

TO AMEND THE ATOMIC ENERGY ACT OF 1954 TO REQUIRE CONGRESSIONAL APPROVAL OF AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION WITH FOREIGN COUNTRIES, AND FOR OTHER PURPOSES

MAY 30, 2012.—Ordered to be printed

Ms. ROS-LEHTINEN, from the Committee on Foreign Affairs,
 submitted the following

R E P O R T

[To accompany H.R. 1280]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 1280) to amend the Atomic Energy Act of 1954 to require congressional approval of agreements for peaceful nuclear cooperation with foreign countries, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	Page
The Amendment	2
Background and Purpose	6
Hearings	13
Committee Consideration and Votes	13
Committee Oversight Findings	14
New Budget Authority and Tax Expenditures	14
Congressional Budget Office Cost Estimate	14
Performance Goals and Objectives	16
New Advisory Committees	16
Congressional Accountability Act	16
Earmark Identification	16
Section-by-Section Analysis	16
Changes in Existing Law Made by the Bill, as Reported	20

THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REQUIREMENT FOR CONGRESSIONAL APPROVAL OF AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION.

(a) COOPERATION WITH OTHER NATIONS.—Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is amended—

(1) in the matter preceding subsection a., by striking “No cooperation” and inserting “Subject to subsection f., no cooperation”;

(2) in subsection a.—

(A) in paragraph (3), by inserting “or acquired from any other source” after “pursuant to such agreement” each place it appears;

(B) in paragraph (4)—

(i) by striking “or terminates or” and inserting “, terminates,”; and

(ii) by inserting “, or violates or abrogates any provision contained within such agreement” after “IAEA safeguards”;

(C) in paragraph (6), by inserting “or acquired from any other source” after “agreement” each place it appears;

(D) in paragraph (8), by striking “and” at the end;

(E) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(F) by inserting after paragraph (9) the following new paragraphs:

“(10) a guaranty by the cooperating party that no nationals of a third country shall be permitted access to any reactor, related equipment, or sensitive materials transferred under the agreement for cooperation without the prior consent of the United States; and

“(11) a commitment to maintain and, in the case of a country without such a legal regime in place, a commitment to enact at the earliest possible date, and in no case later than one year after the agreement enters into force, a legal regime providing for adequate protection from civil liability that will allow for the participation of United States suppliers in any effort by the country to develop civilian nuclear power.”;

(3) in the matter following paragraph (11) (as added by paragraph (2)(F) of this subsection), by striking “The President may exempt a proposed agreement for cooperation” and all that follows through “common defense and security.”;

(4) in subsection c., by striking “and” at the end;

(5) in subsection d.—

(A) in the first sentence—

(i) by striking “not” the first and second place it appears;

(ii) by inserting “only” after “effective” the first place it appears; and

(iii) by striking “: *Provided further,*” and all that follows through “such agreement” and inserting “, unless the proposed agreement includes a requirement as part of the agreement for cooperation or other legally binding document that is considered part of the agreement that no enrichment or reprocessing activities, or acquisition or construction of facilities for such activities, will occur within the territory over which the cooperating party exercises sovereignty, in which case the agreement shall become effective unless the Congress adopts, and there is enacted, a joint resolution of disapproval (1) during such sixty-day period for a new agreement; or (2) during a period of 30 days of continuous session for a renewal agreement”; and

(B) by striking the final period and inserting “; and”;

(6) by redesignating subsection e. as subsection f.;

(7) by inserting immediately after subsection d. the following new subsection: “e. the cooperating party—

“(1) has acceded to and is fully implementing the provisions and guidelines of—

“(A) the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (commonly known as the ‘Chemical Weapons Convention’);

“(B) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction (commonly known as the ‘Biological Weapons Convention’); and

“(C) all other international agreements to which the United States is a party regarding the export of nuclear, chemical, biological, and ad-

- vanced conventional weapons, including missiles and other delivery systems;
- “(2) has established and is fully implementing an effective export control system, including fully implementing the provisions and guidelines of United Nations Security Council Resolution 1540;
- “(3) is in full compliance with all United Nations conventions to which the United States is a party and all Security Council resolutions regarding the prevention of the proliferation of weapons of mass destruction, including—
- “(A) the Convention on the Physical Protection of Nuclear Material; and
- “(B) the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism;
- “(4) is not a Destination of Diversion Concern under section 303 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195);
- “(5) is closely cooperating with the United States to prevent state sponsors of terrorism (the term ‘state sponsor of terrorism’ means a country the government of which has been determined by the Secretary of State, for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or other provision of law, is a government that has repeatedly provided support for acts of international terrorism) from—
- “(A) acquiring or developing chemical, biological, or nuclear weapons or related technologies; or
- “(B) acquiring or developing destabilizing numbers and types of advanced conventional weapons, including ballistic missiles; and
- “(6) has signed, ratified, and is fully implementing an Additional Protocol to its safeguards agreement with the International Atomic Energy Agency.”; and
- (8) by adding after subsection f. (as redesignated by paragraph (6) of this subsection) the following new subsection:
- “g. For purposes of this section—
- “(1) the term ‘new agreement’ means an agreement for cooperation with a country with respect to which the United States has not, on or after the date of the enactment of this subsection, entered into such an agreement; and
- “(2) the term ‘renewal agreement’ means an agreement for cooperation with a country with respect to which the United States has, before the date of the enactment of this subsection, entered into such an agreement.”.
- (b) SUBSEQUENT ARRANGEMENTS.—Section 131 a. (1) of such Act (42 U.S.C. 2160 a.(1)) is amended—
- (1) in the second sentence, by striking “security,” and all that follows through “publication.” and inserting “security.”; and
- (2) by inserting after the second sentence the following new sentences: “Such subsequent arrangement shall become effective only if Congress enacts a joint resolution of approval according to the procedures of sections 123 d. and 130 i. of this Act. Any such nuclear proliferation assessment statement shall be submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate not later than the 31st day of continuous session after submission of the subsequent arrangement.”.

SEC. 2. WITHDRAWAL FROM THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS.

(a) STATEMENT OF POLICY.—It is the policy of the United States to oppose the withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (in this section referred to as the “Treaty”) of any country that is a party to the Treaty and to use all political, economic, and diplomatic means at its disposal to deter, prevent, or reverse any such withdrawal from the Treaty.

(b) PROHIBITION ON CERTAIN ASSISTANCE.—Notwithstanding any other provision of law, no assistance (other than humanitarian assistance) under any provision of law may be provided to a country that has withdrawn from the Treaty on or after the date of the enactment of this Act.

(c) RETURN OF ALL UNITED STATES-ORIGIN MATERIALS AND EQUIPMENT.—The United States shall seek the return of any material, equipment, or components transferred under an agreement for civil nuclear cooperation that is in force pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) on or after the date of the enactment of this Act, and any special fissionable material produced through the use of such material, equipment, or components previously provided to a country that withdraws from the Treaty.

SEC. 3. REPORT ON COMPARABILITY OF NONPROLIFERATION CONDITIONS BY FOREIGN NUCLEAR SUPPLIERS.

Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the extent to which each country that engages in civil nuclear exports (including power and research nuclear reactors) requires nuclear nonproliferation requirements as conditions for export comparable to those under this Act. Such report shall also—

(1) detail the extent to which the exports of each such country incorporate United States-origin components, technology, or materials that require United States approval for re-export;

(2) detail the civil nuclear-related trade and investments in the United States by any entity from each such country; and

(3) list any United States grant, concessionary loan or loan guarantee, or any other incentive or inducement to any such country or entity related to nuclear exports or investments in the United States.

SEC. 4. INITIATIVES AND NEGOTIATIONS RELATING TO AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION.

Subsection f. of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), as redesignated pursuant to section 1(a)(6) of this Act, is amended to read as follows:

“f. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section prior to the President’s announcement of such initiative or negotiations. The President shall consult with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate concerning such initiative or negotiations beginning not later than 15 calendar days after the initiation of any such negotiations, or the receipt or transmission of a draft agreement, whichever occurs first, and monthly thereafter until such time as the negotiations are concluded.”.

SEC. 5. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.

Section 129 a. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

(1) in subparagraph (C), by inserting “or” after the semicolon; and

(2) by inserting after subparagraph (C) the following new subparagraph:

“(D) been determined to be a ‘country of proliferation concern’ under section 1055(g)(2) of the National Defense Authorization Act for Fiscal Year 2010 (50 U.S.C. 2371(g)(2));”.

SEC. 6. CONGRESSIONAL REVIEW PROCEDURES.

Section 130 i. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2159) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving clause of which—

“(i) is as follows: ‘That the Congress does favor the proposed agreement for cooperation transmitted to the Congress by the President on _____’; and

“(ii) includes, immediately after the language specified in clause (i), any other provisions to accompany such proposed agreement for cooperation.”.

SEC. 7. REQUIREMENT OF LIABILITY PROTECTION FOR UNITED STATES NUCLEAR SUPPLIERS.

The Atomic Energy Act of 1954 is amended by inserting after section 134 (42 U.S.C. 2160d) the following new section:

“SEC. 135. REQUIREMENT OF LIABILITY PROTECTION FOR UNITED STATES NUCLEAR SUPPLIERS.

“The President may not issue a license for the export of nuclear material, facilities, components, or other goods, services, or technology to a country pursuant to an agreement that has entered into force after the date of the enactment of this section unless the President determines that such country has liability protection for United States nuclear suppliers that is equivalent to the liability protection specified under the Convention on Supplementary Compensation for Nuclear Damage.”.

SEC. 8. PROHIBITION ON ASSISTANCE TO STATE SPONSORS OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

(a) **PROHIBITION ON ASSISTANCE.**—The United States shall not provide any assistance under Public Law 87–195, Public Law 90–629, the Food for Peace Act, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that the government of the country has repeatedly provided support for acts of proliferation of equipment, technology, or materials to support the design, acquisition, manufacture, or use of weapons of mass destruction or the acquisition or development of ballistic missiles to carry such weapons.

(b) **PUBLICATION OF DETERMINATIONS.**—Each determination of the Secretary of State under subsection (a) shall be published in the Federal Register.

(c) **RESCISSION.**—A determination of the Secretary of State under subsection (a) may not be rescinded unless the Secretary submits to the appropriate congressional committees—

(1) before the proposed rescission would take effect, a report certifying that—

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) the government is not supporting acts of proliferation of equipment, technology, or materials to support the design, acquisition, manufacture, or use of weapons of mass destruction; and

(C) the government has provided assurances that it will not support such acts in the future; or

(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(A) the government of the country concerned has not provided any support for acts of proliferation of equipment, technology, or materials to support the design, acquisition, manufacture, or use of weapons of mass destruction during the preceding 24-month period; and

(B) the government has provided assurances that it will not support such acts of proliferation in the future.

(d) **WAIVER.**—The President may waive the requirements of subsection (a) on a case-by-case basis if—

(1) the President determines that national security interests or humanitarian reasons justify a waiver of such requirements, except that humanitarian reasons may not be used to justify the waiver of such requirements to provide security assistance under Public Law 87–195, Public Law 90–629, or the Export-Import Bank Act of 1945; and

(2) at least 15 days before the waiver takes effect, the President consults with the appropriate congressional committees regarding the proposed waiver and submits to the appropriate congressional committees a report containing—

(A) the name of the recipient country;

(B) a description of the national security interests or humanitarian reasons that require the waiver;

(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

(D) the period of time during which such waiver will be effective.

SEC. 9. ADDITIONAL PROTOCOL AS A CRITERION FOR UNITED STATES ASSISTANCE.

(a) **STATEMENT OF POLICY.**—It is the policy of the United States to ensure that each country that is a party to the Treaty on the Non-Proliferation of Nuclear Weapons should bring into force an Additional Protocol to its safeguards agreement with the IAEA.

(b) **CRITERION FOR ASSISTANCE.**—The United States shall, when considering the provision of assistance under Public Law 87–195 or Public Law 90–629 to a country that is a party to the Treaty on the Nonproliferation of Nuclear Weapons, take into consideration whether the proposed recipient has in force an Additional Protocol to its safeguards agreement with the IAEA.

SEC. 10. SENSE OF CONGRESS.

It is the sense of Congress that the President should ensure that participation in international nuclear programs conducted by the United States is limited to the greatest extent practicable to governmental and nongovernmental participants from countries that have adopted nonproliferation provisions in their nuclear cooperation and nuclear export control policies comparable to the policies specified in section 123 of the Atomic Energy Act (42 U.S.C. 2153), as amended by this Act.

BACKGROUND AND PURPOSE

Stopping Iran's aggressive pursuit of nuclear weapons has been one of the highest priorities for U.S. national security policy for more than a decade. As Iran has moved closer to achieving its goal, several other countries in the region have launched their own nuclear programs. Although each describes the intended use as entirely peaceful, namely for electricity generation, medicine, and research, it is clear that many of these efforts are in response to Iran's continued progress. Thus, the groundwork is being laid for the spread of a nuclear weapons capability from one unstable regime to another throughout the Middle East.

Despite the clear dangers involved, the U.S. and other countries are inadvertently encouraging this development by promoting nuclear cooperation agreements which, in the view of the committee, contain insufficient safeguards to ensure that nuclear power and research activities supported by such agreements are entirely for peaceful purposes.

The greatest threat stems from the spread of the capability to produce fissile material, either by enriching uranium or reprocessing spent fuel to extract unused uranium or plutonium (ENR). Unfortunately, fissile material can be used not only for peaceful purposes but also for nuclear and radiological weapons. Virtually any nuclear program, including one with an ENR component, can be described as being intended solely for peaceful purposes, but such programs are essentially identical to those needed for weapons development. Thus, the foundation for a nuclear weapons program can be built in full view of the world as long as a benign purpose is asserted, however fictional. This is the strategy that Iran has employed from the outset, supplementing its public activities with clandestine efforts which, when exposed, it maintains are actually devoted entirely to medicine, research, and the generation of electricity.

Efforts by the U.S. and other responsible countries to stop Iran's nuclear program are undermined by the simultaneous promotion of nuclear programs throughout the Middle East, especially by nuclear cooperation agreements that do not contain guarantees that these countries will not follow in Iran's footsteps. Any future agreements should contain a provision that the cooperating country will not develop or acquire any uranium enrichment or spent-fuel reprocessing facilities, or engage in such activities, as a critical counterpoint to Iran. The United States, and indeed all nuclear suppliers, must be careful that they do not encourage, however inadvertently, the perception that Iran is merely exercising its "right" to have all aspects of a civil nuclear fuel cycle, including enrichment and reprocessing, regardless of its actual intended use.

Each new nuclear program in the region expands the risk. Recent events have demonstrated that many regimes in the Middle East are unstable and that it is impossible to predict who may come to power should these fall. With that power would come the option to use any existing nuclear infrastructure to establish a military program. Given this alarming possibility, U.S. national interests argue strongly for stopping this trend, especially preventing the acquisition of an ENR capability by additional countries, regardless of any claimed purpose. But the U.S. has instead declared

that preventing the acquisition of an ENR capability—and thus the option of its diversion to military uses—will no longer be a necessary condition in considering new nuclear cooperation agreements. Regardless of any assurances provided by opponents of adding sufficient safeguards in these agreements, we may in fact be helping to bring about an enormous geopolitical upheaval.

That process is already underway. Turki al-Faisal, a high ranking Saudi prince and the former head of the Saudi intelligence service, openly stated in December 2011 that Saudi Arabia was considering producing nuclear weapons, largely in response to the threat from Iran. Despite these and similar assertions, the U.S. has entered into discussions and possibly negotiations for a nuclear cooperation agreement with Saudi Arabia, which is unlikely to be required to permanently forego acquiring an ENR capability. Absent this guarantee, the U.S. may end up helping Saudi Arabia acquire nuclear facilities, material, and expertise that could be employed for either civilian or military use in the future.

Stopping Enrichment and Reprocessing

Countries seeking nuclear weapons are constrained by extraordinary difficulties, their options being either to obtain them or their components from other countries or produce them indigenously. To date, no transfer of a functional nuclear device is known to have occurred, although China is reported to have provided Pakistan with nuclear weapons designs and related technologies. The composition of North Korea's transfer of nuclear-related items to Pakistan, Iran, and other countries has yet to be fully revealed.

Regarding indigenous manufacture, the scale and complexity of the industrial infrastructure needed to produce all of the required elements, the highly advanced technology involved, and the enormous costs have presented insuperable obstacles to all but a handful of states. Countries such as North Korea and Pakistan which have developed their own capacity were able to do so only after securing much of the requisite technology, expertise, and industrial equipment from abroad. Had Iran been forced to rely solely on its own resources, it would not have been able to advance its nuclear program, civil or military, to anything approaching its current capabilities. Its progress has been made possible only by filling the many gaps through transfers from clandestine sources in Pakistan, North Korea, Russia, and other countries. Shutting off the sources of supply for these and other countries seeking nuclear weapons has long been a central objective of U.S. nonproliferation policy.

Of these several challenges, the greatest is acquiring the capacity to produce fissile material through the ENR fuel cycle. A lesser, but related challenge is achieving a sufficiently high level of enrichment. The uranium used in civilian nuclear reactors to generate electricity is typically enriched to a level of 3–5%. That used for medical purposes or for research can reach as high as 20%. But weapons-grade material must be enriched to at least 90%. The first two can be purchased on the world market, but the latter cannot.

Unfortunately, the infrastructure needed to produce weapons-grade fissile material is essentially the same as that used for peaceful purposes. A country seeking nuclear weapons can employ an ostensibly civilian program as camouflage for a clandestine military program. Under the guise of peaceful pursuits, most, if not all,

of the infrastructure needed for ENR fuel cycle can be constructed in the open, thereby rendering detection of the purely military aspects far more difficult, if not impossible, especially in closed societies. The problem is made even more difficult if a country waits until its civilian program is fully established before embarking on a military counterpart.

North Korea used this stratagem to develop its plutonium-based nuclear device and is currently doing the same with uranium enrichment. Saddam Hussein's initial nuclear weapons program was cloaked by Iraq's civil nuclear power program, but Israel's destruction of the ostensibly peaceful reactor at Osirak in 1981 was a major blow to Saddam's military program. The far more massive effort he subsequently embarked upon was uncovered only as a result of his defeat in the 1991 Gulf War and the intensive search for weapons that followed that war. Syria's declared nuclear program had concealed a nuclear reactor secretly built by North Korea, but in 2007 that was also destroyed by an Israeli airstrike.

Iran is following much the same course and has constructed a massive nuclear complex that it claims is solely for the purpose of generating electricity, as well as for medical use and research. Much of this has been done in full view of inspectors from the International Atomic Energy Agency (IAEA) during their visits to a number of identified facilities over several years, although several suspected clandestine sites have remained off limits. Nevertheless, successive revelations of secret nuclear facilities, such the Natanz and Fordow uranium enrichment facilities, as well as the IAEA's discovery of evidence that Iran has performed extensive work related to nuclear warheads, demonstrates that the primary purpose of Iran's nuclear program is military.

Claims by countries that their efforts to acquire an ENR capability are solely for peaceful purposes are very difficult to justify for many reasons. The prohibitive costs and difficulties involved with enriching uranium or reprocessing plutonium ensure that there is little economic motivation for countries that are not already engaged in producing nuclear fuel to do so. As fissile material for civilian use is widely available on the world market from multiple sources, the rationale offered by Iran and other countries that they must produce their own fuel to prevent an interruption of supply cannot be supported. Further, the IAEA has established an international nuclear fuel bank specifically to address this potential problem. For these reasons, and because the infrastructure used to make fissile material for civilian use is in principle the same as that needed for weapons, efforts by countries to construct their own ENR capability is strong evidence that the actual intent is military.

The Inadequacy of the Nonproliferation Regime

The most fundamental element of the global nonproliferation regime is the Nuclear Non-Proliferation Treaty (NPT), which was concluded in 1968 and subsequently ratified by every country except India, Pakistan, and Israel (North Korea withdrew from the NPT in 2003). The treaty prohibits efforts to acquire nuclear weapons by countries other than those which possessed them at the time the treaty was opened for signature in 1968, namely the so-called "nuclear weapon states": the U.S.; the Soviet Union, of which Russia is the successor state; Great Britain; France; and China.

The NPT allows countries to develop nuclear programs for peaceful purposes, but it requires these countries to adopt comprehensive safeguards for their nuclear facilities and undergo regular inspection by the IAEA to ensure that nothing is being diverted for military use.

A major flaw in the treaty is its reliance on voluntary disclosure by the signatories. The discovery of Iraq's massive nuclear program in 1993 despite years of inspections by the IAEA prompted the IAEA to develop strengthened safeguards in 1997 with what is known as the Additional Protocol (AP). By giving the IAEA far greater freedom to conduct intrusive inspections on demand, the AP greatly reduces the ability to hide clandestine nuclear operations. Unfortunately, the AP's adoption is not mandatory, and countries such as Iran and Syria have refused to implement it because it would make their nuclear weapons programs far harder to conceal.

Despite these and other measures to strengthen the global nonproliferation regime, nuclear technology, expertise, materials, and equipment may still be available on the black market to countries engaged in developing a nuclear weapons capability, the most important example of which was the network established by Pakistani nuclear scientist Abdul Qadeer Khan. Until its operations were exposed in 2004, this network provided key nuclear elements to Iran, Libya, and other countries. North Korea has also clandestinely provided indispensable elements to Iran and other countries, including building a nuclear reactor in Syria. Shutting down these clandestine sources remains a high priority for the U.S. and other countries, but the existence and extent of other possible networks are unknown.

Another reason the global nonproliferation regime remains inadequate to preventing the acquisition of the ENR fuel cycle is that many of the necessary components are openly and legitimately sold on the world market. The U.S. and other responsible countries have tried to restrict the commercial availability of many of the necessary inputs. The most important mechanism for doing so is the Nuclear Suppliers Group (NSG) which was established in the aftermath of India's surprise detonation of a nuclear device in 1974. The NSG is made up of nuclear-exporting countries which adopt common guidelines to prevent items from being diverted by recipient countries to the construction of an ENR fuel cycle or for military purposes.

These guidelines have been tightened over the years, most recently in June 2011, but they are voluntary and loosely interpreted by member states. The result is that commercial sales, ranging from nuclear fuel to complete reactors by countries such as France, Russia, Britain, and the U.S., have been only partially constrained. Given the projected hundreds of billions of dollars at stake as a result of the "global renaissance" of nuclear power, exporting countries are eager to maximize sales by their domestic companies, many of which are state-owned and subsidized, and are reluctant to add new safeguards to the existing international patchwork. The result is that limits on the initiation and development of nuclear programs around the world are determined more by a lack of financing than concerns about proliferation.

The most vigorous suppliers seeking new outlets are French and Russian companies, but they are far from alone, as American, South Korean, and exporters from many other countries compete for markets. Not only are the French and Russian companies state-owned, but their governments are actively engaged in promoting nuclear sales. High-ranking officials, such as President Sarkozy of France, often openly act as salesmen for these firms when dealing with their counterparts.

As one country after another, including India, North Korea, and Pakistan, among others, demonstrated that a civilian nuclear energy program could be a springboard to a military capability, the potential military uses of “peaceful” nuclear programs has become increasingly obvious. Nevertheless, commercial concerns continue to dominate the policies of many exporting countries.

The “Gold Standard”

In 2008, the Bush administration began negotiations with the United Arab Emirates (UAE) for a nuclear cooperation agreement to support the UAE’s development of its planned massive nuclear energy program. Given the UAE’s small population and economy, as well as its large reserves of hydrocarbons, many outside experts questioned the actual intent of this program and thus the emphasis placed by the UAE on an agreement with the U.S. when the requisite infrastructure could be purchased on the world market from other countries.

The UAE clearly valued the prospective agreement as a public affirmation of strong U.S.-UAE ties in the face of an increasing threat from Iran, as well as a U.S. seal of approval for its stated ambition to become a major exporter of electricity to the region. The Bush and Obama administrations focused on the agreement’s utility in advancing broader foreign policy goals, namely shoring up the U.S. strategic position in the Persian Gulf. In the end, this political purpose, coupled with commercial considerations, overrode the strong objections of those who feared that the agreement could encourage a further spread of nuclear programs in the region.

The committee was skeptical of the agreement when initially briefed by the Bush administration, due in large part to the UAE’s history of serving as a transshipment point for sensitive exports to Iran as a result of its rudimentary export control regime. The committee was also concerned that the administration had not asked the UAE to formalize in the agreement a prior public pledge not to enrich or reprocess. Ultimately, both the Bush administration and the UAE agreed to revise the agreement to include a provision to that effect, which was signed in January 2009. Due to continuing Congressional concern, the Obama administration sought a more explicit commitment and renegotiated the text to include a legally-binding obligation by the UAE not to enrich or reprocess. This revised agreement was signed, submitted to the Congress, and went into force in 2010. The formal no-ENR commitment it contained was dubbed by a Department of State spokesman as the “gold standard” for all future agreements.

Subsequently, however, the application of this precedent was limited to countries in the Middle East. This approach apparently arose from concerns that a wider application of the “gold standard” might have a potentially negative impact on commercial sales by

the U.S. nuclear industry, which asserted that efforts to secure commitments from countries not to engage in ENR activities would place U.S. companies at a competitive disadvantage vis-à-vis their foreign competitors. However, there is no evidence to support this concern, and the committee believes that a serious effort to convince potential recipients of U.S. nuclear exports to adopt some form of the UAE example would have significant nonproliferation benefits without sacrificing legitimate commerce.

This limited application was further narrowed in January 2012 when the State Department formally informed the committee that the no-ENR policy would be optional apparently in every instance, presumably even in the Middle East.

This change in policy threatens to undo the no-ENR condition in the agreement with the UAE. The “Agreed Minute” attached to the U.S.-UAE agreement states that “the fields of cooperation, terms and conditions . . . shall be no less favorable in scope and effect than those which may be accorded, from time to time, to any other non-nuclear-weapon State in the Middle East in a peaceful nuclear cooperation agreement.” Thus, should the U.S. sign an agreement with another country in the region that does not contain a no-ENR commitment, the UAE will be liberated from this restriction entirely.

At the same time, nuclear cooperation agreements have become increasingly valuable instruments for achieving U.S. foreign policy objectives. For example, a nuclear cooperation agreement with Russia was viewed by both the Bush and Obama administrations largely in terms of its potentially positive impact on relations between the two countries, namely as a U.S. concession of tangible value to be exchanged for Russian cooperation in other areas. That agreement eventually went into effect in 2011.

The committee is concerned that nonproliferation provisions in future nuclear cooperation agreements may be subordinated to commercial and political considerations. The result would be to forgo a major opportunity to advance this country’s fundamental national security interests that are threatened by the spread of nuclear weapons.

The Need for a Strengthened Congressional Role

Any significant nuclear-related export for civil purposes—e.g., power reactors, research reactors, related equipment, and reactor fuel—requires a nuclear cooperation agreement between the U.S. and the partner country to be in force, which sets the terms of the transfer and use of such equipment and material. These agreements are authorized by section 123 of the Atomic Energy Act of 1954, as amended, and are often referred to as “123 agreements.” Section 123 sets nine nonproliferation conditions that each agreement must satisfy.¹ If an agreement satisfies these conditions, the

¹Section 123(a) lists nine criteria that an agreement must meet unless the President determines an exemption is necessary. These include guarantees that

- safeguards on transferred nuclear material and equipment continue in perpetuity;
- full-scope International Atomic Energy Agency (IAEA) safeguards are applied in non-nuclear weapon states;
- nothing transferred is used for any nuclear explosive device or for any other military purpose, except in the case of cooperation agreements with nuclear weapon states, in which the United States has the right to demand the return of transferred nuclear

Continued

President may submit the agreement to Congress for a period of 90 days of “continuous session,” a period that can last six months or longer, depending on the Congressional calendar. The proposed agreement will go into force automatically unless Congress enacts a Joint Resolution of disapproval. Given that the President would presumably veto such a resolution, the effective requirement is a 2/3 vote by both chambers to override, an extraordinarily high barrier. If an agreement does not satisfy one or more of these conditions, the President has the option to formally exempt it from this statutory requirement, but that route requires Congress to enact a Joint Resolution of approval for the agreement to come into force.

The relatively small role of Congress is the product of the Atomic Energy Act (AEA) of 1954, which was enacted at a time when nuclear power was commonly assumed to be a benign source of energy for the world. The U.S. being the leader in the relevant technology, civilian nuclear cooperation agreements with other countries were encouraged for commercial reasons, with relatively little consideration given to preventing proliferation. As such, Congress restricted itself to a largely passive role in their review and approval.

Since that time, however, and despite the significant strengthening of the AEA by the Nuclear Nonproliferation Act of 1978, nuclear weapons programs have continued to proliferate. As noted previously, Saddam Hussein’s massive program was uncovered in 1991, and fortunately destroyed, in the aftermath of the first Gulf War; North Korea has developed and tested nuclear weapons; Iran has illicitly constructed and is operating several uranium enrichment facilities supporting a barely concealed nuclear weapons program; Libya obtained, and subsequently surrendered, uranium enrichment equipment and weapons designs; and Syria constructed a covert nuclear reactor with the apparent assistance of North Korea, which was destroyed by an Israeli airstrike in 2007. In addition, the extensive black market network headed by A.Q. Khan of Pakistan had supplied uranium enrichment technology and equipment to North Korea, Iran, Libya, and possibly other countries. These developments have significantly changed the nature and scope of the threat posed by further proliferation, necessitating an updating and strengthening of U.S. nonproliferation policy, including U.S. nuclear cooperation agreements.

H.R. 1280

To that end, H.R. 1280 and H.R. 1320 were introduced in 2011 by Chairman Ileana Ros-Lehtinen and Ranking Member Howard Berman, respectively, to update section 123 and other provisions of the Atomic Energy Act to address the increasing threat posed by the spread of enrichment and reprocessing capabilities. The legisla-

materials and equipment, as well as any special nuclear material produced through their use, if the cooperating state detonates a nuclear explosive device or terminates or abrogates its IAEA safeguards agreement;

- there is no retransfer of material or classified data without U.S. consent;
- physical security on nuclear material is maintained;
- there is no enrichment or reprocessing by the recipient state of transferred nuclear material or nuclear material produced with materials or facilities transferred pursuant to the agreement without prior approval;
- storage for transferred plutonium and highly enriched uranium is approved in advance by the United States; and
- any material or facility produced or constructed through use of special nuclear technology transferred under the cooperation agreement is subject to all of the above requirements.

tion was also intended to enhance the role of Congress in nuclear trade in keeping with its constitutional authority to regulate commerce with foreign nations. On April 14, 2011, the committee marked up H.R. 1280, with amendments including several provisions from H.R. 1320, and passed it unanimously.

H.R. 1280 amends the Atomic Energy Act of 1954 to reinforce U.S. nonproliferation policy, especially by strengthening the role of Congress in reviewing and approving nuclear cooperation agreements proposed by the President. It accomplishes this through modest changes to the AEA, the most important being that new agreements with countries that do not possess ENR capabilities, but which refuse to provide guarantees that they will not seek to obtain them, cannot go into effect unless approved by Congress through a Joint Resolution. This provision does not prevent such agreements but instead allows Congress the opportunity to examine and weigh the broad range of relevant factors—foreign policy, political, commercial, and others—to ensure that proposed agreements meet fundamental U.S. interests and that these are not being sacrificed for commercial or political considerations. If a proposed nuclear cooperation agreement does contain such a commitment, the current procedure for Congressional consideration will remain the same, namely an automatic approval after 90 days of continuous session unless Congress passes a Joint Resolution of disapproval.

H.R. 1280 also expands the requirements for countries seeking nuclear cooperation agreements with the U.S to include adherence to basic international and multinational nonproliferation agreements and conventions, implementation of an effective export control system, and cooperation with the U.S. to prevent state sponsors of terrorism from acquiring or developing chemical, biological, or nuclear weapons of mass destruction, among other measures. None of these conditions imposes an undue burden, and it is questionable why the U.S. would want to engage in nuclear cooperation with a country that did not already meet them.

HEARINGS

The full committee held a hearing on March 17, 2011, titled, “The Global Nuclear Revival and U.S. Nonproliferation Policy.”

COMMITTEE CONSIDERATION AND VOTES

On April 14, 2011, the Foreign Affairs Committee marked up the bill, H.R. 1280, pursuant to notice, in open session. Chairman Ros-Lehtinen offered an amendment in the nature of a substitute (Ros-Lehtinen 47) that, by unanimous consent, was considered base text.

- 1) Rep. Sherman offered en bloc amendments regarding adequate civil liability protections for U.S. suppliers of civilian nuclear power efforts (Sherman 14) and the sense of Congress that participation in U.S. international nuclear programs should be limited to participants that have adopted nonproliferation and export control policies comparable to section 123 of the Atomic Energy Act (Sherman 16); agreed to by voice vote.

The Ros-Lehtinen substitute amendment (as amended by Sherman 14 and 16) was agreed to by a roll call vote of 34 ayes–0 noes.

Voting yes: Ros-Lehtinen, Smith (NJ), Burton, Gallegly, Rohrabacher, Manzullo, Royce, Chabot, Wilson (SC), Fortenberry, Poe, Bilirakis, Schmidt, Johnson (OH), Rivera, Kelly, Griffin, Duncan, Buerkle, Ellmers, Berman, Ackerman, Sherman, Sires, Connolly, Deutch, Cardoza, Chandler, Higgins, Schwartz, Wilson (FL), Bass, Keating, Cicilline.

H.R. 1280, as amended, was ordered favorably reported to the House, by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House Rule XIII, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the “Background and Purpose” portion of this report, above.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of House Rule XIII, the committee adopts as its own the estimate of new budget authority, entitlement authority, and tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2011.

Hon. ILEANA ROS-LEHTINEN, *Chairman,*
Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1280, a bill to amend the Atomic Energy Act of 1954 to require Congressional approval of agreements for peaceful nuclear cooperation with foreign countries, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Raymond Hall, who can be reached at 226–2840.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure

cc: Honorable Howard L. Berman
Ranking Member

H.R. 1280—A bill to amend the Atomic Energy Act of 1954 to require Congressional approval of agreements for peaceful nuclear cooperation with foreign countries, and for other purposes

As amended by the House Committee on Foreign Affairs on April 14, 2011

H.R. 1280 would amend the Atomic Energy Act of 1954 by adding new requirements for agreements for commercial nuclear exports negotiated under section 123 of that act. Such agreements are required for U.S. companies to export commercial nuclear materials, technologies, and services to foreign nations. The bill would require nations signing those agreements to forswear any future development of facilities for enriching or reprocessing nuclear materials. That requirement could lead to fewer agreements between the United States and foreign countries, but CBO estimates that it would have no significant effect on the budget.

The bill also would increase Congressional reporting requirements related to negotiating section 123 agreements. Such requirements would have an insignificant effect on the budget, CBO estimates. Those costs would be subject to the availability of appropriated funds.

Pay-as-you-go procedures do not apply because enacting the bill would not affect direct spending or revenues.

H.R. 1280 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on U.S. exporters of nuclear materials and other defense-related items sent as non-humanitarian assistance. Because of uncertainty about the future income from such exports, CBO cannot determine whether the aggregate cost of the private-sector mandates contained in the legislation would exceed the annual threshold established in UMRA (\$142 million for private-sector mandates in 2011, adjusted annually for inflation). However, given the nature of the exports being restricted and the limited number of public entities affected, CBO estimates the aggregate cost of the mandates on the public sector would not exceed the annual threshold established in UMRA (\$71 million for intergovernmental mandates in 2011, adjusted annually for inflation).

The bill would prohibit U.S. suppliers from exporting some items and services that are sent as non-humanitarian assistance to any country that withdraws from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Given the low historical rate of withdrawal from the NPT, it is unlikely that this mandate would be imposed. If, however, a country withdraws from the NPT, some private-sector entities could lose income. CBO cannot estimate the magnitude of such losses because the value of assistance and exports from private-sector entities varies greatly and the number of items exported as a form of assistance is unknown. CBO estimates that the cost of the mandate on state, local, and tribal governments would be small because assistance and exports from public entities—primarily colleges and universities—is far more limited.

The bill also would impose a mandate on U.S. nuclear suppliers by prohibiting the export of nuclear materials and technologies to any country designated by the Director of the CIA as one of proliferation concern. Based on information from the Nuclear Regulatory Commission and historical data on the total value of U.S.

nuclear exports and their distribution among importing countries, CBO expects that the forgone income from nuclear exports, if suspended, would probably be minimal for both public (including mostly universities) and private exporters.

The CBO staff contacts for this estimate are Raymond Hall (for the federal costs), J'nell Blanco (for the intergovernmental impact), and Marin Randall (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

As explained more specifically in the “Background and Purpose” and “Section-by-Section Analysis” portions of this report, the principal goals of H.R. 1280 are to enhance the role of Congress in the review and approval of nuclear cooperation agreements and to add certain nonproliferation-related conditions to the requirements for such agreements.

NEW ADVISORY COMMITTEES

H.R. 1280 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 1280 does not relate to terms and conditions of employment or access to public services or accommodations, as described in section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

EARMARK IDENTIFICATION

H.R. 1280 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(e), 9(f), and 9(g) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

Section 1. Requirement for Congressional Approval of Agreements for Peaceful Nuclear Cooperation

This section makes several changes to the Atomic Energy Act of 1954 (AEA) to strengthen the existing nonproliferation conditions that any new nuclear cooperation agreement must meet in order to be submitted by the President for Congressional consideration. It also makes a change to the manner in which Congress considers such agreements.

Section 123(a)(3) of the AEA forbids a cooperating country in a nuclear cooperation agreement from using any U.S.-exported equipment or material, or any byproduct material, in or for development of a nuclear explosive device. This section broadens this requirement to include any such material, equipment, or material acquired from any other source, foreign or domestic.

Section 123 (a)(4) of the AEA requires that any proposed nuclear cooperation agreement confer upon the United States the “right of return” of any U.S.-origin nuclear exported item or material, or byproduct material, if the cooperating country detonates a nuclear explosive device or terminates or abrogates an International Atomic Energy Agency (IAEA) safeguards agreement. This section of H.R.

1280, as amended, expands the scope of this requirement to include the violation of any provision of its nuclear cooperation agreement with the United States.

Section 123(a)(6) requires that any nuclear cooperation agreement must commit the cooperating country to maintain “adequate physical security” regarding any nuclear material exported to that country by the U.S., or any byproduct nuclear material. This section of H.R. 1280, as amended, broadens the application of that commitment to extend to any nuclear material acquired from any other source other than the United States.

This section adds two new requirements to those in section 123 (a) of the AEA:

- a guaranty by the cooperating party that no nationals of a third country will be permitted access to any reactor, related equipment, or sensitive materials transferred under the agreement for cooperation without the prior consent of the United States; and
- a commitment to maintain and, in the case of a country without such a legal regime in place, a commitment to enact at the earliest possible date, and in no case later than one year after the agreement enters into force, a legal regime providing for adequate protection from civil liability that will allow for the participation of United States suppliers in any effort by the country to develop civilian nuclear power.”

Section 123(d) of the AEA sets forth the procedures by which a proposed agreement for cooperation that has been submitted to the Congress is to be reviewed. This section of H.R. 1280, as amended, requires that a proposed agreement for civil nuclear cooperation that does not contain a legally-binding commitment that the cooperating country will not engage in uranium enrichment or spent-fuel reprocessing activities (ENR), or acquire or construct facilities for such activities, anywhere in its territory, can come into effect only if Congress adopts, and there is enacted, a joint resolution of approval. If a proposed new agreement does contain such a commitment, it can go into effect after lying before Congress for 90 days of continuous session, unless the Congress adopts and enacts a joint resolution of disapproval during the last 60 days of continuous session of such period. For the renewal of an existing agreement with a commitment to forgo ENR, Congress will have 30 days of continuous session to disapprove such agreement.

This section also adds conditions that a cooperating party must meet in order to qualify for a nuclear cooperation agreement with the United States:

- the cooperating party has acceded to and is fully implementing the provisions and guidelines of the Chemical Weapons Convention; the Biological Weapons Convention; and all other international agreements to which the United States is a party regarding the export of nuclear, chemical, biological, and advanced conventional weapons, including missiles and other delivery systems;
- has established and is fully implementing an effective export control system, including fully implementing the provisions

and guidelines of United Nations Security Council Resolution 1540;

- is in full compliance with all United Nations conventions to which the United States is a party and all Security Council resolutions regarding the prevention of the proliferation of weapons of mass destruction, including the Convention on the Physical Protection of Nuclear Material, and the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism;
- is not a Destination of Diversion Concern under section 303 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195);
- is closely cooperating with the United States to prevent state sponsors of terrorism from acquiring or developing chemical, biological, or nuclear weapons or related technologies or acquiring or developing destabilizing numbers and types of advanced conventional weapons, including ballistic missiles; and
- has signed, ratified, and is fully implementing an Additional Protocol to its safeguards agreement with the IAEA.

This section also states that subsequent arrangements to existing nuclear cooperation agreements can become effective only if Congress enacts a joint resolution of approval according to the amended procedures noted above.

Section 2. Withdrawal from Treaty on the Non-Proliferation of Nuclear Weapons.

This section states that it is the policy of the United States government to oppose the withdrawal by any signatory from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and to use all political, economic, and diplomatic means to deter, prevent, or reverse any such withdrawal. It prohibits U.S. assistance, other than humanitarian assistance, from being provided to any such country and requires the U.S. to seek the return of any material, equipment, or components transferred to the country under a nuclear cooperation agreement.

Section 3. Report on Comparability of Nonproliferation Conditions by Foreign Nuclear Suppliers.

This section requires the President to provide the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 180 days after the enactment of this Act a report on the extent to which each country that engages in civil nuclear exports requires nuclear nonproliferation conditions comparable to those in this Act. The report must include information on U.S.-origin components in each country's nuclear exports, investments in the U.S. by entities from those countries that are engaged in nuclear exports, and any U.S. grant, loan, or loan guarantee to such country or entity.

Section 4. Initiatives and Negotiations Relating to Agreements for Peaceful Nuclear Cooperation.

This provision amends subsection (f) of section 123 (as redesignated), to require the President to keep the Committee on Foreign Affairs of the House of Representatives and the Committee on For-

eign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation prior to the President's announcement of such initiative or negotiations. The President is also required to consult with the committees concerning such initiative or negotiations beginning not later than 15 calendar days after the initiation of any such negotiations, or the receipt or transmission of a draft agreement, whichever occurs first, and monthly thereafter until such time as the negotiations are concluded.

Section 5. Conduct Resulting In Termination of Nuclear Exports.

Section 5 amends section 129 a.(2) of the AEA to insert a new subparagraph (D) which prohibits the export of any U.S. nuclear materials, equipment, or sensitive nuclear technology to any nation or group of nations that has been determined by the President to be a 'country of proliferation concern' under section 1055(g)(2) of the National Defense Authorization Act for Fiscal Year 2010 (50 U.S.C. 2371(g)(2)).

Section 6. Congressional Review Procedures.

This section amends section 130 i.(1) of the AEA to specify the language of the joint resolution of approval addressed in section 1 of this Act. This provision allows the Congress to add provisions to a joint resolution of approval, e.g., reports, conditions for the entry into force of the agreement or the granting of export licenses pursuant to such agreement, and other relevant provisions.

The AEA allows Congress only two options: to approve or disapprove of a proposed nuclear cooperation agreement without amendment. H.R. 1280 retains this same set of options for new agreements that include a legally binding commitment to forgo acquiring an ENR capability. For agreements that do not have this ENR provision, H.R. 1280 would require that Congress affirmatively vote to approve such agreements, as well as provide the option to add conditions, e.g., a requirement for a Presidential certification regarding the nonproliferation behavior of the country before the agreement could come into force. By contrast, a similar requirement for the U.S.-China nuclear cooperation agreement required passage of separate legislation. Such conditions could facilitate approval of such agreements by addressing Congressional concerns regarding the agreement, such as the country's commitment to non-proliferation.

Section 7. Requirement of Liability Protection for United States Nuclear Suppliers.

This section amends the AEA to require that, prior to issuing a license for any nuclear export, the President must certify that a cooperating country has liability protection for United States nuclear suppliers equivalent to that of the Convention on Supplementary Compensation for Nuclear Damage.

Section 8. Prohibition on Assistance to State Sponsors of Proliferation of Weapons of Mass Destruction.

This section prohibits U.S. assistance to countries the governments of which have repeatedly engaged in or supported proliferation activities if the Secretary of State has issued a determination

to that effect. This determination must be published in the Federal Register and cannot be rescinded unless the Secretary provides to the appropriate committees a report certifying that the government of that country is not engaged in or supporting proliferation activities and has provided assurances that it will not engage in such activities in the future or that the government has not engaged in proliferation activities in the previous 24 months. The President may waive this requirement if he determines that U.S. national security or humanitarian reason justify a waiver and provides to the appropriate congressional committees a report stating the reasons for the waiver and the type and amount of the proposed assistance.

Section 9. Additional Protocol as a Criterion for United States Assistance.

This section states that it is the policy of the U.S. to ensure that every signatory of the NPT should bring into force an Additional Protocol to its safeguards agreement with the IAEA. It also requires the U.S. to take this policy into account when considering providing assistance to any country.

Section 10. Sense of Congress.

This section states that it is the sense of Congress that the President should ensure that participation in international nuclear programs conducted by the United States is limited to the greatest extent practicable to governmental and nongovernmental participants from countries that have adopted nonproliferation provisions in their nuclear cooperation and nuclear export control policies comparable to the policies specified in section 123 of the AEA as amended by this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY

* * * * *

CHAPTER 11—INTERNATIONAL ACTIVITIES

* * * * *

SEC. 123. COOPERATION WITH OTHER NATIONS.—[No cooperation] *Subject to subsection f., no cooperation* with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—
 a. the proposed agreement for cooperation has been submitted to the President, which proposed arrangement shall include the terms, conditions, duration, nature, and

scope of the cooperation; and shall include the following requirements:

(1) * * *

* * * * *

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement *or acquired from any other source*, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement *or acquired from any other source*, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device [or terminates or], *terminates*, abrogates an agreement providing for IAEA safeguards, *or violates or abrogates any provision contained within such agreement*;

* * * * *

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement *or acquired from any other source* and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement *or acquired from any other source*;

* * * * *

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. 144 c., or 144 d., a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; [and]

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection[.];

(10) *a guaranty by the cooperating party that no nationals of a third country shall be permitted access to any reactor, related equipment, or sensitive materials transferred under the agreement for cooperation without the prior consent of the United States; and*

(11) *a commitment to maintain and, in the case of a country without such a legal regime in place, a commitment to enact at the earliest possible date, and in no case later than one year after the agreement enters into force, a legal regime providing for adequate protection from civil liability that will allow for the participation of United States suppliers in any effort by the country to develop civilian nuclear power.*

【The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security.】 Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy; and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission. The Secretary of State shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those

agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 d. which are to be implemented by the Department of Defense, by the Secretary of Defense;

* * * * *

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.) together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; **[and]**

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall **[not]** become effective *only* if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does **[not]** favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection 123 a., have been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement**], unless the proposed agreement includes a requirement as part of the agreement for cooperation or other legally binding document that is considered part of the agreement that no enrichment or reprocessing activities, or acquisition or construction of facilities for such activities, will occur within the territory over which the cooperating party exercises sovereignty, in which case the agreement shall become effective**

unless the Congress adopts, and there is enacted, a joint resolution of disapproval (1) during such sixty-day period for a new agreement; or (2) during a period of 30 days of continuous session for a renewal agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress[.]; and

e. the cooperating party—

(1) has acceded to and is fully implementing the provisions and guidelines of—

(A) the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (commonly known as the "Chemical Weapons Convention");

(B) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction (commonly known as the "Biological Weapons Convention"); and

(C) all other international agreements to which the United States is a party regarding the export of nuclear, chemical, biological, and advanced conventional weapons, including missiles and other delivery systems;

(2) *has established and is fully implementing an effective export control system, including fully implementing the provisions and guidelines of United Nations Security Council Resolution 1540;*

(3) *is in full compliance with all United Nations conventions to which the United States is a party and all Security Council resolutions regarding the prevention of the proliferation of weapons of mass destruction, including—*

(A) *the Convention on the Physical Protection of Nuclear Material; and*

(B) *the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism;*

(4) *is not a Destination of Diversion Concern under section 303 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195);*

(5) *is closely cooperating with the United States to prevent state sponsors of terrorism (the term “state sponsor of terrorism” means a country the government of which has been determined by the Secretary of State, for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or other provision of law, is a government that has repeatedly provided support for acts of international terrorism) from—*

(A) *acquiring or developing chemical, biological, or nuclear weapons or related technologies; or*

(B) *acquiring or developing destabilizing numbers and types of advanced conventional weapons, including ballistic missiles; and*

(6) *has signed, ratified, and is fully implementing an Additional Protocol to its safeguards agreement with the International Atomic Energy Agency.*

【e. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d., or an amendment thereto).】

f. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section prior to the President’s announcement of such initiative or negotiations. The President shall consult with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate concerning such initiative or negotiations beginning not later than 15 calendar days after the initiation of any such negotiations, or the receipt or transmission of a draft agreement, whichever occurs first, and monthly thereafter until such time as the negotiations are concluded.

g. For purposes of this section—

(1) the term “new agreement” means an agreement for cooperation with a country with respect to which the United States has not, on or after the date of the enactment of this subsection, entered into such an agreement; and

(2) the term “renewal agreement” means an agreement for cooperation with a country with respect to which the United States has, before the date of the enactment of this subsection, entered into such an agreement.

* * * * *

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—

a. No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) * * *

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,

(A) * * *

* * * * *

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes; or

(D) been determined to be a “country of proliferation concern” under section 1055(g)(2) of the National Defense Authorization Act for Fiscal Year 2010 (50 U.S.C. 2371(g)(2));

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President’s determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

* * * * *

SEC. 130. CONGRESSIONAL REVIEW PROCEDURES.—

a. * * *

* * * * *

i.(1) For the purposes of this subsection, the term “joint resolution” means—

(A) * * *

(B) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving clause of which—

(i) is as follows: “That the Congress does favor the proposed agreement for cooperation transmitted to the Congress by the President on _____.”; and

(ii) includes, immediately after the language specified in clause (i), any other provisions to accompany such proposed agreement for cooperation.

[(B)] (C) for a determination under section 129 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: “That the Congress does not favor the determination transmitted to the Congress by the President on _____, or

[(C)] (D) for a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, a joint resolution, the matter after the resolving clause of which is as follows: “That the Congress does not favor the subsequent arrangement to the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.”,

* * * * *

SEC. 131. SUBSEQUENT ARRANGEMENTS.—

a.(1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and [security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication.] *security. Such subsequent arrangement shall become effective only if Congress enacts a joint resolution of approval according to the procedures of sections 123 d. and 130 i. of this Act. Any such nuclear proliferation assessment statement shall be submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate not later than the 31st day of continuous session after submission of the subsequent arrangement.* Whenever the Secretary of State is required to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the requirement to prepare a Nuclear Pro-

liferation Assessment Statement shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

* * * * *

SEC. 135. REQUIREMENT OF LIABILITY PROTECTION FOR UNITED STATES NUCLEAR SUPPLIERS.

The President may not issue a license for the export of nuclear material, facilities, components, or other goods, services, or technology to a country pursuant to an agreement that has entered into force after the date of the enactment of this section unless the President determines that such country has liability protection for United States nuclear suppliers that is equivalent to the liability protection specified under the Convention on Supplementary Compensation for Nuclear Damage.

* * * * *

○