with the Act, and the Secretary's obligation to develop an Integrated Management System in accordance with the Act, shall provide sufficient and independent grounds (in addition to grounds NRC has used in the past) for any further NRC finding of reasonable assurance that fuel and waste will be disposed of safely and on a timely basis or purposes of any decision to grant or amend a reactor license.

Subsection (i) requires NRC, within 18 months of enactment, to establish criteria (to the extent such criteria are not incorporated in NRC regulations) for the storage in the interim storage facility of spent fuel and high-level waste from shut-down reactors, spent fuel and high-level waste from atomic energy defense activities, and spent fuel from foreign research reactors (referred to as additional fuel and waste). It requires the Secretary, following establishment of such criteria, to seek authority, as necessary, to store such additional fuel and waste. This subsection provides that neither the establishment of such criteria or request for authority to store additional fuel and waste shall delay or otherwise affect, the development, construction, licensing, or operation of the interim storage facility.

Subsection (j) reenacts the provisions of the NWSA of 1982 that authorized the NRC to establish, by rule, procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. It protects the Commission's procedures governing the licensing of independent spent fuel storage installations, including the general license, by providing that nothing in the Act shall affect such procedures, or any licenses or approvals issued pursuant to such procedures, in effect on the date of enactment of the Act.

SECTION 205.—PERMANENT DISPOSAL

Subsection (a) annuls and revokes the Secretary's site characterization guidelines codified at 10 CFR Part 960. It requires the Secretary to continue with site characterization activities in accordance with the program approach, and to eliminate or modify any site characterization activities designed to demonstrate suitability under the guidelines. This provision is necessary to reflect the changes in the Secretary's responsibilities since the passage of the NWPA of 1982. Section 112 of the NWPA, as enacted in 1982, required the Secretary to nominate at least 5 sites as suitable for characterization for development as a repository, and to recommend 3 of the sites to the President for further characterization. The nominations and recommendations were to be based, in part, on the site suitability guidelines. Thus, the primary purpose of the guidelines was to assist the Secretary in comparing and evaluating the relative advantages and disadvantages of the various sites under consideration. In 1987, Congress amended the NWPA to require the Secretary to characterize only the Yucca Mountain site and to cease site characterization activities at all other sites under consideration. However, Congress did not give the Secretary any direction as to the continued value of the site suitability guidelines. As a result, the Secretary has designed the site characterization program to enable the Secretary to reach a decision on site suitability as a precondition to preparing the license application. This is an inappropriate use of the guidelines, and a waste of the Secretary's limited resources. The relevant question is not whether the Yucca Mountain site is suitable, but whether the site can satisfy the Commission's repository licensing regulations in 10 CFR Part 60. Thus, the bill expressly annuls and revokes the guidelines, and in so doing makes clear that the Secretary is to focus the site characterization program solely on obtaining information necessary to make a determination whether the site can satisfy applicable licensing standards.

Subsection (a)(3) requires the Secretary to submit a license application for the repository consistent with the schedule set forth in the program approach, as modified to be consistent with the Act, but no later than December 31, 2001. If, prior to the filing of the application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's repository licensing regulations, the Secretary must terminate site characterization activities and report to Congress within six months. This subsection requires the Secretary to develop a repository design that maximizes repository capacity.

Subsection (b) requires NRC, upon completion of the licensing proceeding for the first phase of the interim storage facility, to amend its repository licensing regulations as necessary to comply with the Act, including the licensing process and release standard established in the Act. This subsection establishes a three-step process for licensing the repository: first, a construction authorization; followed by a license to dispose of waste in the repository; and ultimately a license amendment permitting the Secretary to close the repository. For each step, NRC must find that the action complies with the Secretary's application, the Act, and the NRC's regu-

lations, does not pose an unreasonable risk to public health and safety, and is consistent with the common defense and security. This subsection requires the Secretary to take those actions necessary and appropriate at the site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing exposure to members of the public beyond the limits established in this section.

Subsection (c) requires NRC to provide in its regulations for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement of waste in the repository, on a retrievable basis, as necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure.

Subsection (d) establishes a standard that constitutes an overall system performance standard. The subsection provides that the Environmental Protection Agency shall promulgate generally applicable standards for the protection of the public from releases of radiation from the repository consistent with the overall system performance standard, unless EPA determines that standard constitutes an unreasonable risk to health and safety. The overall system performance standard established for the repository prohibits releases of radioactive material or radioactivity that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems. This is the maximum annual dose from manmade sources recommended by the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements and the NRC's general public protection standard. An annual dose of 100 millirems is equivalent to the annual dose an individual receives from natural sources (often referred to as natural background radiation) minus the exposure to radon, which varies considerably depending on location. It is the limit for annual public exposure that is recommended by the International Commission for Radiological Protection (ICRP). See ISSN-0146-6453, ICRP Publication 60, "1990 Recommendations of the International Commission on Radiological Protection."

Subsection (d)(2) specifies the manner in which the NRC is to apply the overall system performance standard. It requires the Commission to issue the license if it finds reasonable assurance that for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on a probabilistic evaluation, as appropriate, of compliance with the overall system performance standard. The Commission is also required to analyze the overall system performance through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository.

Subsection (d)(3) requires NRC to assume that, following repository closure the inclusion of engineered barriers and Secretary's post-closure actions at the site will thwart human intrusion suffi-

cient to prevent exposure of members of the public beyond limits established in this section. It clarifies that an average member of the general population in the vicinity of the Yucca Mountain site means a person whose behavior represents the average for persons living in the vicinity of the site. This subsection precludes NRC consideration of catastrophic events where health consequences of such events can be reasonably assumed to exceed the health consequences due to the impact of the events on repository performance.

Subsection (e) requires the Secretary to prepare an EIS in connection with the license application and to supplement such EIS as appropriate, but relieves the Secretary of the need to consider the need for the repository, or alternative sites or designs for the repository. It requires NRC, in licensing the repository, to adopt the Secretary's EIS, and any supplements thereto, to the extent practicable.

SECTION 206.—LAND WITHDRAWAL

This section provides for withdrawal of the Interim Storage Facility Site, as designated by the Secretary within Area 25 of the Nevada Test Site, within 6 months of enactment of the Act through the publication of the required legal description in the Federal Register and the filing of the map with the appropriate government entities. It provides for the withdrawal of the Yucca Mountain Site at the same time that the Secretary submits a license application.

When the withdrawals become effective, this section transfers jurisdiction of any land within such sites to the Secretary, and reserves such sites for the Secretary's exclusive use in connection with construction and operation of an interim storage facility and a repository. This section also specifies procedures the Secretary must follow to depict the boundaries of the withdrawn sites.

TITLE III—LOCAL RELATIONS

Section 301 provides grants to any affected Indian tribe or affected unit of local government for purposes of oversight of activities at the Yucca Mountain site. The section also authorized financial and technical assistance to these parties, as well as payments in lieu of taxes. Section 302 provides for an on-site representative from the local government within whose jurisdiction the interim storage facility or permanent repository site is located.

Section 303 confirms that acceptance of benefits under the Act does not constitute an expression of consent to the siting of facilities under the Act. Section 304 clarifies that functioning provided under this title cannot be used to lobbying activities.

Section 305 provides for the conveyance of certain public lands to Nye County, Nevada.

TITLE IV—FUNDING AND ORGANIZATION

SECTION 401.—PROGRAM FUNDING

This section reenacts, with some modifications, provisions of old law with respect to the execution of contracts for the Secretary's acceptance of title and possession, transportation, interim storage,

and disposal of fuel and waste, in return for payment of specified fees to the Secretary. It clarifies that, subsequent to enactment of the Nuclear Waste Policy Act of 1997, the contracts executed under the NWPA of 1982 shall remain in effect, provided that the Secretary shall consent to an amendment to such contracts, as necessary, to implement the provisions of the NWPA of 1997. Thus, the Secretary is not required to execute new contracts with current contract holders. Rather, the Secretary is directed to consent to an amendment to the existing contracts as necessary to reflect the provisions of the bill.

Subsection (a) enacts the current ongoing fee of 1.0 mill per kilowatt hour generated and sold until September 30, 2003. Payment of a 1.0 mill per kilowatt hour fee under the Contracts prior to enactment of this Act shall fulfill all fee obligations related to fuel used to generate electricity prior to enactment. After October 1, 2003, the Act requires that the fee be collected as a “user fee,” i.e., the fees collected each year shall equal the level of appropriations for that year. It reenacts the provisions of the NWPA of 1982 regarding the one-time fee for fuel used to generate electricity prior to April 7, 1983, clarifies that payment of such fees prior to date of enactment shall satisfy the one-time fee obligation. The subsection provides that all unpaid fees shall be paid by September 30, 2002, and provides that any future payments of such fees, including any interest due under the contracts, shall be made to the Nuclear Waste Fund.

Subsection (a)(4) requires the Secretary to review the fee annually to evaluate whether they, together with the existing balance in the Nuclear Waste Fund, provide sufficient revenues to offset program costs. In event the Secretary determines that the fees will provide either insufficient or excessive revenues to recover program costs, requires the Secretary to propose an adjustment of the fee to ensure full cost recovery, and to transmit immediately the proposal for such an adjustment to both houses of Congress.

Subsection (b) reenacts with minor changes provisions of NWPA of 1982 that prohibit NRC from issuing or renewing a license for a utilization or production facility unless such person has executed a contract with the Secretary or the Secretary affirms that such person is negotiating such a contract. Similarly, it reenacts provisions of NWPA of 1982 prohibiting disposal of fuel in the repository unless the generator or owner has executed a contract with the Secretary. This subsection provides that the rights and duties of contract holders are assignable.

Subsection (c) provides for continuation of the Waste Fund established under the NWPA of 1982, which shall consist of the existing balance in the Waste Fund on the date of enactment; and all receipts proceeds, and recoveries realized due to fee payments and recoveries realized as a result of the investment of the balance in the Waste Fund. It reenacts provisions of NWPA of 1982 that authorize the Secretary of the Treasury to hold the Waste Fund and invest proceeds. This subsection authorizes the Secretary to make expenditures for the Waste Fund only for purposes of the Integrated Management System.

SECTION 402.—OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

This section reenacts provisions of the old law establishing the OCRWM. It provides that Office shall be headed by the Director, and specifies appointment procedure and pay level for Director.

SECTION 403.—FEDERAL CONTRIBUTION

This section requires the Secretary, within one year of enactment, to issue a final rule establishing the appropriate portion of program costs allocable to the storage and/or disposal of spent nuclear fuel and/or high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors. It directs that such costs include (i) the costs associated with research and development activities, and (ii) as appropriate, interest on the principal amounts due by reference to the appropriate Treasury Bill rate as if the payments were made at a point in time consistent with the payment dates for fuel and waste under the contracts.

Subsection (b) authorizes appropriations from general revenues to cover the costs, as determined by the Secretary in the rule-making proceeding, of storing and/or disposing of waste and fuel from atomic energy defense activities under the Integrated Management System and directs the Secretary to request such appropriations along with the Secretary's requests for appropriations from the Waste Fund.

Subsection (c) requires the Secretary to advise the Congress, on an annual basis, of the amount of waste and fuel from atomic energy defense activities requiring management in the Integrated Management System.

TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

SECTION 501.—COMPLIANCE WITH OTHER LAWS

This section provides that, if any law does not conflict with the provisions of the Nuclear Waste Policy Act and the Atomic Energy Act, that law will govern. State and local laws are preempted only if those laws are inconsistent with or duplicative of the Nuclear Waste Policy Act or the Atomic Energy Act.

SECTION 502.—JUDICIAL REVIEW OF AGENCY ACTIONS

This section reenacts provisions of old law regarding judicial review, but specifies that any specific judicial review provisions in the Act take precedence over the more general provision.

SECTION 503.—LICENSING OF FACILITY EXPANSIONS AND
TRANSHIPMENTS

This section reenacts provision in old law regarding licensing proceedings for expansion of spent nuclear fuel storage capacity at the site of power reactors.

SECTION 504.—SITING A SECOND REPOSITORY

This section reenacts provisions in old law barring the Secretary from developing a second repository without further authorization

and requiring the Secretary to report on the need for a second repository between 2007 and 2010.

SECTION 505.—FINANCIAL ARRANGEMENTS FOR LOW-LEVEL
RADIOACTIVE WASTE SITE CLOSURE

This section reenacts provision in old law authorizing the Secretary to assume ownership of low-level waste sites after their decommissioning.

SECTION 506.—NUCLEAR REGULATORY COMMISSION TRAINING
AUTHORITY

This section reenacts provisions in old law authorizing NRC to issue regulations on nuclear power plant operator training.

SECTION 507.—EMPLACEMENT SCHEDULE

This section requires that the emplacement schedule shall be implemented in accordance with the acceptance priority ranking determined by the Department's annual "Acceptance Priority Ranking" report. It requires that the Secretary's spent fuel emplacement rate shall be no less than 1,200 MTU in 1999 and 2000; 2,000 MTU in 2001 and 2002; 2,700 MTU in 2003; and 3,000 MTU annual thereafter.

In the event the Secretary is unable to being emplacement by January 31, 1999 at the rates specified, or if the cumulative amount accepted in any year thereafter is less than specified, provides as a mitigation measure that the Secretary is required to adjust the schedule upward such that within 5 years of the start of emplacement, the total quantity emplaced is consistent with the total quantity that would have been accepted if emplacement commenced in 1999 and thereafter the emplacement rate is equivalent to the rate that would be in place if the Secretary had commenced acceptance in 1999.

SECTION 508.—TRANSFER OF TITLE

This section provides that acceptance by the Secretary of any spent fuel or high-level waste shall constitute a transfer of title to the Secretary. Acceptance is defined as the Secretary's act of taking possession of the fuel or waste involved.

SECTION 509.—DECOMMISSIONING PILOT PROGRAM

This section authorizes the Secretary to establish a Decommissioning Pilot Program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas. This section precludes the use of the Nuclear Waste Fund to fund the Decommissioning Pilot Program.

SECTION 510.—WATER RIGHTS

This section clarifies that nothing in the Act constitutes a Federal reservation of water or water rights. The section further provides that the Federal Government may acquire and use water rights pursuant to the requirements of the State of Nevada.

TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

Section 603 re-enacts the Board's functions as they are in the NWPA of 1982. However, the Committee cautions the Board that it should be certain that its activities and those of its staff and contractors remain within the bounds of this provision and not on subjects that such a Board was not constituted for or well suited to review.

Section 604 re-enacts the Board's investigatory powers as they are in the NWPA of 1982. This includes authority to hold hearings, take testimony, receive evidence, etc. It also includes requirement that the Secretary or any contractor of the Secretary shall provide the Board with such records, files, papers, data, etc. that the Board deems necessary in response to its inquiries. However, the Commission reminds the Board that its function to evaluate the Secretary's activities as described in section 603 is best carried out in a manner that does not interfere with the Secretary's ability to carry out these functions.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of the rule XXV of the Standing Rules of the Senate, the Congressional Budget Office cost estimate has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

FEDERAL MANDATE EVALUATION

The Congressional Budget Office Federal mandate evaluation has been requested but was not received at the time the report was filed. When the report is available, the chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing S. 104. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses above those in existing law.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

There are not likely to be significant paperwork requirements for the Department of Energy above those required by existing law.

Each of us, whether he or she voted for or against reporting S. 104, agrees on the need to solve the nuclear waste problem. We do not dispute the magnitude of the problem, the financial burden it imposes on electric utilities, or the need for the Federal Government to honor its contractual commitment to the utilities to dispose of their nuclear waste. The issue that separates us from our Republican colleagues is whether S. 104 is the best solution.

In 1982, after four years of debate, Congress decided that nuclear waste should be buried in a deep geologic repository, at a site selected on the basis of scientific merit. In 1987, Congress chose Yucca Mountain as the most promising of the candidate sites and focused the Department of Energy's scientific investigations there. The soundness of those decisions, while often questioned, has never been refuted.

Considerable progress has been made toward completing the necessary investigations, but the program is years behind schedule. The Department of Energy will—cannot—meet its contractual deadline of January 31, 1998 to begin picking up nuclear waste from the utilities. The reasons for this delay are many and varied. But Congress itself bears some measure of responsibility because it has not given the program the money it needed, the President requested, or the utilities contributed.

The failure to meet the contractual deadline is causing considerable hardship and understandable frustration among the utilities generating the waste. They want the Government to take the problem off their hands, they want the Government to do it now, and Senators want to oblige.

We are, however, designing a repository to last for millennia. Immensely complex questions on the frontiers of scientific knowledge must be answered before we will know whether the repository will be safe, not just for ourselves and our children, but for generations yet unborn. Collecting and analyzing the geological and hydrological evidence, and doing it properly, takes time. Precipitous action now could lead to unfathomable consequences later.

S. 104 is a short-term fix for the utilities at the expense of the long-term solution. It prejudices the scientific investigations by designating Yucca Mountain as the interim storage site before we know whether it is suitable for the repository. It diverts resources from the repository to interim storage, making completion of the repository by 2010 less likely. Indeed, by setting up a storage facility to hold indefinitely twice the amount of waste generated by all the utilities in the last 40 years, S. 104 invites a future Congress to abandon the repository entirely.

Moreover, S. 104 does nothing to provide the nuclear waste program adequate funds in the immediate future. Such relief as the bill provides is postponed for six years, until September 2003. In the meantime, the bill revokes the Secretary of Energy's current authority to increase fee collections to ensure that the nuclear in-

dustry, rather than the taxpayer, pays the full cost of disposing of the industry's wastes.

In addition, S. 104 imposes on the Federal Government new obligations that cannot be met. Under current law, the utilities are responsible for managing their own wastes until the Department of Energy can begin disposing of them in the repository. S. 104 transfers this obligation to the Department and gives it only until November 30, 1999 to do it. This deadline cannot possibly be met and members of the Committee know it.

During Committee consideration of S. 104, Senator Bingaman offered amendments to cure each of these defects. Regrettably, our Republican colleagues voted in block to reject each of them. The President has authorized Secretary Peña to work with us to craft a compromise, but Republican members of the Committee delayed the Secretary's confirmation until the bill was being reported. The President has said that he would veto any bill siting an interim storage facility at Yucca Mountain before the site is found viable, but the Republicans have pursued a strategy aimed at overriding the President's veto rather than trying to accommodate his legitimate concerns.

The nation's nuclear waste policy should not be the subject of partisan strife. The original Nuclear Waste Policy Act was first proposed by a Democratic President, but was signed into law by a Republican one. It was passed by a Democratic House and a Republican Senate. Its implementation has required, and will continue to require, the active bipartisan support of Republicans and Democrats alike, both in Congress and in the Executive Branch, for decades to come. It can only succeed in the long run through consensus and cooperation, not confrontation and coercion.

Some of us could not vote to report S. 104 in its present form. Some of us were willing to report it as it is in the hope that we can improve it on the Senate floor. But all of us agree that S. 104 should not pass the Senate without major improvement.

DALE BUMPERS.
WENDELL H. FORD.
JEFF BINGAMAN.
DANIEL K. AKAKA.
TIM JOHNSON.
MARY L. LANDRIEU.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 104, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NUCLEAR WASTE POLICY ACT OF 1982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

【SHORT TITLE AND TABLE OF CONTENTS

【SECTION 1. This Act may be cited as the “Nuclear Waste Policy Act of 1982”.

【TABLE OF CONTENTS

【Sec. 1. Short title and table of contents.
【Sec. 2. Definitions.
【Sec. 3. Separability.
【Sec. 4. Territories and possessions.
【Sec. 5. Ocean disposal.
【Sec. 6. Limitation on spending authority.
【Sec. 7. Protection of classified national security information.
【Sec. 8. Applicability.
【Sec. 9. Applicability.

【TITLE I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

【Sec. 101. State and affected Indian tribe participation in development of proposed repositories for defense waste.

【SUBTITLE A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

【Sec. 111. Findings and purposes.
【Sec. 112. Recommendation of candidate sites for site characterization.
【Sec. 113. Site characterization.
【Sec. 114. Site approval and construction authorization.
【Sec. 115. Review of repository site selection.
【Sec. 116. Participation of States.
【Sec. 117. Consultation with States and Indian tribes.
【Sec. 118. Participation of Indian tribes.
【Sec. 119. Judicial review of agency actions.
【Sec. 120. Expedited authorizations.
【Sec. 121. Certain standards and criteria.
【Sec. 122. Disposal of spent nuclear fuel.
【Sec. 123. Title to material.
【Sec. 124. Consideration of effect of acquisition of water rights.
【Sec. 125. Termination of certain provisions.

【SUBTITLE B—INTERIM STORAGE PROGRAM

【Sec. 131. Findings and purposes.
【Sec. 132. Available capacity for interim storage of spent nuclear fuel.
【Sec. 133. Interim at-reactor storage.
【Sec. 134. Licensing of facility expansions and transshipments.
【Sec. 135. Storage of spent nuclear fuel.
【Sec. 136. Interim Storage Fund.
【Sec. 137. Transportation.

【SUBTITLE C—MONITORED RETRIEVABLE STORAGE

【Sec. 141. Monitored retrievable storage.
【Sec. 142. Authorization of monitored retrievable storage.
【Sec. 143. Monitored Retrievable Storage Commission.
【Sec. 144. Survey.
【Sec. 145. Site selection.

- [Sec. 146. Notice of disapproval.
- [Sec. 147. Benefits agreement.
- [Sec. 148. Construction authorization.
- [Sec. 159. Financial assistance.

[SUBTITLE D—LOW-LEVEL RADIOACTIVE WASTE

- [Sec. 151. Financial arrangements for site closure.

[SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

- [Sec. 160. Selection of Yucca Mountain site.
- [Sec. 161. Siting a second repository.

[SUBTITLE F—BENEFITS

- [Sec. 170. Benefits agreements.
- [Sec. 171. Content of agreements.
- [Sec. 172. Review panel.
- [Sec. 173. Termination.

[SUBTITLE G—OTHER BENEFITS

- [Sec. 174. Consideration in siting facilities.
- [Sec. 175. Report.

[SUBTITLE H—TRANSPORTATION

- [Sec. 180. Transportation.

[TITLE II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

- [Sec. 211. Purpose.
- [Sec. 212. Applicability.
- [Sec. 213. Identification of sites.
- [Sec. 214. Siting research and related activities.
- [Sec. 215. Test and evaluation facility siting review and reports.
- [Sec. 216. Federal agency actions.
- [Sec. 217. Research and development on disposal of high-level radioactive waste.
- [Sec. 218. Research and development on spent nuclear fuel.
- [Sec. 219. Payments to States and affected Indian tribes.
- [Sec. 220. Study of research and development needs for monitored retrievable storage proposal.
- [Sec. 221. Judicial review.
- [Sec. 222. Research on alternatives for the permanent disposal of high-level radioactive waste.
- [Sec. 223. Technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.
- [Sec. 224. Subseabed disposal.

[TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

- [Sec. 301. Mission plan.
- [Sec. 302. Nuclear Waste Fund.
- [Sec. 303. Alternate means of financing.
- [Sec. 304. Office of Civilian Radioactive Waste Management.
- [Sec. 305. Location of test and evaluation facility.
- [Sec. 306. Nuclear Regulatory Commission training authorization.

[TITLE IV—NUCLEAR WASTE NEGOTIATOR

- [Sec. 401. Definition.
- [Sec. 402. The Office of Nuclear Waste Negotiator.
- [Sec. 403. Duties of the Negotiator.
- [Sec. 404. Environmental assessment of sites.
- [Sec. 405. Site characterization; licensing.
- [Sec. 406. Monitored retrievable storage.
- [Sec. 407. Environmental impact statement.
- [Sec. 408. Administrative powers of the Negotiator.
- [Sec. 409. Cooperation of other departments and agencies.
- [Sec. 410. Termination of the office.
- [Sec. 411. Authorization of appropriations.

[TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

- [Sec. 501. Definitions.
- [Sec. 502. Nuclear Waste Technical Review Board.
- [Sec. 503. Functions.
- [Sec. 504. Investigatory powers.
- [Sec. 505. Compensatory of members.
- [Sec. 506. Staff.
- [Sec. 507. Support services.
- [Sec. 508. Report.
- [Sec. 509. Authorization of appropriations.
- [Sec. 510. Termination of the Board.

[DEFINITIONS

[SEC. 2. For purposes of this Act:

[(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

[(2) The term “affected Indian tribe” means any Indian tribe—

[(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

[(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;

[(3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

[(A) naval reactors development;

[(B) weapons activities including defense inertial confinement fusion;

[(C) verification and control technology;

[(D) defense nuclear materials production;

[(E) defense nuclear waste and materials by-products management;

[(F) defense nuclear materials security and safeguards and security investigations; and

[(G) defense research and development.

[(4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 112 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113.

[(5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.

[(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

[(7) The term "Commission" means the Nuclear Regulatory Commission.

[(8) The term "Department" means the Department of Energy.

[(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

[(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

[(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the resale of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radio-

active waste canisters, and other materials placed over and around such canisters.

[(12) The term “high-level radioactive waste” means—

[(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

[(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

[(13) The term “Federal agency” means any Executive agency, as defined in section 105 of title 5, United States Code.

[(14) The term “Governor” means the chief executive officer of a State.

[(15) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

[(16) The term “low-level radioactive waste” means radioactive material that—

[(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

[(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

[(17) The term “Office” means the Office of Civilian Radioactive Waste Management established in section 305.

[(18) The term “repository” means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

[(19) The term “reservation” means—

[(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or

[(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

[(20) The term “Secretary” means the Secretary of Energy.

[(21) The term “site characterization” means—

[(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

[(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to

the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

[(22) The term “siting research” means activities, including borings, surface excavations, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

[(23) The term “spent nuclear fuel” means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

[(24) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

[(25) The term “storage” means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

[(26) The term “Storage Fund” means the Interim Storage Fund established in section 137(c).

[(27) The term “test and evaluation facility” means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

[(28) The term “unit of general local government” means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

[(29) The term “Waste Fund” means the Nuclear Waste Fund established in section 302(c).

[(30) The term “Yucca Mountain site” means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.

[(31) The term “affected unit of local government” means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

[(32) The term “Negotiator” means the Nuclear Waste Negotiator.

[(33) As used in title IV, the term “Office” means the Office of the Nuclear Waste Negotiator established under title IV of this Act.

[(34) The term “monitored retrievable storage facility” means the storage facility described in section 141(b)(1).

【SEPARABILITY

【SEC. 3. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

【TERRITORIES AND POSSESSIONS

【SEC. 4. Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980 (48 U.S.C. 1491).

【OCEAN DISPOSAL

【SEC. 5. Nothing in this Act shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

【LIMITATION ON SPENDING AUTHORITY

【SEC. 6. The authority under this Act to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

【PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION

【SEC. 7. Nothing in this Act shall require the release or disclosure to any person or to the Commission of any classified national security information.

【APPLICABILITY

【SEC. 8. (a) ATOMIC ENERGY DEFENSE ACTIVITIES.—Subject to the provisions of subsection (c), the provisions of this Act shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

【(b) EVALUATION BY PRESIDENT.—(1) Not later than 2 years after the date of the enactment of this Act, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

【(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I of the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-

level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 302.

[(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 202 of the Energy Reorganization Act of 1973 (42 U.S.C. 5842); and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

[(c) APPLICABILITY TO CERTAIN REPOSITORIES.—The provisions of this Act shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

[APPLICABILITY

[SEC. 9. TRANSPORTATION.—Nothing in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

[TITLE I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

[STATE AND AFFECTED INDIAN TRIBE PARTICIPATION IN DEVELOPMENT OF PROPOSED REPOSITORIES FOR DEFENSE WASTE

[SEC. 101. (a) NOTIFICATION TO STATES AND AFFECTED INDIAN TRIBES.—Notwithstanding the provisions of section 8, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

[(b) PARTICIPATION OF STATES AND AFFECTED INDIAN TRIBES.—Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 115 through 118, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

[SUBTITLE A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

[FINDINGS AND PURPOSES

[SEC. 111. (a) FINDINGS.—The Congress finds that—

[(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

[(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

[(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

[(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

[(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this Act;

[(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

[(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

[(b) PURPOSES.—The purposes of this subtitle are—

[(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

[(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

[(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

[(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

[RECOMMENDATION OF CANDIDATE SITES FOR SITE CHARACTERIZATION

[SEC. 112. (a) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary, following consulta-

tion with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidances for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

[(b) RECOMMENDATION BY SECRETARY TO THE PRESIDENT.—(1)(A) Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

[(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

[(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 305.

[(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

[(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a);

[(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

[(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

[(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

[(v) a description of the decision process by which such site was recommended; and

[(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

[(E)(i) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

[(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

[(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

[(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 113(b)(1).

[(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress upon the date of enactment of this Act or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this Act or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

[(c) PRESIDENTIAL REVIEW OF RECOMMENDED CANDIDATE SITES.—(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not

later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

[(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

[(d) PRELIMINARY ACTIVITIES.—Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

【SITE CHARACTERIZATION

【SEC. 113. (a) IN GENERAL.—The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 112(b)(2) and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).

【(b) COMMISSION AND STATES.—(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

【(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

【(i) a description of such candidate site;

[(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

[(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

[(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a); and

[(v) any other information required by the Commission;

[(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be employed in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

[(C) a conceptual repository design that takes into account likely site-specific requirements.

[(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

[(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information from such activities.

[(c) RESTRICTIONS.—(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(2) In conducting site characterization activities—

[(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

[(B) if any radioactive material is used at a site—

[(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

[(ii) such radioactive material shall be fully retrievable.

[(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

[(A) terminate all site characterization activities at such site;

[(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

[(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

[(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

[(E) suspend all future benefits payments under subtitle F with respect to such site; and

[(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

[(d) PRELIMINARY ACTIVITIES.—Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

[SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

[SEC. 114. (a) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 113, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 113 and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to

the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

[(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

[(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

[(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

[(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

[(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

[(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

[(G) such other information as the Secretary considers appropriate; and

[(H) any impact report submitted under section 116(c)(2)(B) by the State of Nevada.

[(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

[(B) The President shall submit with such recommendation a copy of the statement of such site prepared by the Secretary under paragraph (1).

[(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

[(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

[(b) SUBMISSION OF APPLICATION.—If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 115,

the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

[(c) STATUS REPORT ON APPLICATION.—Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

[(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

[(2) any matters of contention regarding such application; and

[(3) any Commission actions regarding the granting or denial of such authorization.

[(d) COMMISSION ACTION.—The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to subtitle C of this Act, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

[(e) PROJECT DECISION SCHEDULE.—(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

[(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

[(f) ENVIRONMENTAL IMPACT STATEMENT.—(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

[(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

[(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

[(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

[(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

[(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

[REVIEW OF REPOSITORY SITE SELECTION]

[Sec. 115. (a) DEFINITION.—For purposes of this section, the term “resolution of repository siting approval” means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That there hereby is approved the site at for a repository, with respect to which a notice of disapproval was submitted by on”. The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

[(b) STATE OR INDIAN TRIBE PETITIONS.—The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 114, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

[(c) CONGRESSIONAL REVIEW OF PETITIONS.—If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation or approval of such site is made by the President under section 114, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

[(d) PROCEDURES APPLICABLE TO THE SENATE.—(1) The provisions of this subsection are enacted by the Congress—

[(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

[(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

[(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 116 or 118, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

[(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

[(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

[(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

[(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

[(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

[(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

[(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

[(A) The resolution of the House with respect to such site shall not be referred to a committee.

[(B) With respect to the resolution of the Senate with respect to such site—

[(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

[(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

[(e) PROCEDURES APPLICABLE TO THE HOUSE OF REPRESENTATIVES.—(1) The provisions of this section are enacted by the Congress—

[(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

[(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

[(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

[(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

[(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the

resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

[(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

[(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

[(B) With respect to the resolution of the House with respect to such site—

[(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

[(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

[(f) COMPUTATION OF DAYS.—For purposes of this section—

[(1) continuity of session of Congress is broken only by an adjournment sine die; and

[(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

[(g) INFORMATION PROVIDED TO CONGRESS.—In considering any notice of disapproval submitted to the Congress under section 116 or 118, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

[(PARTICIPATION OF STATES

[(SEC. 116. (a) NOTIFICATION OF STATES AND AFFECTED TRIBES.—The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after the date of enactment of this Act. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this title, the term “potentially acceptable site” means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

[(b) STATE PARTICIPATION IN REPOSITORY SITING DECISIONS.—(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the

Governor or legislature of such State shall be considered to refer instead to such other person or entity.

[(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

[(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

[(c) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

[(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

[(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

[(ii) to develop a request for impact assistance under paragraph (2);

[(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

[(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

[(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

[(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

[(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

[(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

[(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

[(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b).

[(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

[(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

[(ii) the procedures to be followed in providing such assistance.

[(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

[(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

[(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

[(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

[(ii) the date on which the Yucca Mountain site is disapproved under section 115; or

[(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

[(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

[(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or

affected unit of local government under paragraph (1) or (2), except for—

[(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

[(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

[(iii) such funds as may be provided under an agreement entered into under title IV.

[(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

[(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(d) ADDITIONAL NOTIFICATION AND CONSULTATION.—Whenever the Secretary is required under any provision of this Act to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

[CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

[SEC. 117. (a) PROVISION OF INFORMATION.—(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

[(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this subtitle, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

[(b) CONSULTATION AND COOPERATION.—In performing any study of an area within a State for the purpose of determining the suit-

ability of such area for a repository pursuant to section 112(c), and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

[(c) WRITTEN AGREEMENT.—Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c), or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) to the Secretary, whichever, first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress. Such written agreement shall specify procedures—

[(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

[(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

[(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

[(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 116(c) or section 118(b), as the case may be;

[(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to,

questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

[(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

[(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

[(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

[(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

[(10) for public notification of the procedures specified under the preceding paragraphs; and

[(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

[(d) ON-SITE REPRESENTATIVE.—The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

[(PARTICIPATION OF INDIAN TRIBES

[SEC. 118. (a) PARTICIPATION OF INDIAN TRIBES IN REPOSITORY SITING DECISIONS.—Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress

on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

[(b) FINANCIAL ASSISTANCE.—(1) The Secretary shall make grants to each affected tribe notified under section 116(a) for the purpose of participating in activities required by section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

[(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 112(c). Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

[(i) to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

[(ii) to develop a request for impact assistance under paragraph (2);

[(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

[(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

[(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

[(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

[(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

[(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommenda-

tion of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

[(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

[(5) An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

[(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

[(ii) the date on which such site is disapproved under section 115;

[(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

[(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 112(c) and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

[(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

[(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

[(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

[(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

[(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 302.

【JUDICIAL REVIEW OF AGENCY ACTIONS

【SEC. 119. (a) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

【(A) for review of any final decision or action of the Secretary, the President, or the Commission under this subtitle;

【(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this subtitle;

【(C) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle;

【(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this subtitle, or as required under section 135(c)(1), or alleging a failure to prepare such statement with respect to any such action;

【(E) for review of any environmental assessment prepared under section 112(b)(1) or 135(c)(2); or

【(F) for review of any research and development activity under title II.

【(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

【(c) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

【EXPEDITED AUTHORIZATIONS

【SEC. 120. (a) ISSUANCE OF AUTHORIZATIONS.—(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this subtitle requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

[(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

[(b) TERMS OF AUTHORIZATIONS.—Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

[CERTAIN STANDARDS AND CRITERIA

[SEC. 121. (a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—Not later than 1 year after the date of the enactment of this Act, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

[(b) COMMISSION REQUIREMENTS AND CRITERIA.—(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

[(i) applications for authorization to construct repositories;

[(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

[(iii) applications for authorization for closure and decommissioning of such repositories.

[(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

[(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

[(2) For purposes of this Act, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

[(c) ENVIRONMENTAL IMPACT STATEMENT.—The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

【DISPOSAL OF SPENT NUCLEAR FUEL

【SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 114.

【TITLE TO MATERIAL

【SEC. 123. Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this subtitle shall constitute a transfer to the Secretary of title to such waste or spent fuel.

【CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS

【SEC. 124. The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

【TERMINATION OF CERTAIN PROVISIONS

【SEC. 125. Sections 119 and 120 shall cease to have effect at such time as a repository developed under this subtitle is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

【SUBTITLE B—INTERIM STORAGE PROGRAM

【FINDINGS AND PURPOSES

【SEC. 131. (a) FINDINGS.—The Congress finds that—

【(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

【(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

[(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this subtitle, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

[(b) PURPOSES.—The purposes of this subtitle are—

[(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

[(2) to provide, in accordance with the provisions of this subtitle, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

[(AVAILABLE CAPACITY FOR INTERIM STORAGE OF SPENT NUCLEAR FUEL

[SEC. 132. The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

[(1) the protection of the public health and safety, and the environment;

[(2) economic considerations;

[(3) continued operation of such reactor;

[(4) any applicable provisions of law; and

[(5) the views of the population surrounding such reactor.

[(INTERIM AT REACTOR STORAGE

[SEC. 133. The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

[(LICENSING OF FACILITY EXPANSIONS AND TRANSHIPMENTS

[SEC. 134. (a) ORAL ARGUMENT.—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after the date of the enactment of this Act, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nu-

clear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

[(b) ADJUDICATORY HEARING.—(1) At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

[(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

[(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

[(2) In making a determination under this subsection, the Commission—

[(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

[(B) shall not consider—

[(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

[(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

[(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

[(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

[(c) JUDICIAL REVIEW.—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

[(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

[(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

[STORAGE OF SPENT NUCLEAR FUEL

[SEC. 135. (a) STORAGE CAPACITY.—(1) Subject to section 8, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

[(A) use of available capacity at one or more facilities owned by the Federal Government on the date of the enactment of this Act, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

[(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

[(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

[(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on the date of enactment of this Act;

[(C) construction of storage capacity at any site of a civilian nuclear power reactor.

[(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

[(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

[(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

[(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 136(a), and shall accept upon request any spent nuclear fuel as covered under such contracts.

[(6) For purposes of paragraph (1)(A), the term “facility” means any building or structure.

[(b) CONTRACTS.—(1) Subject to the capacity limitation established in subsections (a) (1) and (d) the Secretary shall offer to enter into, and may enter into, contracts under section 136(a) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

[(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

[(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

[(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

[(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

[(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

[(iv) transshipment to another civilian nuclear power reactor owned by such person.

[(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor

involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

[(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

[(c) ENVIRONMENTAL REVIEW.—(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

[(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

[(i) an estimate of the amount of storage capacity to be made available at such site;

[(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

[(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

[(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

[(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

[(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

[(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

[(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

[(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 119.

[(d) REVIEW OF SITES AND STATE PARTICIPATION.—(1) In carrying out the provisions of this subtitle with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any af-

affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

[(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

[(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

[(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

[(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

[(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

[(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

[(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

[(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval

was submitted by _____ on _____. The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

[(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

[(7) As used in this section, the term “affected Tribal Council” means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

[(e) LIMITATIONS.—Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this Act is available for disposal of such spent nuclear fuel.

[(f) REPORT.—The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after the date of the enactment of this Act.

[(g) CRITERIA FOR DETERMINING ADEQUACY OF AVAILABLE STORAGE CAPACITY.—Not later than 90 days after the date of the enactment of this Act, the Commission pursuant to section 553 of the Administrative Procedures Act, shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the

use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

[(h) APPLICATION.—Notwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.

[(i) COORDINATION WITH RESEARCH AND DEVELOPMENT PROGRAM.—To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 217 from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

INTERIM STORAGE FUND

[SEC. 136. (a) CONTRACTS.—(1) During the period following the date of the enactment of this Act, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this subtitle: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 135(a). Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored on-site, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

[(2) The Secretary shall undertake a study and, not later than 180 days after the date of the enactment of this Act, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

[(3) Fees for storage under this subtitle shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this subtitle with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle.

[(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

[(5) Except as provided in section 137, nothing in this or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

[(b) LIMITATION.—No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be stored by the Secretary in any storage capacity provided under this subtitle unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

[(c) ESTABLISHMENT OF INTERIM STORAGE FUND.—There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

[(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Storage Fund immediately upon their realization;

[(2) any appropriations made by the Congress to the Storage Fund; and

[(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

[(d) USE OF STORAGE FUND.—The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this subtitle, including—

[(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this subtitle;

[(2) the administrative cost of the interim storage program;

[(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 135;

[(4) the cost of transportation of spent nuclear fuel; and

[(5) impact assistance as described in subsection (e).

[(e) IMPACT ASSISTANCE.—(1) Beginning the first fiscal year which commences after the date of the enactment of this Act, the

Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional boundaries of such government or governments and authorized under this subtitle: *Provided, however,* That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less;

[(2) Payments made available to States and units of local government pursuant to this section shall be—

[(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

[(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this title, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

[(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

[(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).

[(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this subtitle in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

[(6) As used in this subsection, the term “unit of local government” means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on the date of the enactment of this subsection, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

[(f) ADMINISTRATION OF STORAGE FUND.—(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

[(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

[(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

[(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

[(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

[(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

[(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

[(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average mar-

ket yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

【SEC. 137. (a) TRANSPORTATION.—(1) Transportation of spent nuclear fuel under section 136(a) shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

【(2) The Secretary, in providing for the transportation of spent nuclear fuel under this Act, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

【SUBTITLE C—MONITORED RETRIEVABLE STORAGE

【MONITORED RETRIEVABLE STORAGE

【SEC. 141. (a) FINDINGS.—The Congress finds that—

【(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

【(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

【(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

【(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

【(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this Act should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

【(b) SUBMISSION OF PROPOSAL BY SECRETARY.—(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

【(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

【(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

[(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

[(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

[(2) Such proposal shall include—

[(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

[(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

[(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

[(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this Act.

[(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

[(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (b)(1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

[(c) ENVIRONMENTAL IMPACT STATEMENTS.—(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act, an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

[(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facil-

ity, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

[(d) LICENSING.—Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

[(e) CLARIFICATION.—Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

[(f) IMPACT ASSISTANCE.—(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

[(2) Payments made available to units of general local government under this subsection shall be—

[(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

[(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

[(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

[(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302(c) and shall be available only to the extent provided in advance in appropriation Acts.

[(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

[(g) LIMITATION.—No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 112. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

[(h) PARTICIPATION OF STATES AND INDIAN TRIBES.—Any facility authorized pursuant to this section shall be subject to the provi-

sions of sections 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.

[AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE]

[SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.—The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

[(b) AUTHORIZATION.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.

[MONITORED RETRIEVABLE STORAGE COMMISSION]

[SEC. 143. (a) ESTABLISHMENT.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the “MRS Commission”), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

[(B) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation’s nuclear waste management system.

[(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

[(i) review the status and adequacy of the Secretary’s evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

[(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

[(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

[(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository

development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

[(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

- [(A) repository design and construction;
- [(B) waste package design, fabrication and standardization;
- [(C) waste preparation;
- [(D) waste transportation systems;
- [(E) the reliability of the national system for the disposal of radioactive waste;
- [(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and
- [(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

[(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

[(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

[(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

[(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

[(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

[(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

[(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at

rates and under such rules as the MRS Commission considers reasonable.

[(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

【SURVEY

【SEC. 144. After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

【(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

【(2) minimize the impacts of transportation and handling of such fuel and waste;

【(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

【(4) impose minimal adverse effects on the local community and the local environment;

【(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

【(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

【(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

【SITE SELECTION

【SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

【(b) LIMITATION.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

【(c) SITE SPECIFIC ACTIVITIES.—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

【(d) ENVIRONMENTAL ASSESSMENT.—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations

issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

[(e) NOTIFICATION BEFORE SELECTION.—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

[(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

[(f) NOTIFICATION OF SELECTION.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

[(g) LIMITATION.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.

【NOTICE OF DISAPPROVAL

【SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

[(b) REFERENCES.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

【BENEFITS AGREEMENT

【SEC. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribes on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

【CONSTRUCTION AUTHORIZATION

【SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C

4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

[(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

[(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

[(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

[(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

[(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

[(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

[(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

[(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

[(FINANCIAL ASSISTANCE

[(SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

[SUBTITLE D—LOW-LEVEL RADIOACTIVE WASTE

[FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE
SITE CLOSURE

【SEC. 151. (a) FINANCIAL ARRANGEMENTS.—(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on the date of the enactment of this Act, prior to termination of such licenses.

【(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

【(b) TITLE AND CUSTODY.—(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

【(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

【(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

【(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

【(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

【(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of

such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

【SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

【SELECTION OF YUCCA MOUNTAIN SITE

【SEC. 160. (a) IN GENERAL.—(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

【(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

【(b) Effective on the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170.

【SITING A SECOND REPOSITORY

【SEC. 161. (a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

【(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

【(c) TERMINATION OF GRANITE RESEARCH.—Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987,¹ the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment designated to evaluate the suitability of crystalline rock as a potential repository host medium.

【(d) ADDITIONAL SITING CRITERIA.—In the event that the Secretary at any time after such date of enactment considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as—

【(1) seasonally increases in population;

【(2) proximity to public drinking water supplies, including those of metropolitan areas; and

【(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

【SUBTITLE F—BENEFITS

【BENEFITS AGREEMENTS

【SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive

waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

[(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

[(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

[(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

[(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

[(c) AGREEMENT WITH NEVADA.—The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

[(d) MONITORED RETRIEVABLE STORAGE.—The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

[(e) LIMITATION.—Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

[(f) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

【CONTENT OF AGREEMENTS

【SEC. 171. (a) IN GENERAL.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule:

【BENEFITS SCHEDULE

[Amounts in millions]

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	\$5	\$10
(B) Upon first spent fuel receipt	10	20

[Amounts in millions]

Event	MRS	Repository
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

[(2) For purposes of this section, the term—

[(A) “MRS” means a monitored retrievable storage facility,

[(B) “spent fuel” means high-level radioactive waste or spent nuclear fuel, and

[(C) “first spent fuel receipt” does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

[(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

[(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

[(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

[(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

[(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

[(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

[(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

[(b) CONTENTS.—A benefits agreement under section 170 shall provide that—

[(1) a Review Panel be established in accordance with section 172;

[(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

[(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

[(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulations governing the effects of the facility on the public health and safety; and

[(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

[(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

[(REVIEW PANEL

[SEC. 172. (a) IN GENERAL.—The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

[(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

[(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

[(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

[(4) 1 member to represent other public interests, to be selected by the Secretary.

[(b) TERMS.—(1) The members of the Review Panel shall serve for terms of 4 years each.

[(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

[(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

[(c) DUTIES.—The Review Panel shall—

[(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

[(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

[(3) recommend corrective actions to the Secretary;

[(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

[(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

[(d) INFORMATION.—The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

[(e) FEDERAL ADVISORY COMMITTEE ACT.—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

【TERMINATION

【SEC. 173. (a) IN GENERAL.—The Secretary may terminate a benefits agreement under this title if—

【(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or

【(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

【(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.

【(c) DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

【SUBTITLE G—OTHER BENEFITS

【CONSIDERATION IN SITING FACILITIES

【SEC. 174. The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

【REPORT

【SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

【(b) IMPACTS TO BE CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—

【(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

[(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

[(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

[(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

[(5) medical care, including emergency services and hospitals;

[(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

[(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

[(8) vocational training and employment services;

[(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

[(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

[(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

[(12) availability of energy;

[(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

[(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the constructions operation, and eventual closure of the repository facility.

[(SUBTITLE H—TRANSPORTATION

[(TRANSPORTATION

[(SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purposes by the Commission.

[(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

[(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these

materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

[TITLE II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL]

[PURPOSE]

[SEC. 211. It is the purpose of this title—

[(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

[(2) to authorize the Secretary, pursuant to this title—

[(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

[(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

[(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

[APPLICABILITY]

[SEC. 212. The provisions of this title are subject to section 8 and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

[IDENTIFICATION OF SITES]

[SEC. 213. (a) GUIDELINES.—Not later than 6 months after the date of the enactment of this Act and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, United States Code, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the

National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this title.

[(b) SITE IDENTIFICATION BY THE SECRETARY.—(1) Not later than 1 year after the date of the enactment of this Act, and following promulgation of guidelines under subsection (a), the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on the date of the enactment of this Act for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this title. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

[(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a);

[(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

[(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

[(D) a description of the decision process by which such site was recommended; and

[(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

[(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 302(d) may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

[SITING RESEARCH AND RELATED ACTIVITIES]

【SEC. 214. (a) IN GENERAL.—Not later than 30 months after the date on which the Secretary completes the identification of sites under section 213, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 218. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 302(d) may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

【(b) PUBLIC MEETINGS AND ENVIRONMENTAL ASSESSMENT.—Not later than 6 months after the date on which the Secretary completes the identification of sites under section 213, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

【(c) RESTRICTIONS.—Except as provided in section 218 with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a)—

【(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

【(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

【(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

【(d) TITLE TO MATERIAL.—The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 302 for the disposal of such material.

[TEST AND EVALUATION FACILITY SITING REVIEW AND REPORTS]

【SEC. 215. (a) CONSULTATION AND COOPERATION.—The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 213 shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term “process of consultation and cooperation” means a methodology—

【(1) by which the Secretary—

【(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

[(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

[(C) works diligently and cooperatively to resolve such concerns and objections; and

[(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

[(b) WRITTEN AGREEMENTS.—The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

[(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

[(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

[(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

[(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

[(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

[(c) LIMITATION.—Except as specifically provided in this section, nothing in this title is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

[(FEDERAL AGENCY ACTIONS

[(SEC. 216. (a) COOPERATION AND COORDINATION.—Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this title and the mission plan under section 301.

[(b) ENVIRONMENTAL REVIEW.—(1) No action of the Secretary or any other Federal agency required by this title or section 301 with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this title.

[(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[RESEARCH AND DEVELOPMENT ON DISPOSAL OF HIGH-LEVEL
RADIOACTIVE WASTE

[SEC. 217. (a) PURPOSE.—Not later than 64 months after the date of the enactment of this Act, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

[(1) to supplement and focus the repository site characterization process;

[(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

[(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 212;

[(4) to validate, under actual conditions, the scientific models used in the design of a repository;

[(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

[(6) to supplement the siting data, the generic and specific geological characteristics developed under section 214 relating to isolating disposal materials in the physical environment of a repository;

[(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

[(8) to establish operating capability without exposing workers to excessive radiation.

[(b) DESIGN.—The Secretary shall design each test and evaluation facility—

[(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

[(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

[(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that

the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

[(c) OPERATION.—(1) Not later than 88 months after the date of the enactment of this Act, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 301, for purposes of—

[(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

[(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

[(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

[(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

[(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

[(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

[(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

[(ii) thermal pulses significantly greater than the maximum calculated; and

[(iii) human intrusion creating a direct pathway to the biosphere; and

[(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

[(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

[(d) USE OF EXISTING DEPARTMENT FACILITIES.—During the conducting of siting research activities under section 214 and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on the date of the enactment of this Act for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

[(e) ENGINEERED BARRIERS.—The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this Act, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

[(f) ROLE OF COMMISSION.—(1)(A) Not later than 1 year after the date of the enactment of this Act, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subtitle, for submission by the Secretary of, and review by the Commission of and necessary action on—

[(i) the mission plan prepared under section 301; and

[(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

[(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

[(2) Subject to section 305, the test and evaluation facility, and the facilities authorized in section 217, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

[(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

[(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

[(g) ENVIRONMENTAL REVIEW.—The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under section 217(a). Nothing in this subsection may be construed to limit siting research activities conducted under section 214. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

[(h) LIMITATIONS.—(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

[(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) determined by the Secretary to be useful in carrying out the purposes of this Act.

[(3) The operation of the test and evaluation facility shall terminate not later than—

[(A) 5 years after the date on which the initial repository begins operation; or

[(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes; whichever occurs sooner.

[(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

[RESEARCH AND DEVELOPMENT ON SPENT NUCLEAR FUEL

[SEC. 218. (a) DEMONSTRATION AND COOPERATIVE PROGRAMS.—The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after the date of the enactment of this Act, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

[(b) COOPERATIVE AGREEMENTS.—To carry out the programs described in subsection (a), the Secretary shall enter into a coopera-

tive agreement with each utility involved that specifies, at a minimum, that—

[(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

[(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

[(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this Act or in any other provision of law.

[(c) DRY STORAGE RESEARCH AND DEVELOPMENT.—(1) The consultative and technical assistance referred to in subsection (b)(2) may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on the date of the enactment of this Act. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

[(2) To the extent available, and consistent with the provisions of section 135, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 135. Such spent nuclear fuel shall not be subject to the provisions of section 135(e).

[(d) FUNDING.—The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a), as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 136.

[(e) RELATION TO SPENT NUCLEAR FUEL STORAGE PROGRAM.—The spent nuclear fuel storage program authorized in section 135 shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

[(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any nec-

essary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

[(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

[PAYMENTS TO STATES AND INDIAN TRIBES

[SEC. 219. (a) PAYMENTS.—Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 215. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 215 with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed \$3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 217(h). Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 213, or to an affected Indian tribe where the potential site has been identified under such section.

[(b) LIMITATION.—The Secretary shall make any payment to a State under subsection (a) only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 215. Annual payments shall be prorated on a 365-day basis to the specified dates.

[STUDY OF RESEARCH AND DEVELOPMENT NEEDS FOR MONITORED RETRIEVABLE STORAGE PROPOSAL

[SEC. 220. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 141(b) with respect to a monitored retrievable storage facility.

[JUDICIAL REVIEW

[SEC. 221. Judicial review of research and development activities under this title shall be in accordance with the provisions of section 119.

[SEC. 222. RESEARCH ON ALTERNATIVES FOR THE PERMANENT DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE.—The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nu-

clear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

[TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE
FIELD OF SPENT FUEL STORAGE AND DISPOSAL]

[SEC. 223. (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

[(b)(1) Within 90 days of enactment of this Act, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

[(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

[(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

[(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

[(e) For the purposes of this subsection, the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).

[(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

[SUBSEABED DISPOSAL

[SEC. 224. (a) STUDY.—Within 270 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste. The report under this subsection shall include—

[(1) an assessment of the current state of knowledge of subseabed disposal as an alternative technology for disposal of spent nuclear fuel and high-level radioactive waste;

[(2) an estimate of the costs of subseabed disposal;

[(3) an analysis of institutional factors associated with subseabed disposal, including international aspects of a decision of the United States to proceed with subseabed disposal as an option for nuclear waste management;

[(4) a full discussion of the environmental and public health and safety aspects of subseabed disposal;

[(5) recommendations on alternative ways to structure an effort in research, development, and demonstration with respect to subseabed disposal; and

[(6) the recommendations of the Secretary with respect to research, development and demonstration in subseabed disposal of spent nuclear fuel and high-level radioactive waste.

[(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law.

[(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

[(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

[(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

[(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

[(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

[(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

[(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

[(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.

[(TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

[(MISSION PLAN

[(SEC. 301. (a) CONTENTS OF MISSION PLAN.—The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act. The mission plan shall include—

[(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

[(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this Act and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

[(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this Act, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

[(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

[(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

[(6) the guidelines issued under section 112(a);

[(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

[(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

[(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

[(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this Act; and

[(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

[(b) SUBMISSION OF MISSION PLAN.—(1) Not later than 15 months after the date of the enactment of this Act, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

[(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

[(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after the date of the enactment of this Act. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

[NUCLEAR WASTE FUND]

[SEC. 302. (a) CONTRACTS.—(1) In the performance of his functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

[(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after the date of enactment of this Act, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

[(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after the date of enactment of this Act, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 123, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) 126(b). In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and per-

manent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

[(4) Not later than 180 days after the date of enactment of this Act, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act.

[(5) Contracts entered into under this section shall provide that—

[(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

[(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subtitle.

[(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

[(b) ADVANCE CONTRACTING REQUIREMENT.—(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

[(i) such person has entered into a contract with the Secretary under this section; or

[(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

[(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

[(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in any repository constructed under this Act unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

[(A) June 30, 1983; or

[(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste; whichever occurs later.

[(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

[(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be disposed of by the Secretary in any repository constructed under this Act unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

[(c) ESTABLISHMENT OF NUCLEAR WASTE FUND.—There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

[(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;

[(2) any appropriations made by the Congress to the Waste Fund; and

[(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

[(d) USE OF WASTE FUND.—The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under titles I and II, including—

[(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored, retrievable storage facility or test and evaluation facility constructed under this Act;

[(2) the conducting of nongeneric research, development, and demonstration activities under this Act;

[(3) the administrative cost of the radioactive waste disposal program;

[(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in

a repository, to be stored in a monitored, retrievable storage site or to be used in a test and evaluation facility;

[(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility; and

[(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 116, 118, and 219.

No amount may be expended by the Secretary under this subtitle for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

[(e) ADMINISTRATION OF WASTE FUND.—(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

[(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

[(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

[(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

[(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

[(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

[(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the

Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

[(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

[ALTERNATIVE MEANS OF FINANCING

[SEC. 303. The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after the date of the enactment of this Act.

[OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT]

[SEC. 304. (a) ESTABLISHMENT.—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

[(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

[(c) ANNUAL REPORT TO CONGRESS.—The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

[(d) ANNUAL AUDIT BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

[LOCATION OF TEST AND EVALUATION FACILITY]

[SEC. 305. (a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

[(b) PROCEDURES.—(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in title I with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

[(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in title I with respect to the site selection and development of repositories.

[(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 115.

[NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION]

[SEC. 306. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.—The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Com-

mission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following enactment of this Act, and the Commission within the 12-month period following enactment of this Act shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

【TITLE IV—NUCLEAR WASTE NEGOTIATOR

【DEFINITION

【SEC. 401. For purposes of this title, the term “State” means each of the several States and the District of Columbia.

【THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

【SEC. 402. (a) ESTABLISHMENT.—There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

【(b) THE NUCLEAR WASTE NEGOTIATOR.—(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code.

【(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

【DUTIES OF THE NEGOTIATOR

【SEC. 403. (a) NEGOTIATIONS WITH POTENTIAL HOSTS.—(1) The Negotiator shall—

【(A) seek to enter into negotiations on behalf of the United States with—

【(i) the Governor of any State in which a potential site is located; and

【(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

【(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

[(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.

[(b) CONSULTATION WITH AFFECTED STATES, SUBDIVISIONS OF STATES, AND TRIBES.—In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

[(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

[(d) PROPOSED AGREEMENT.—(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) for the site concerned.

[(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b).

[(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal Law.

[(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

[(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.), title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

[(ENVIRONMENTAL ASSESSMENT OF SITES

[SEC. 404. (a) IN GENERAL.—Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a).

[(b) CONTENTS.—(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

[(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

[(c) JUDICIAL REVIEW.—The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119.

[(d) PUBLIC HEARINGS.—(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

[(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1).

[(e) PUBLIC AVAILABILITY.—Each environmental assessment prepared under subsection (a) shall be made available to the public.

[(f) EVALUATION OF SITES.—(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

[(A) such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;

[(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.

[(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

[SITE CHARACTERIZATION; LICENSING

[SEC. 405. (a) SITE CHARACTERIZATION.—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a), the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 113, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

[(b) LICENSING.—(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

[(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

[MONITORED RETRIEVABLE STORAGE]

[SEC. 406. (a) CONSTRUCTION AND OPERATION.—Upon enactment of legislation to implement an agreement negotiated under section 403(a) to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

[(b) FINANCIAL ASSISTANCE.—The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

[ENVIRONMENTAL IMPACT STATEMENT]

[SEC. 407. (a) IN GENERAL.—Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(b) PREPARATION.—A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

[(c) ADOPTION.—(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

[(2)(A) In any such statement prepared with respect to a repository to be constructed under this title at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

[(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

【ADMINISTRATIVE POWERS OF THE NEGOTIATOR

【SEC. 408. In carrying out his functions under this title, the Negotiator may—

【(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

【(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;

【(3) promulgate such rules and regulations as may be necessary to carry out such functions;

【(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

【(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

【(6) accept voluntary and uncompensated services, notwithstanding the provisions of sections 1342 of title 31, United States Code;

【(7) adopt an official seal, which shall be judicially noticed;

【(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

【(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

【(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

【COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

【SEC. 409. Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title.

【TERMINATION OF THE OFFICE

【SEC. 410. The Office shall cease to exist not later than 30 days after the date 7 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

【AUTHORIZATION OF APPROPRIATIONS

【SEC. 411. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title.

【TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

【DEFINITIONS

【SEC. 501. As used in this title:

【(1) The term “Chairman” means the Chairman of the Nuclear Waste Technical Review Board.

【(2) The term “Board” means the Nuclear Waste Technical Review Board established under section 502.

【NUCLEAR WASTE TECHNICAL REVIEW BOARD

【SEC. 502. (a) ESTABLISHMENT.—There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

【(b) MEMBERS.—(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

【(2) The President shall designate a member of the Board to serve as chairman.

【(3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

【(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

【(C)(i) Each person nominated for appointment to the Board shall be—

【(I) eminent in a field of science or engineering, including environmental sciences; and

【(II) selected solely on the basis of established records of distinguished service.

【(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.

【(iii) No person shall be nominated for appointment to the Board who is an employee of—

【(I) the Department of Energy;

【(II) a national laboratory under contract with the Department of Energy; or

【(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

【(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

【(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

【FUNCTIONS

【SEC. 503. The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including—

- 【(1) site characterization activities; and
- 【(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

【INVESTIGATORY POWERS

【SEC. 504. (a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

【(b) PRODUCTION OF DOCUMENTS.—(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

【(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

【COMPENSATION OF MEMBERS

【SEC. 505. (a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

【(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

【STAFF

【SEC. 506. (a) CLERICAL STAFF.—(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

【(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

【(b) PROFESSIONAL STAFF.—(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

【(2) Not more than 10 professional staff members may be appointed under this subsection.

[(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

【SUPPORT SERVICES

【SEC. 507. (a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

【(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

【(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

【(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

【(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

【REPORT

【SEC. 508. The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

【AUTHORIZATION OF APPROPRIATIONS

【SEC. 509. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title.

【TERMINATION OF THE BOARD

【SEC. 510. The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “Nuclear Waste Policy Act of 1997”.

(b) *TABLE OF CONTENTS.*—

Sec. 1. *Short title and table of contents.*

Sec. 2. *Definitions.*

TITLE I—OBLIGATIONS

Sec. 101. *Obligations of the Secretary of Energy.*

TITLE II—INTEGRATED MANAGEMENT SYSTEM

Sec. 201. *Intermodal Transfer.*

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Sec. 203. *Transportation requirements.*

Sec. 204. *Interim storage.*

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Sec. 206. *Land withdrawal.*

TITLE III—LOCAL RELATIONS

Sec. 301. *Financial Assistance.*

Sec. 302. *On-Site Representative.*

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TITLE IV—FUNDING AND ORGANIZATION

Sec. 401. *Program Funding.*

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TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

Sec. 501. *Compliance with other laws.*

Sec. 502. *Judicial review of agency actions.*

Sec. 503. *Licensing of facility expansions and transshipments.*

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Sec. 505. *Financial arrangements for low-level radioactive waste site closure.*

Sec. 506. *Nuclear Regulatory Commission training authority.*

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TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

Sec. 601. *Definitions.*

Sec. 602. *Nuclear Waste Technical Review Board.*

Sec. 603. *Functions.*

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Sec. 607. *Support services.*

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Sec. 609. *Authorization of appropriations.*

Sec. 610. *Termination of the board.*

TITLE VII—MANAGEMENT REFORM

Sec. 701. *Management reform initiatives.*

Sec. 702. *Reporting.*

Sec. 703. *Effective date.*

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) *ACCEPT, ACCEPTANCE.*—The terms “accept” and “acceptance” mean the Secretary’s act of taking possession of spent nuclear fuel or high-level radioactive waste.

(2) *AFFECTED INDIAN TRIBE.*—The term “affected Indian tribe” means any Indian tribe—

(A) whose reservation is surrounded by or borders an affected unit of local government, or

(B) whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of an interim storage facility or a repository if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

(3) *AFFECTED UNIT OF LOCAL GOVERNMENT.*—The term “affected unit of local government” means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

(4) *ATOMIC ENERGY DEFENSE ACTIVITY.*—The term “atomic energy defense activity” means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) Naval reactors development.

(B) Weapons activities including defense inertial confinement fusion.

(C) Verification and control technology.

(D) Defense nuclear materials production.

(E) Defense nuclear waste and materials byproducts management.

(F) Defense nuclear materials security and safeguards and security investigations.

(G) Defense research and development.

(5) *CIVILIAN NUCLEAR POWER REACTOR.*—The term “civilian nuclear power reactor” means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

(6) *COMMISSION.*—The term “Commission” means the Nuclear Regulatory Commission.

(7) *CONTRACTS.*—The term “contracts” means the contracts, executed prior to the date of enactment of the Nuclear Waste Policy Act of 1997, under section 302(a) of the Nuclear Waste Policy Act of 1982, by the Secretary and any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for acceptance of such waste or fuel by the Secretary and the payment of fees to offset the Secretary’s expenditures, and any subsequent contracts executed by the Secretary pursuant to section 401(a) of this Act.

(8) *CONTRACT HOLDERS.*—The term “contract holders” means parties (other than the Secretary) to contracts.

(9) *DEPARTMENT.*—The term “Department” means the Department of Energy.

(10) *DISPOSAL.*—The term “disposal” means the emplacement in a repository of spent nuclear fuel, high-level radioactive waste, or other highly radioactive material with no foreseeable

intent of recovery, whether or not such emplacement permits recovery of such material for any future purpose.

(11) *DISPOSAL SYSTEM.*—The term “disposal system” means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

(12) *EMPLACEMENT SCHEDULE.*—The term “emplacement schedule” means the schedule established by the Secretary in accordance with section 507(a) for emplacement of spent nuclear fuel and high-level radioactive waste at the interim storage facility.

(13) *ENGINEERED BARRIERS AND ENGINEERED SYSTEMS AND COMPONENTS.*—The terms “engineered barriers” and “engineered systems and components,” mean man-made components of a disposal system. These terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

(14) *HIGH-LEVEL RADIOACTIVE WASTE.*—The term “high-level radioactive waste” means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation, which includes any low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

(15) *FEDERAL AGENCY.*—The term “Federal agency” means any Executive agency, as defined in section 105 of title 5, United States Code.

(16) *INDIAN TRIBE.*—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(17) *INTEGRATED MANAGEMENT SYSTEM.*—The term “integrated management system” means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste under title II of this Act.

(18) *INTERIM STORAGE FACILITY.*—The term “interim storage facility” means a facility designed and constructed for the receipt, handling, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

(19) *INTERIM STORAGE FACILITY SITE.*—The term “interim storage facility site” means the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

(20) *LOW-LEVEL RADIOACTIVE WASTE.*—The term “low-level radioactive waste” means radioactive material that—

(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(21) *METRIC TONS URANIUM.*—The terms “metric tons uranium” and “MTU” means the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

(22) *NUCLEAR WASTE FUND.*—The terms “Nuclear Waste Fund” and “waste fund” mean the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

(23) *OFFICE.*—The term “Office” means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

(24) *PROGRAM APPROACH.*—The term “program approach” means the Civilian Radioactive Waste Management Program Plan, dated May 6, 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

(25) *REPOSITORY.*—The term “repository” means a system designed and constructed under title II of this Act for the geologic disposal of spent nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

(26) *SECRETARY.*—The term “Secretary” means the Secretary of Energy.

(27) *SITE CHARACTERIZATION.*—The term “site characterization” means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(28) *SPENT NUCLEAR FUEL.*—The term “spent nuclear fuel” means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(29) *STORAGE*.—The term “storage” means retention of spent nuclear fuel or high-level radioactive waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(30) *WITHDRAWAL*.—The term “withdrawal” has the same definition as that set forth in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

(31) *YUCCA MOUNTAIN SITE*.—The term “Yucca Mountain site” means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

TITLE I—OBLIGATIONS

SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

(a) *DISPOSAL*.—The Secretary shall develop and operate an integrated management system for the storage and permanent disposal of spent nuclear fuel and high-level radioactive waste.

(b) *INTERIM STORAGE*.—The Secretary shall store spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders at an interim storage facility pursuant to section 204 in accordance with the emplacements schedule, beginning not later than November 30, 1999.

(c) *TRANSPORTATION*.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary. The Secretary shall procure all systems and components necessary to transport spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders to and among facilities comprising the Integrated Management System. Consistent with the Buy American Act (41 U.S.C. 10a–10c), unless the Secretary shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, all such systems and components procured by the Secretary shall be manufactured in the United States, with the exception of any transportable storage systems purchased by contract holders prior to the effective date of the Nuclear Waste Policy Act of 1997 and procured by the Secretary from such contract holders for use in the integrated management system.

(d) *INTEGRATED MANAGEMENT SYSTEM*.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

(e) *PRIVATE SECTOR PARTICIPATION*.—In administering the Integrated Management System, the Secretary shall, to the maximum extent possible, utilize, employ, procure and contract with, the private sector to fulfill the Secretary’s obligations and requirements under this Act.

(f) *PREEXISTING RIGHTS*.—Nothing in this Act is intended to or shall be construed to modify—

(1) any right of a contract holder under section 302(a) of the Nuclear Waste Policy Act of 1982, or under a contract executed prior to the date of enactment of this Act under that section; or

(2) obligations imposed upon the Federal Government by the United States District Court of Idaho in an order entered on

October 17, 1995 in *United States v. Batt* (No. 91-0054-S-EJL).

(g) **LIABILITY.**—Subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste for storage or disposal under this Act.

TITLE II—INTEGRATED MANAGEMENT SYSTEM

SEC. 201. INTERMODAL TRANSFER.

(a) **ACCESS.**—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site.

(b) **CAPABILITY DATE.**—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than November 30, 1999. Intermodal transfer and related activities are incidental to the interstate transportation of spent nuclear fuel and high-level radioactive waste.

(c) **ACQUISITIONS.**—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

(d) **REPLACEMENTS.**—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and right-of-way within Lincoln County, Nevada, as required to facilitate replacement of land and city wastewater disposal facilities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than November 30, 1999.

(e) **NOTICE AND MAP.**—Within 6 months of the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary shall—

(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this subsection; and

(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors and legal descriptions and make minor adjustments in the boundaries.

(f) **IMPROVEMENTS.**—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

(g) **LOCAL GOVERNMENT INVOLVEMENT.**—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

(h) *BENEFITS AGREEMENT.*—

(1) *IN GENERAL.*—The Secretary shall offer to enter into an agreement with the City of Caliente and Lincoln County, Nevada concerning the integrated management system.

(2) *AGREEMENT CONTENT.*—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of the City of Caliente and Lincoln County, Nevada.

(3) *AMENDMENT.*—An agreement entered into under this subsection may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with paragraph (4).

(4) *TERMINATION.*—The Secretary shall terminate the agreement under this subsection if any major element of the integrated management system may not be completed.

(5) *LIMITATION.*—Only 1 agreement may be in effect at any one time.

(6) *JUDICIAL REVIEW.*—Decisions of the Secretary under this section are not subject to judicial review.

(i) *CONTENT OF AGREEMENT.*—

(1) *SCHEDULE.*—In addition to the benefits to which the City of Caliente and Lincoln County are entitled to under this title, the Secretary shall make payments under the benefits agreement in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in millions)

<i>Event</i>	<i>Payment</i>
(A) Annual payments prior to first receipt of spent fuel	2.5
(B) Annual payments beginning upon first spent fuel receipt	5
(C) Payment upon closure of the intermodal transfer facility	5

(2) *DEFINITIONS.*—For purposes of this section, the term—

(A) “spent fuel” means high-level radioactive waste or spent nuclear fuel; and

(B) “first spent fuel receipt” does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) *ANNUAL PAYMENTS.*—Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) *REDUCTION.*—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual

payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to $\frac{1}{12}$ of such annual payment under paragraph (1)(A) for each full month less than 6 that has not elapsed since the last annual payment under paragraph (1)(A).

(5) *RESTRICTIONS.*—The Secretary may not restrict the purposes for which the payments under this section may be used.

(6) *DISPUTE.*—In the event of a dispute concerning such agreement, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

(7) *CONSTRUCTION.*—The signature of the Secretary on a valid benefits agreement under this section shall constitute a commitment by the United States to make payments in accordance with such agreement under section 401(c)(2).

(j) *INITIAL LAND CONVEYANCES.*

(1) *CONVEYANCES OF PUBLIC LANDS.*—One hundred and twenty days after enactment of this Act, all right, title and interest of the United States in the property described in paragraph (2), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Lincoln, Nevada, unless the county notifies the Secretary of Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Lincoln under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Lincoln County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

(2) *SPECIAL CONVEYANCES.*—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, shall be conveyed under paragraph (1) to the County of Lincoln, Nevada:

Map 10: Lincoln County, Parcel M, Industrial Park Site

Map 11: Lincoln County, Parcel F, Mixed Use Industrial Site

Map 13: Lincoln County, Parcel J, Mixed Use, Alamo Community Expansion Area

Map 14: Lincoln County, Parcel E, Mixed Use, Pioche Community Expansion Area

Map 15: Lincoln County, Parcel B, Landfill Expansion Site.

(3) *CONSTRUCTION.*—The maps and legal descriptions of special conveyances referred to in paragraph (2) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the

maps and legal descriptions and make minor adjustments in the boundaries of the sites.

(4) *EVIDENCE OF TITLE TRANSFER.*—Upon the request of the County of Lincoln, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

SEC. 202. TRANSPORTATION PLANNING.

(a) *TRANSPORTATION READINESS.*—The Secretary—

(1) shall take such actions as are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities and from the mainline transportation facilities to the interim storage facility or repository, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas, beginning not later than November 30, 1999; and

(2) not later than November 30, 1999, shall, in consultation with the Secretary of Transportation and affected States and tribes, develop and implement a comprehensive management plan that ensures that safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site beginning not later than that date.

(b) *TRANSPORTATION PLANNING.*—

(1) *IN GENERAL.*—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility not later than November 30, 1999.

(2) *MATTERS TO BE ADDRESSED.*—Among other things, planning under paragraph (1) shall provide a schedule and process for addressing and implementing, as necessary—

(A) transportation routing plans;

(B) transportation contracting plans;

(C) transportation training in accordance with section 203;

(D) public education regarding transportation of spent nuclear fuel and high level radioactive waste; and

(E) transportation tracking programs.

(c) *SHIPPING CAMPAIGN TRANSPORTATION PLANS.*—

(1) *IN GENERAL.*—The Secretary shall develop a transportation plan for the implementation of each shipping campaign (as that term is defined by the Secretary) from each site at which high-level nuclear waste is stored, in accordance with the requirements stated in Department of Energy Order No. 460.2 and the Program Manager's Guide.

(2) *REQUIREMENTS.*—A shipping campaign transportation plan shall—

(A) be fully integrated with State, and tribal government notification, inspection, and emergency response plans along the preferred shipping route or State-designated alternative route identified under subsection (d); and

(B) be consistent with the principles and procedures developed for the safe transportation of transuranic waste to the Waste Isolation Pilot Plant (unless the Secretary demonstrates that a specific principle or procedure is inconsistent with a provision of this Act).

(d) *SAFE SHIPPING ROUTES AND MODES.*—

(1) *IN GENERAL.*—The Secretary shall evaluate the relative safety of the proposed shipping routes and shipping modes from each shipping origin to the interim storage facility or repository compared with the safety of alternative modes and routes.

(2) *CONSIDERATIONS.*—The evaluation under paragraph (1) shall be conducted in a manner consistent with regulations promulgated by the Secretary of Transportation under authority of chapter 51 of title 49, United States Code, and the Nuclear Regulatory Commission under authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), as applicable.

(3) *DESIGNATION OF PREFERRED SHIPPING ROUTE AND MODE.*—Following the evaluation under paragraph (1), the Secretary shall designate preferred shipping routes and modes from each civilian nuclear power reactor and Department of Energy facility that stores spent nuclear fuel or other high-level defense waste.

(4) *SELECTION OF PRIMARY SHIPPING ROUTE.*—If the Secretary designates more than 1 preferred route under paragraph (3), the Secretary shall select a primary route after considering, at a minimum, historical accident rates, population, significant hazards, shipping time, shipping distance, and mitigating measures such as limits on the speed of shipments.

(5) *USE OF PRIMARY SHIPPING ROUTE AND MODE.*—Except in cases of emergency, for all shipments conducted under this Act, the Secretary shall cause the primary shipping route and mode or State-designated alternative route under chapter 51 of title 49, United States Code, to be used. If a route is designated as a primary route for any reactor or Department of Energy facility, the Secretary may use that route to transport spent nuclear fuel or high-level radioactive waste from any other reactor or Department of Energy facility.

(6) *TRAINING AND TECHNICAL ASSISTANCE.*—Following selection of the primary shipping routes, or State-designated alternative routes, the Secretary shall focus training and technical assistance under section 203(c) on those routes.

(7) *PREFERRED RAIL ROUTES.*—

(A) *REGULATION.*—Not later than 1 year after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary of Transportation, pursuant to authority under other provisions of law, shall promulgate a regulation establishing procedures for the selection of preferred routes for the transportation of spent nuclear fuel and nuclear waste by rail.

(B) *INTERIM PROVISION.*—During the period beginning on the date of enactment of the Nuclear Waste Policy Act of 1997 and ending on the date of issuance of a final regulation under subparagraph (A), rail transportation of spent nuclear fuel and high-level radioactive waste shall be conducted in accordance with regulatory requirements in effect on that date and with this section.

SEC. 203. TRANSPORTATION REQUIREMENTS.

(a) *PACKAGE CERTIFICATION.*—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

(b) *STATE NOTIFICATION.*—The Secretary shall abide by regulations of the Commission regarding advance notification of State and tribal governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

(c) *TECHNICAL ASSISTANCE.*—

(1) *IN GENERAL.*—

(A) *STATES AND INDIAN TRIBES.*—As provided in paragraph (3), the Secretary shall provide technical assistance and funds to States and Indian tribes for training of public safety officials of appropriate units of State, local, and tribal government. A State shall allocate to local governments within the State a portion any funds that the Secretary provides to the State for technical assistance and funding.

(B) *EMPLOYEE ORGANIZATIONS.*—The Secretary shall provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation.

(C) *TRAINING.*—Training under this section—

(i) shall cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations;

(ii) shall be consistent with any training standards established by the Secretary of Transportation under subsection (g); and

(iii) shall include—

(I) a training program applicable to persons responsible for responding to emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste;

(II) instruction of public safety officers in procedures for the command and control of the response to any incident involving the waste; and

(III) instruction of radiological protection and emergency medical personnel in procedures for re-

sponding to an incident involving spent nuclear fuel or high-level radioactive waste being transported.

(2) *NO SHIPMENTS IF NO TRAINING.*—(A) *There will be no shipments of spent nuclear fuel and high-level radioactive waste through the jurisdiction of any State or the reservation lands of any Indian Tribe eligible for grants under paragraph (3)(B) unless technical assistance and funds to implement procedures for safe routine transportation and for dealing with emergency response situations under paragraph (1)(A) have been available to a State or Indian Tribe for at least two years prior to any shipment. Provided, however, the Secretary may ship spent nuclear fuel and high-level radioactive waste if technical assistance or funds have not been made available due to (1) an emergency, including the sudden and unforeseen closure of a highway or rail line or the sudden and unforeseen need to remove spent fuel from a reactor because of an accident, or (2) the refusal to accept technical assistance by the State or Indian Tribe, or (3) fraudulent actions which violate federal law governing the expenditure of federal funds.*

(B) *In the event the Secretary is required to transport spent fuel or high level radioactive waste through a jurisdiction prior to 2 years after the provision of technical assistance or funds to such jurisdiction, the Secretary shall, prior to such shipment, hold meetings in each state and Indian reservation through which the shipping route passes in order to present initial shipment plans and receive comments. Department of Energy personnel trained in emergency response shall escort each shipment. Funds and all Department of Energy training resources shall be made available to States and Indian Tribes along the shipping route no later than three months prior to the commencement of shipments. Provided, however, that in no event shall such shipments exceed 1,000 metric tons per year, and provided further, that no such shipments shall be conducted more than four years after the effective date of the Nuclear Waste Policy Act of 1997.*

(3) *GRANTS.*—

(A) *IN GENERAL.*—*To implement this section, grants shall be made under section 401(c)(2).*

(B) *GRANTS FOR DEVELOPMENT OF PLANS.*—

(i) *IN GENERAL.*—*The Secretary shall make a grant of at least \$150,000 to each State through the jurisdiction of which and each federally recognized Indian tribe through the reservation lands of which a shipment of spent nuclear fuel or high-level radioactive waste will be made under this Act for the purpose of developing a plan to prepare for such shipments.*

(ii) *LIMITATION.*—*A grant shall be made under clause (i) only to a State or a federally recognized Indian tribe that has the authority to respond to incidents involving shipments of hazardous material.*

(C) *GRANTS FOR IMPLEMENTATION OF PLANS.*—

(i) *IN GENERAL.*—*Annual implementation grants shall be made to States and Indian tribes that have de-*

veloped a plan to prepare for shipments under this Act under subparagraph (B). The Secretary, in submitting annual departmental budget to Congress for funding of implementation grants under this section, shall be guided by the State and tribal plans developed under subparagraph (B). As part of the Department of Energy's annual budget request, the Secretary shall report to Congress on—

(I) the funds requested by states and federally recognized Indian tribes to implement this subsection;

(II) the amount requested by the President for implementation; and

(III) the rationale for any discrepancies between the amounts requested by States and federally recognized Indian tribes and the amounts requested by the President.

(ii) **ALLOCATION.**—Of funds available for grants under this subparagraph for any fiscal year—

(I) 25 percent shall be allocated by the Secretary to ensure minimum funding and program capability levels in all States and Indian tribes based on plans developed under subparagraph (B); and

(II) 75 percent shall be allocated to States and Indian tribes in proportion to the number of shipment miles that are projected to be made in total shipments under this Act through each jurisdiction.

(4) **AVAILABILITY OF FUNDS FOR SHIPMENTS.**—Funds under paragraph (1) shall be provided for shipments to an interim storage facility or repository, regardless of whether the interim storage facility or repository is operated by a private entity or by the Department of Energy.

(d) **PUBLIC EDUCATION.**—The Secretary shall conduct a program to educate the public regarding the transportation of spent nuclear fuel and high-level radioactive waste, with an emphasis upon those States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste.

(e) **COMPLIANCE WITH TRANSPORTATION REGULATIONS.**—Any person that transports spent nuclear fuel or high-level radioactive waste under the Nuclear Waste Policy Act of 1997, pursuant to a contract with the Secretary, shall comply with all requirements governing such transportation issued by the Federal, State, and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation that is in or affects interstate commerce must comply with such requirements, as required by 49 U.S.C. sec. 5126.

(f) **EMPLOYEE PROTECTION.**—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of 49 U.S.C. 20109 and 49 U.S.C. 31105.

(g) *TRAINING STANDARD.*—(1) No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

(2) If the Secretary of Transportation determines, in promulgating the regulation required by subparagraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation and the Commission shall work through their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

(3) The training standards required to be promulgated under subparagraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

(A) a specified minimum number of hours of initial offsite instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

(4) There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

SEC. 204. INTERIM STORAGE.

(a) *AUTHORIZATION.*—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations, which regulations shall be amended by the Commission as necessary to implement the provisions of this Act. The interim storage facility shall commence operation in phases in accordance with subsection (b).

(b) *SCHEDULE.*—(1) The Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at the interim

storage facility at the interim storage facility site by November 30, 1999, except that:

(A) The Secretary shall not begin any construction activities at the interim storage facility site before December 31, 1998.

(B) The Secretary shall cease all activities (except necessary termination activities) at the Yucca Mountain site if the President determines, in his discretion, on or before December 31, 1998, based on a preponderance of the information available at such time, that the Yucca Mountain site is unsuitable for development as a repository, including geologic and engineered barriers, because of a substantial likelihood that a repository of useful size cannot be designed, licensed, and constructed at the Yucca Mountain site.

(C) No later than June 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include—

(i) the preliminary design concept for the critical elements of the repository and waste package,

(ii) a total system performance assessment, based upon the design concept and the scientific data and analysis available by June 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geologic setting relative to the overall system performance standard set forth in section 205(d) of this Act,

(iii) a plan and cost estimate for the remaining work required to complete a license application, and

(iv) an estimate of the costs to construct and operate the repository in accordance with the design concept.

(D) Within 18 months of a determination by the President that the Yucca Mountain site is unsuitable for development as a repository under subparagraph (B), the President shall designate a site for the construction of an interim storage facility. The President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for construction of an interim storage facility. If the President does not designate a site for the construction of an interim storage facility, or the construction of an interim storage facility at the designated site is not approved by law within 24 months of the President's determination that the Yucca Mountain site is not suitable for development as a repository, the Secretary shall begin construction of an interim storage facility at the interim storage facility site as defined in section 2(19) of this Act. The interim storage facility site as defined in section 2(19) of this Act shall be deemed to be approved by law for purposes of this section.

(2) Upon the designation of an interim storage facility site by the President under paragraph (1)(D), the Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at an interim storage facility at the designated site, except that the Secretary shall not begin any construction activities at the designated interim storage facility site before the designated interim storage facility site is approved by law.

(c) DESIGN.—

(1) *The interim storage facility shall be designed in two phases in order to commence operations no later than November 30, 1999. The design of the interim storage facility shall provide for the use of storage technologies, licensed, approved, or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.*

(2) *The Secretary shall consent to an amendment to the contracts to provide for reimbursement to contract holders for transportable storage systems purchased by contract holders if the Secretary determines that it is cost effective to use such transportable storage systems as part of the integrated management system, provided that the Secretary shall not be required to expend any funds to modify contract holders' storage or transport systems or to seek additional regulatory approvals in order to use such systems.*

(d) *LICENSING.—*

(1) *PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than November 30, 1999.*

(2) *FIRST PHASE.—No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The Environmental Report and Safety Analysis Report submitted in support of such license application shall be consistent with the scope of authority requested in the license application. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more than 15,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 16 months from the date of the submittal of the application for such license.*

(3) *SECOND PHASE.—No later than 30 months after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. If the Secretary does not submit the license application for construction of a repository by February 1, 2002, or does not begin full spent nuclear fuel receipt operations at a repository by January 17, 2010, the license shall authorize a storage capacity of 60,000 MTU. The license application shall be submitted such that the license can be issued to permit the second phase facility to begin full spent nuclear fuel receipt operations no later than December 31, 2002. The license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.*

(e) *ADDITIONAL AUTHORITY.—*

(1) *CONSTRUCTION.*—For purposes of complying with this section, the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of the Nuclear Waste Policy Act of 1997 and shall commence construction of each phase of the interim storage facility subsequent to submittal of the license application for such phase except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

(2) *FACILITY USE.*—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of the Nuclear Waste Policy Act of 1997 within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

(3) *EMPLACEMENT OF FUEL AND WASTE.*—Subject to paragraph (i), in each year in which the actual emplacement rate is greater than the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed prior to the date of enactment of the Nuclear Waste Policy Act of 1997, as set forth in the Secretary's annual capacity report dated March 1995 (DOE/RW-0457), the Secretary shall accept, in an amount not less than 25 percent of the difference between the contractual acceptance rate and the actual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 507(a), the following radioactive materials:

(A) spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors that have permanently ceased operation on or before the date of enactment of the Nuclear Waste Policy Act of 1997;

(B) spent nuclear fuel from foreign research reactors, as necessary to promote nonproliferation objectives; and

(C) spent nuclear fuel, including spent nuclear fuel from naval reactors, and high-level radioactive waste from atomic energy defense activities. Provided, however, that the Secretary shall accept not less than 5% of the total quantity of spent fuel accepted in any one year from the categories of radioactive materials described in subparagraphs (B), and (C).

(f) *NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.*—

(1) *PRELIMINARY DECISIONMAKING ACTIVITIES.*—The Secretary's and President's activities under this section, including, but not limited to, the selection of a site for the interim storage facility, assessments, determinations and designations made under section 204(b), the preparation and submittal of a license application and supporting documentation, the construction of a facility under paragraph (e)(1) of this section, and facility use

pursuant to paragraph (e)(2) of this section shall be considered preliminary decisionmaking activities for purposes of judicial review. The Secretary shall not prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of such Act before conducting these activities.

(2) ENVIRONMENTAL IMPACT STATEMENT.—

(A) FINAL DECISION.—*A final decision by the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—*

(i) shall ensure that the scope of the Environmental Impact Statement is consistent with the scope of the licensing action; and

(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

(B) CONSIDERATIONS.—*Such Environmental Impact Statement shall not consider—*

(i) the need for the interim storage facility, including any individual component thereof;

(ii) the time of the initial availability of the interim storage facility;

(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

(g) JUDICIAL REVIEW.—*Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.*

(h) WASTE CONFIDENCE.—*The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Commission of reasonable assurance that spent nuclear fuel and*

high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(i) **STORAGE OF OTHER SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.**—*No later than 18 months following the date of enactment of the Nuclear Waste Policy Act of 1997, the Commission shall, by rule, establish criteria for the storage in the interim storage facility of fuel and waste listed in subsection (e)(3) (A) through (C), to the extent such criteria are not included in regulations issued by the Commission and existing on the date of enactment of the Nuclear Waste Policy Act of 1997. Following establishment of such criteria, the Secretary shall seek authority, as necessary, to store fuel and waste listed in subsection (e)(3) (A) through (C) at the interim storage facility. None of the activities carried out pursuant to this subsection shall delay, or otherwise affect, the development, construction, licensing, or operation of the interim storage facility.*

(j) **SAVINGS CLAUSE.**—*The Commission shall, by rule, establish procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. Nothing in this Act shall affect any such procedures, or any licenses or approvals issued pursuant to such procedures in effect on the date of enactment.*

SEC. 205. PERMANENT REPOSITORY.

(a) **REPOSITORY CHARACTERIZATION.**—

(1) **GUIDELINES.**—*The guidelines promulgated by the Secretary and published at 10 CFR part 960 are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.*

(2) **SITE CHARACTERIZATION ACTIVITIES.**—*The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization. The Secretary shall modify or eliminate those site characterization activities designed only to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).*

(3) **SCHEDULE DATE.**—*Consistent with the schedule set forth in the program approach, as modified to be consistent with the Nuclear Waste Policy Act of 1997, no later than February 1, 2002, the Secretary shall apply to the Commission for authorization to construct a repository. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.*

(4) *MAXIMIZING CAPACITY.*—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository, in the most cost-effective manner, consistent with the need for disposal capacity.

(b) *REPOSITORY LICENSING.*—Upon the completion of any licensing proceeding for the first phase of the interim storage facility, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

(1) *CONSTRUCTION AUTHORIZATION.*—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

(B) without unreasonable risk to the health and safety of the public; and

(C) consistent with the common defense and security.

(2) *LICENSE.*—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

(B) without unreasonable risk to the health and safety of the public; and

(C) consistent with the common defense and security.

(3) *CLOSURE.*—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission's regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment upon finding that there is reasonable assurance that the repository can be permanently closed—

(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

(B) without unreasonable risk to the health and safety of the public; and

(C) consistent with the common defense and security.

(4) *POST-CLOSURE.*—The Secretary shall take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

(A) breaching the repository's engineered or geologic barriers; or

(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

(c) *MODIFICATION OF REPOSITORY LICENSING PROCEDURE.*—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of spent nuclear fuel or high-level radioactive waste as is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

(d) *REPOSITORY LICENSING STANDARDS.*—The Administrator of the Environmental Protection Agency shall, pursuant to authority under others provisions of law, issue generally applicable standards for the protection of the public from releases of radioactive materials or radioactivity from the repository. Such standards shall be consistent with the overall system performance standard established by this subsection unless the Administrator determines by rule that the overall system performance standard would constitute an unreasonable risk to health and safety. The Commission's repository licensing determinations for the protection of the public shall be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1), applied in accordance with the provisions of paragraph (2), and the Administrator's radiation protection standards. The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards:

(1) *ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.*—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the Commission determines by rule that such standard would constitute an unreasonable risk to health and safety and establishes by rule another standard which will protect health and safety. Such standard shall constitute an overall system performance standard.

(2) *APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.*—The Commission shall issue the license if it finds reasonable assurance that for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on a probabilistic evaluation, as appropriate, of compliance with the overall system performance standard in paragraph (1).

(3) *FACTORS.*—For purposes of making the finding in paragraph (2)—

(A) the Commission shall not consider catastrophic events where the health consequences of individual events themselves can be reasonably assumed to exceed the health con-

sequences due to the impact of the events on repository performance;

(B) for the purpose of this section, an average member of the general population in the vicinity of the Yucca Mountain site means a person whose physiology, age, general health, agricultural practices, eating habits, and social behavior represent the average for persons living in the vicinity of the site. Extremes in social behavior, eating habits, or other relevant practices or characteristics shall not be considered; and

(C) the Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(4), shall be sufficient to—

(i) prevent any human activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

(ii) prevent any increase in the exposure of individual members of the public to radiation beyond the allowable limits specified in paragraph (1).

(4) ADDITIONAL ANALYSIS.—The Commission shall analyze the overall system performance through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository.

(e) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) SUBMISSION OF STATEMENT.—Construction and operation of the repository shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall submit an environmental impact statement on the construction and operation of the repository to the Commission with the license application and shall supplement such environmental impact statement as appropriate.

(2) CONSIDERATIONS.—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, or alternative sites or designs for the repository.

(3) ADOPTION BY COMMISSION.—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954.

In any such statement or supplement prepared with respect to the repository, the Commission shall not consider the need for a repository, or alternate sites or designs for the repository.

(f) *JUDICIAL REVIEW.*—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

SEC. 206. LAND WITHDRAWAL.

(a) *WITHDRAWAL AND RESERVATION.*—

(1) *WITHDRAWAL.*—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

(2) *JURISDICTION.*—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

(3) *RESERVATION.*—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

(b) *LAND DESCRIPTION.*—

(1) *BOUNDARIES.*—The boundaries depicted on the map entitled “Interim Storage Facility Site Withdrawal Map,” dated March 13, 1996, and on file with the Secretary, are established as the boundaries of the Interim Storage Facility site.

(2) *BOUNDARIES.*—The boundaries depicted on the map entitled “Yucca Mountain Site Withdrawal Map,” dated July 9, 1996, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

(3) *NOTICE AND MAPS.*—Within 6 months of the date of the enactment of the Nuclear Waste Policy Act of 1997, the Secretary shall—

(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

(4) *NOTICE AND MAPS.*—Concurrent with the Secretary’s application to the Commission for authority to construct the repository, the Secretary shall—

(A) publish in the Federal Register a notice containing a legal description of the Yucca Mountain site; and

(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

(5) *CONSTRUCTION.*—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct

clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

TITLE III—LOCAL RELATIONS

SEC. 301. FINANCIAL ASSISTANCE.

(a) *GRANTS.*—*The Secretary is authorized to make grants to any affected Indian tribe or affected unit of local government for purposes of enabling the affected Indian tribe or affected unit of local government—*

(1) to review activities taken with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of the integrated management system on the affected Indian tribe or the affected unit of local government and its residents;

(2) to develop a request for impact assistance under subsection (c);

(3) to engage in any monitoring, testing, or evaluation activities with regard to such site;

(4) to provide information to residents regarding any activities of the Secretary, or the Commission with respect to such site; and

(5) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken with respect to such site.

(b) *SALARY AND TRAVEL EXPENSES.*—*Any salary or travel expense that would ordinarily be incurred by any affected Indian tribe or affected unit of local government may not be considered eligible for funding under this section.*

(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

(1) ASSISTANCE REQUESTS.—*The Secretary is authorized to offer to provide financial and technical assistance to any affected Indian tribe or affected unit of local government requesting such assistance. Such assistance shall be designed to mitigate the impact on the affected Indian tribe or affected unit of local government of the development of the integrated management system.*

(2) REPORT.—*Any affected Indian tribe or affected unit of local government may request assistance under this section by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from activities of the integrated management system.*

(d) OTHER ASSISTANCE.—

(1) TAXABLE AMOUNTS.—*In addition to financial assistance provided under this subsection, the Secretary is authorized to grant to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amount such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.*

(2) *TERMINATION.*—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

(3) *ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.*—

(A) *PERIOD.*—Any affected Indian tribe or affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.

(B) *ACTIVITIES.*—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

SEC. 302. ON-SITE REPRESENTATIVE.

The Secretary shall offer to the unit of local government within whose jurisdiction a site for an interim storage facility or repository is located under this Act an opportunity to designate a representative to conduct on-site oversight activities at such site. The Secretary is authorized to pay the reasonable expenses of such representative.

SEC. 303. ACCEPTANCE OF BENEFITS.

(a) *CONSENT.*—The acceptance or use of any of the benefits provided under this title by any affected Indian tribe or affected unit of local government shall not be deemed to be an expression of consent, express, or implied, either under the Constitution of the State or any law thereof, to the siting of an interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

(b) *ARGUMENTS.*—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State to oppose the siting in Nevada of an interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

(c) *LIABILITY.*—No liability of any nature shall accrue to be asserted against any official of any governmental unit of Nevada premised solely upon the acceptance or use of benefits under this title.

SEC. 304. RESTRICTIONS ON USE OF FUNDS.

None of the funding provided under this title may be used—

(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

(2) for litigation purposes; and

(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

SEC. 305. LAND CONVEYANCES.

(a) *CONVEYANCES OF PUBLIC LANDS.*—One hundred and twenty days after enactment of this Act, all rights, title and interest of the United States in the property described in subsection (b), and im-

provements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Nye, Nevada, unless the county notifies the Secretary of the Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Nye County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

(b) *SPECIAL CONVEYANCES.*—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, and on file with the Secretary shall be conveyed under subsection (a) to the County of Nye, Nevada:

Map 1: Proposed Pahrump Industrial Park Site

Map 2: Proposed Lathrop Wells (Gate 510) Industrial Park Site

Map 3: Pahrump Landfill Sites

Map 4: Amargosa Valley Regional Landfill Site

Map 5: Amargosa Valley Municipal Landfill Site

Map 6: Beatty Landfill/Transfer Station Site

Map 7: Round Mountain Landfill Site

Map 8: Tonopah Landfill Site

Map 9: Gabbs Landfill Site.

(3) *CONSTRUCTION.*—The maps and legal descriptions of special conveyances referred to in subsection (b) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

(4) *EVIDENCE OF TITLE TRANSFER.*—Upon the request of the County of Nye, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

TITLE IV—FUNDING AND ORGANIZATION

SEC. 401. PROGRAM FUNDING.

(a) CONTRACTS.—

(1) *AUTHORITY OF SECRETARY.*—In the performance of the Secretary's functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such waste or spent fuel. Such contracts shall provide for payment of annual fees to the Secretary in the amounts set by the Secretary pursuant to paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by

the Secretary pursuant to this section until expended. Subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act, provided that the Secretary shall consent to an amendment to such contracts as necessary to implement the provisions of this Act.

(2) ANNUAL FEES.—

(A) For electricity generated by civilian nuclear power reactors and sold between January 7, 1983, and September 30, 2003, the fee under paragraph (1) shall be equal to 1.0 mill per kilowatt hour generated and sold. For electricity generated by civilian nuclear power reactors and sold on or after October 1, 2003, the aggregate amount of fees collected during each fiscal year shall be no greater than the annual level of appropriations for expenditures on those activities consistent with subsection (d) for that fiscal year, minus—

(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

(ii) the percentage of such appropriation required to be funded by the Federal Government pursuant to section 403;

The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that the annual fee collected under this subparagraph shall not exceed 1.0 mill per kilowatt-hour generated and sold.

(B) EXPENDITURES IF SHORTFALL.—*If, during any fiscal year on or after October 1, 2002, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—*

(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

(ii) the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403;

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of the fees assessed.

(C) RULES.—*The Secretary shall, by rule, establish procedures necessary to implement this paragraph.*

(3) ONE-TIME FEE.—*For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant*

to such contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph on or before September 30, 2002, and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

(4) *ADJUSTMENTS TO FEE.*—The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3), together with the existing balance of the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1997, to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (c)(2). In the event the Secretary determines that the revenues being collected are either insufficient or excessive to recover the costs incurred by the Federal Government that are specified in subsection (c)(2), the Secretary shall propose an adjustment to the fee in subsection (c)(2) to ensure full cost recovery. The Secretary shall immediately transmit the proposal for such an adjustment to both Houses of Congress.

(b) *ADVANCE CONTRACTING REQUIREMENT.*—

(1) *IN GENERAL.*—

(A) *LICENSE ISSUANCE AND RENEWAL.*—The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

(i) such person has entered into a contract under subsection (a) with the Secretary; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) *PRECONDITION.*—The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of spent nuclear fuel and high-level radioactive waste that may result from the use of such license.

(2) *DISPOSAL IN REPOSITORY.*—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or

owner commences generation of, or takes title to, such spent fuel or waste.

(3) *ASSIGNMENT.*—The rights and duties of contract holders are assignable.

(c) *NUCLEAR WASTE FUND.*—

(1) *IN GENERAL.*—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

(A) the existing balance in the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1997; and

(B) all receipts, proceeds, and recoveries realized under subsections (a), and (c)(3) subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997, which shall be deposited in the Nuclear Waste Fund immediately upon their realization.

(2) *USE.*—The Secretary may make expenditures from the Nuclear Waste Fund, subject to subsections (d) and (e), only for purposes of the integrated management system.

(3) *ADMINISTRATION OF NUCLEAR WASTE FUND.*—

(A) *IN GENERAL.*—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

(B) *AMOUNTS IN EXCESS OF CURRENT NEEDS.*—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund; and

(ii) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(C) *EXEMPTION.*—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

(d) *BUDGET.*—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget annually along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall

consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

(e) **APPROPRIATIONS.**—The Secretary may make expenditures from the Nuclear Waste Fund, subject to appropriations, which shall remain available until expended.

SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

(a) **ESTABLISHMENT.**—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) **FUNCTIONS OF DIRECTOR.**—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

SEC. 403. FEDERAL CONTRIBUTION.

(a) **ALLOCATION.**—No later than 1 year from the date of enactment of the Nuclear Waste Policy Act of 1997, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors shall include,

(1) an appropriate portion of the costs associated with research and development activities with respect to development of an interim storage facility and repository; and

(2) as appropriate, interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

(b) **APPROPRIATION REQUEST.**—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

(c) **REPORT.**—In conjunction with the annual report submitted to Congress under section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, requiring management in the integrated management system.

(d) *AUTHORIZATION.*—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 501. COMPLIANCE WITH OTHER LAWS.

If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act in implementing the integrated management system.

SEC. 502. JUDICIAL REVIEW OF AGENCY ACTIONS.

(a) *JURISDICTION OF THE UNITED STATES COURTS OF APPEALS.*—

(1) *ORIGINAL AND EXCLUSIVE JURISDICTION.*—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this Act;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this Act;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this Act; or

(D) for review of any environmental impact statement prepared or environmental assessment pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

(2) *VENUE.*—The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) *DEADLINE FOR COMMENCING ACTION.*—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge or such decision, action, or failure to act.

(c) *APPLICATION OF OTHER LAW.*—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

SEC. 503. LICENSING OF FACILITY EXPANSIONS AND TRANSHIPMENTS.

(a) **ORAL ARGUMENT.**—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) **ADJUDICATORY HEARING.**—

(1) **DESIGNATION.**—At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) **DETERMINATION.**—In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor to which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless—

(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) **APPLICATION.**—The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) **CONSTRUCTION.**—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

(c) **JUDICIAL REVIEW.**—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

SEC. 504. SITING A SECOND REPOSITORY.

(a) **CONGRESSIONAL ACTION REQUIRED.**—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) **REPORT.**—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

SEC. 505. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.

(a) **FINANCIAL ARRANGEMENTS.**—

(1) **STANDARDS AND INSTRUCTIONS.**—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements estab-

lished by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) **BONDING, SURETY, OR OTHER FINANCIAL ARRANGEMENTS.**—If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) **TITLE AND CUSTODY.**—

(1) **AUTHORITY OF SECRETARY.**—The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) **PROTECTION.**—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) **SPECIAL SITES.**—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

SEC. 506. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors,

technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant licensee personnel training programs.

SEC. 507. EMPLACEMENT SCHEDULE.

(a) *The emplacement schedule shall be implemented in accordance with the following:*

(1) *Emplacement priority ranking shall be determined by the Department's annual 'Acceptance Priority Ranking' report.*

(2) *The Secretary's spent fuel emplacement rate shall be no less than the following: 1,200 MTU in fiscal year 2000 and 1,200 MTU in fiscal year 2001; 2,000 MTU in fiscal year 2002 and 2,000 MTU in fiscal year 2003; 2,700 MTU in fiscal year 2004; and 3,000 MTU annually thereafter.*

(b) *If the Secretary is unable to begin emplacement by November 30, 1999 at the rates specified in subsection (a), or if the cumulative amount emplaced in any year thereafter is less than that which would have been accepted under the emplacement rate specified in subsection (a), the Secretary shall, as a mitigation measure, adjust the emplacement schedule upward such that within 5 years of the start of emplacement by the Secretary,*

(1) *the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had begun emplacement in fiscal year 2000, and*

(2) *thereafter the emplacement rate is equivalent to the rate that would be in place pursuant to paragraph (a) above if the Secretary had commenced emplacement in fiscal year 2000.*

SEC. 508. TRANSFER OF TITLE.

(a) *Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.*

(b) *No later than 6 months following the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary is authorized to accept all spent nuclear fuel withdrawn from Dairyland Power Cooperative's La Crosse Reactor and, upon acceptance, shall provide Dairyland Power Cooperative with evidence of the title transfer. Immediately upon the Secretary's acceptance of such spent nuclear fuel, the Secretary shall assume all responsibility and liability for the interim storage and permanent disposal thereof and is authorized to compensate Dairyland Power Cooperative for any costs related to operating and maintaining facilities necessary for such storage from the date of acceptance until the Secretary removes the spent nuclear fuel from the La Crosse Reactor site."*

SEC. 509. DECOMMISSIONING PILOT PROGRAM.

(a) **AUTHORIZATION.**—*The Secretary is authorized to establish a Decommissioning Pilot Program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas.*

(b) *FUNDING.*—No funds from the Nuclear Waste Fund may be used for the Decommissioning Pilot Program.

SEC. 510. WATER RIGHTS.

(a) *NO FEDERAL RESERVATION.*—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

(b) *ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.*—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands.

(c) *EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.*—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

SEC. 601. DEFINITIONS.

For purposes of this title—

(1) *CHAIRMAN.*—The term “Chairman” means the Chairman of the Nuclear Waste Technical Review Board.

(2) *BOARD.*—The term “Board” means the Nuclear Waste Technical Review Board continued under section 602.

SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

(a) *CONTINUATION OF THE NUCLEAR WASTE TECHNICAL REVIEW BOARD.*—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of the Nuclear Waste Policy Act of 1997, shall continue in effect subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997.

(b) *MEMBERS.*—

(1) *NUMBER.*—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) *CHAIR.*—The President shall designate a member of the Board to serve as Chairman.

(3) *NATIONAL ACADEMY OF SCIENCES.*—

(A) *NOMINATIONS.*—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) *VACANCIES.*—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C) *NOMINEES.*—

(i) Each person nominated for appointment to the Board shall be—

(I) *eminent in a field of science or engineering, including environmental sciences; and*

(II) *selected solely on the basis of established records of distinguished service.*

(ii) *The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.*

(iii) *No person shall be nominated for appointment to the Board who is an employee of—*

(I) *the Department of Energy;*

(II) *a national laboratory under contract with the Department of Energy; or*

(III) *an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.*

(4) **VACANCIES.**—*Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).*

(5) **TERMS.**—*Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.*

SEC. 603. FUNCTIONS.

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) *site characterization activities; and*

(2) *activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.*

SEC. 604. INVESTIGATORY POWERS.

(a) **HEARINGS.**—*Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.*

(b) **PRODUCTION OF DOCUMENTS.**—

(1) **RESPONSE TO INQUIRIES.**—*Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.*

(2) **AVAILABILITY OF DRAFTS.**—*Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.*

SEC. 605. COMPENSATION OF MEMBERS.

(a) *IN GENERAL.*—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) *TRAVEL EXPENSES.*—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

SEC. 606. STAFF.

(a) *CLERICAL STAFF.*—

(1) *AUTHORITY OF CHAIRMAN.*—Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) *PROVISIONS OF TITLE 5.*—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

(b) *PROFESSIONAL STAFF.*—

(1) *AUTHORITY OF CHAIRMAN.*—Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) *NUMBER.*—Not more than 10 professional staff members may be appointed under this subsection.

(3) *TITLE 5.*—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

SEC. 607. SUPPORT SERVICES.

(a) *GENERAL SERVICES.*—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) *ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.*—The Comptroller General and the Librarian of Congress shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) *ADDITIONAL SUPPORT.*—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

(d) *MAILS.*—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) *EXPERTS AND CONSULTANTS.*—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

SEC. 608. REPORT.

The Board shall report not less than two times per year to Congress and the Secretary its findings, conclusions, and recommendations.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

Notwithstanding section 401(d), and subject to section 401(e), there are authorized to be appropriated for expenditures from amounts in the Nuclear Waste Fund under section 401(c) such sums as may be necessary to carry out the provisions of this title.

SEC. 610. TERMINATION OF THE BOARD.

The Board shall cease to exist not later than one year after the date on which the Secretary begins disposal of spent nuclear fuel or high-level radioactive waste in the repository.

TITLE VII—MANAGEMENT REFORM

SEC. 701. MANAGEMENT REFORM INITIATIVES.

(a) *IN GENERAL.*—The Secretary is directed to take actions as necessary to improve the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

(b) *AUDITS.*—

(1) *STANDARD.*—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

(2) *TIME.*—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the enactment of the Nuclear Waste Policy Act of 1997.

(3) *TIME.*—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

(4) *PUBLIC DOCUMENTS.*—All audit reports shall be public documents and available to any individual upon request.

(d) *VALUE ENGINEERING.*—The Secretary shall create a value engineering function within the Office of Civilian Radioactive Waste Management that reports directly to the Director, which shall carry

out value engineering functions in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects.

(e) *SITE CHARACTERIZATION.*—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

SEC. 702. REPORTING.

(a) *INITIAL REPORT.*—Within 180 days of enactment of this section, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than November 30, 1999, and in accordance with the acceptance schedule;

(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary's obligations under this Act and the contracts;

(3) a detailed description of the Secretary's contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and

(4) an analysis by the Secretary of its funding needs for fiscal years 1997 through 2001.

(b) *ANNUAL REPORTS.*—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of:

(1) any modifications to the Secretary's schedule and timeline for meeting its obligations under this Act;

(2) the reasons for such modifications, and the status of the implementation of any of the Secretary's contingency plans; and

(3) the Secretary's analysis of its funding needs for the ensuing 5 fiscal years."

SEC. 703. EFFECTIVE DATE.

This Act shall become effective one day after enactment.