

1 **TITLE I—UNITED STATES AND**
2 **INDIA NUCLEAR COOPERATION**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Henry J. Hyde United
5 States-India Peaceful Atomic Energy Cooperation Act of
6 2006”.

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

8 It is the sense of Congress that—

9 (1) preventing the proliferation of nuclear
10 weapons, other weapons of mass destruction, the
11 means to produce them, and the means to deliver
12 them are critical objectives for United States foreign
13 policy;

14 (2) sustaining the Nuclear Non-Proliferation
15 Treaty (NPT) and strengthening its implementation,
16 particularly its verification and compliance, is the
17 keystone of United States nonproliferation policy;

18 (3) the NPT has been a significant success in
19 preventing the acquisition of nuclear weapons capa-
20 bilities and maintaining a stable international secu-
21 rity situation;

22 (4) countries that have never become a party to
23 the NPT and remain outside that treaty’s legal re-

1 gime pose a potential challenge to the achievement
2 of the overall goals of global nonproliferation, be-
3 cause those countries have not undertaken the NPT
4 obligation to prohibit the spread of nuclear weapons
5 capabilities;

6 (5) it is in the interest of the United States to
7 the fullest extent possible to ensure that those coun-
8 tries that are not States Party to the NPT are re-
9 sponsible in the disposition of any nuclear tech-
10 nology they develop;

11 (6) it is in the interest of the United States to
12 enter into an agreement for nuclear cooperation ar-
13 ranged pursuant to section 123 of the Atomic En-
14 ergy Act of 1954 (42 U.S.C. 2153) with a country
15 that has never been a State Party to the NPT if—

16 (A) the country has demonstrated respon-
17 sible behavior with respect to the nonprolifera-
18 tion of technology related to nuclear weapons
19 and the means to deliver them;

20 (B) the country has a functioning and un-
21 interrupted democratic system of government,
22 has a foreign policy that is congruent to that of
23 the United States, and is working with the
24 United States on key foreign policy initiatives
25 related to nonproliferation;

1 (C) such cooperation induces the country
2 to promulgate and implement substantially im-
3 proved protections against the proliferation of
4 technology related to nuclear weapons and the
5 means to deliver them, and to refrain from ac-
6 tions that would further the development of its
7 nuclear weapons program; and

8 (D) such cooperation will induce the coun-
9 try to give greater political and material sup-
10 port to the achievement of United States global
11 and regional nonproliferation objectives, espe-
12 cially with respect to dissuading, isolating, and,
13 if necessary, sanctioning and containing states
14 that sponsor terrorism and terrorist groups that
15 are seeking to acquire a nuclear weapons capa-
16 bility or other weapons of mass destruction ca-
17 pability and the means to deliver such weapons;

18 (7) the United States should continue its policy
19 of engagement, collaboration, and exchanges with
20 and between India and Pakistan;

21 (8) strong bilateral relations with India are in
22 the national interest of the United States;

23 (9) the United States and India share common
24 democratic values and the potential for increasing
25 and sustained economic engagement;

1 (10) commerce in civil nuclear energy with
2 India by the United States and other countries has
3 the potential to benefit the people of all countries;

4 (11) such commerce also represents a signifi-
5 cant change in United States policy regarding com-
6 merce with countries that are not States Party to
7 the NPT, which remains the foundation of the inter-
8 national nonproliferation regime;

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

17 (13) the United States should not seek to facili-
18 tate or encourage the continuation of nuclear ex-
19 ports to India by any other party if such exports are
20 terminated under United States law.

21 **SEC. 103. STATEMENTS OF POLICY.**

22 (a) IN GENERAL.—The following shall be the policies
23 of the United States:

1 (1) Oppose the development of a capability to
2 produce nuclear weapons by any non-nuclear weapon
3 state, within or outside of the NPT.

4 (2) Encourage States Party to the NPT to in-
5 terpret the right to “develop research, production
6 and use of nuclear energy for peaceful purposes”, as
7 set forth in Article IV of the NPT, as being a right
8 that applies only to the extent that it is consistent
9 with the object and purpose of the NPT to prevent
10 the spread of nuclear weapons and nuclear weapons
11 capabilities, including by refraining from all nuclear
12 cooperation with any State Party that the Inter-
13 national Atomic Energy Agency (IAEA) determines
14 is not in full compliance with its NPT obligations,
15 including its safeguards obligations.

16 (3) Act in a manner fully consistent with the
17 Guidelines for Nuclear Transfers and the Guidelines
18 for Transfers of Nuclear-Related Dual-Use Equip-
19 ment, Materials, Software and Related Technology
20 developed by the NSG, and decisions related to the
21 those guidelines, and the rules and practices regard-
22 ing NSG decisionmaking.

23 (4) Strengthen the NSG guidelines and deci-
24 sions concerning consultation by members regarding
25 violations of supplier and recipient understandings

1 by instituting the practice of a timely and coordi-
2 nated response by NSG members to all such viola-
3 tions, including termination of nuclear transfers to
4 an involved recipient, that discourages individual
5 NSG members from continuing cooperation with
6 such recipient until such time as a consensus regard-
7 ing a coordinated response has been achieved.

8 (5) Given the special sensitivity of equipment
9 and technologies related to the enrichment of ura-
10 nium, the reprocessing of spent nuclear fuel, and the
11 production of heavy water, work with members of
12 the NSG, individually and collectively, to further re-
13 strict the transfers of such equipment and tech-
14 nologies, including to India.

15 (6) Seek to prevent the transfer to a country of
16 nuclear equipment, materials, or technology from
17 other participating governments in the NSG or from
18 any other source if nuclear transfers to that country
19 are suspended or terminated pursuant to this title,
20 the Atomic Energy Act of 1954 (42 U.S.C. 2011 et
21 seq.), or any other United States law.

22 (b) WITH RESPECT TO SOUTH ASIA.—The following
23 shall be the policies of the United States with respect to
24 South Asia:

1 (1) Achieve, at the earliest possible date, a mor-
2 atorium on the production of fissile material for nu-
3 clear explosive purposes by India, Pakistan, and the
4 People's Republic of China.

5 (2) Achieve, at the earliest possible date, the
6 conclusion and implementation of a treaty banning
7 the production of fissile material for nuclear weap-
8 ons to which both the United States and India be-
9 come parties.

10 (3) Secure India's—

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

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

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

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

23 (E) ratification of or accession to the Con-
24 vention on Supplementary Compensation for

1 Nuclear Damage, done at Vienna on September
2 12, 1997.

3 (4) Secure India's full and active participation
4 in United States efforts to dissuade, isolate, and, if
5 necessary, sanction and contain Iran for its efforts
6 to acquire weapons of mass destruction, including a
7 nuclear weapons capability and the capability to en-
8 rich uranium or reprocess nuclear fuel, and the
9 means to deliver weapons of mass destruction.

10 (5) Seek to halt the increase of nuclear weapon
11 arsenals in South Asia and to promote their reduc-
12 tion and eventual elimination.

13 (6) Ensure that spent fuel generated in India's
14 civilian nuclear power reactors is not transferred to
15 the United States except pursuant to the Congres-
16 sional review procedures required under section 131
17 f. of the Atomic Energy Act of 1954 (42 U.S.C.
18 2160 (f)).

19 (7) Pending implementation of the multilateral
20 moratorium described in paragraph (1) or the treaty
21 described in paragraph (2), encourage India not to
22 increase its production of fissile material at
23 unsafeguarded nuclear facilities.

24 (8) Ensure that any safeguards agreement or
25 Additional Protocol to which India is a party with

1 the IAEA can reliably safeguard any export or reex-
2 port to India of any nuclear materials and equip-
3 ment.

4 (9) Ensure that the text and implementation of
5 any agreement for cooperation with India arranged
6 pursuant to section 123 of the Atomic Energy Act
7 of 1954 (42 U.S.C. 2153) meet the requirements set
8 forth in subsections a.(1) and a.(3) through a.(9) of
9 such section.

10 (10) Any nuclear power reactor fuel reserve
11 provided to the Government of India for use in safe-
12 guarded civilian nuclear facilities should be commen-
13 surate with reasonable reactor operating require-
14 ments.

15 **SEC. 104. WAIVER AUTHORITY AND CONGRESSIONAL AP-**
16 **PROVAL.**

17 (a) IN GENERAL.—If the President makes the deter-
18 mination described in subsection (b), the President may—

19 (1) exempt a proposed agreement for coopera-
20 tion with India arranged pursuant to section 123 of
21 the Atomic Energy Act of 1954 (42 U.S.C. 2153)
22 from the requirement of subsection a.(2) of such sec-
23 tion;

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

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

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

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

12 (b) DETERMINATION BY THE PRESIDENT.—The de-
13 termination referred to in subsection (a) is a determina-
14 tion by the President that the following actions have oc-
15 curred:

16 (1) India has provided the United States and
17 the IAEA with a credible plan to separate civil and
18 military nuclear facilities, materials, and programs,
19 and has filed a declaration regarding its civil facili-
20 ties and materials with the IAEA.

21 (2) India and the IAEA have concluded all legal
22 steps required prior to signature by the parties of an
23 agreement requiring the application of IAEA safe-
24 guards in perpetuity in accordance with IAEA
25 standards, principles, and practices (including IAEA

1 Board of Governors Document GOV/1621 (1973))
2 to India's civil nuclear facilities, materials, and pro-
3 grams as declared in the plan described in para-
4 graph (1), including materials used in or produced
5 through the use of India's civil nuclear facilities.

6 (3) India and the IAEA are making substantial
7 progress toward concluding an Additional Protocol
8 consistent with IAEA principles, practices, and poli-
9 cies that would apply to India's civil nuclear pro-
10 gram.

11 (4) India is working actively with the United
12 States for the early conclusion of a multilateral trea-
13 ty on the cessation of the production of fissile mate-
14 rials for use in nuclear weapons or other nuclear ex-
15 plosive devices.

16 (5) India is working with and supporting
17 United States and international efforts to prevent
18 the spread of enrichment and reprocessing tech-
19 nology to any state that does not already possess
20 full-scale, functioning enrichment or reprocessing
21 plants.

22 (6) India is taking the necessary steps to secure
23 nuclear and other sensitive materials and technology,
24 including through—

1 (A) the enactment and effective enforce-
2 ment of comprehensive export control legislation
3 and regulations;

4 (B) harmonization of its export control
5 laws, regulations, policies, and practices with
6 the guidelines and practices of the Missile Tech-
7 nology Control Regime (MTCR) and the NSG;
8 and

9 (C) adherence to the MTCR and the NSG
10 in accordance with the procedures of those re-
11 gimes for unilateral adherence.

12 (7) The NSG has decided by consensus to per-
13 mit supply to India of nuclear items covered by the
14 guidelines of the NSG.

15 (c) SUBMISSION TO CONGRESS.—

16 (1) IN GENERAL.—The President shall submit
17 to the appropriate congressional committees the de-
18 termination made pursuant to subsection (b), to-
19 gether with a report detailing the basis for the deter-
20 mination.

21 (2) INFORMATION TO BE INCLUDED.—To the
22 fullest extent available to the United States, the re-
23 port referred to in paragraph (1) shall include the
24 following information:

1 (A) A summary of the plan provided by
2 India to the United States and the IAEA to
3 separate India's civil and military nuclear facili-
4 ties, materials, and programs, and the declara-
5 tion made by India to the IAEA identifying In-
6 dia's civil facilities to be placed under IAEA
7 safeguards, including an analysis of the credi-
8 bility of such plan and declaration, together
9 with copies of the plan and declaration.

10 (B) A summary of the agreement that has
11 been entered into between India and the IAEA
12 requiring the application of safeguards in ac-
13 cordance with IAEA practices to India's civil
14 nuclear facilities as declared in the plan de-
15 scribed in subparagraph (A), together with a
16 copy of the agreement, and a description of the
17 progress toward its full implementation.

18 (C) A summary of the progress made to-
19 ward conclusion and implementation of an Ad-
20 ditional Protocol between India and the IAEA,
21 including a description of the scope of such Ad-
22 ditional Protocol.

23 (D) A description of the steps that India
24 is taking to work with the United States for the
25 conclusion of a multilateral treaty banning the

1 production of fissile material for nuclear weap-
2 ons, including a description of the steps that
3 the United States has taken and will take to
4 encourage India to identify and declare a date
5 by which India would be willing to stop produc-
6 tion of fissile material for nuclear weapons uni-
7 laterally or pursuant to a multilateral morato-
8 rium or treaty.

9 (E) A description of the steps India is tak-
10 ing to prevent the spread of nuclear-related
11 technology, including enrichment and reprocess-
12 ing technology or materials that can be used to
13 acquire a nuclear weapons capability, as well as
14 the support that India is providing to the
15 United States to further United States objec-
16 tives to restrict the spread of such technology.

17 (F) A description of the steps that India is
18 taking to secure materials and technology appli-
19 cable for the development, acquisition, or manu-
20 facture of weapons of mass destruction and the
21 means to deliver such weapons through the ap-
22 plication of comprehensive export control legis-
23 lation and regulations, and through harmoni-
24 zation with and adherence to MTCR, NSG,
25 Australia Group, and Wassenaar Arrangement

1 guidelines, compliance with United Nations Se-
2 curity Council Resolution 1540, and participa-
3 tion in the Proliferation Security Initiative.

4 (G) A description and assessment of the
5 specific measures that India has taken to fully
6 and actively participate in United States and
7 international efforts to dissuade, isolate, and, if
8 necessary, sanction and contain Iran for its ef-
9 forts to acquire weapons of mass destruction,
10 including a nuclear weapons capability and the
11 capability to enrich uranium or reprocess nu-
12 clear fuel and the means to deliver weapons of
13 mass destruction.

14 (H) A description of the decision of the
15 NSG relating to nuclear cooperation with India,
16 including whether nuclear cooperation by the
17 United States under an agreement for coopera-
18 tion arranged pursuant to section 123 of the
19 Atomic Energy Act of 1954 (42 U.S.C. 2153)
20 is consistent with the decision, practices, and
21 policies of the NSG.

22 (I) A description of the scope of peaceful
23 cooperation envisioned by the United States
24 and India that will be implemented under the
25 agreement for nuclear cooperation, including

1 whether such cooperation will include the provi-
2 sion of enrichment and reprocessing technology.

3 (J) A description of the steps taken to en-
4 sure that proposed United States civil nuclear
5 cooperation with India will not in any way as-
6 sist India's nuclear weapons program.

7 (d) RESTRICTIONS ON NUCLEAR TRANSFERS.—

8 (1) IN GENERAL.—Pursuant to the obligations
9 of the United States under Article I of the NPT,
10 nothing in this title constitutes authority to carry
11 out any civil nuclear cooperation between the United
12 States and a country that is not a nuclear-weapon
13 State Party to the NPT that would in any way as-
14 sist, encourage, or induce that country to manufac-
15 ture or otherwise acquire nuclear weapons or nuclear
16 explosive devices.

17 (2) NSG TRANSFER GUIDELINES.—Notwith-
18 standing the entry into force of an agreement for co-
19 operation with India arranged pursuant to section
20 123 of the Atomic Energy Act of 1954 (42 U.S.C.
21 2153) and pursuant to this title, no item subject to
22 such agreement or subject to the transfer guidelines
23 of the NSG, or to NSG decisions related thereto,
24 may be transferred to India if such transfer would

1 be inconsistent with the transfer guidelines of the
2 NSG in effect on the date of the transfer.

3 (3) TERMINATION OF NUCLEAR TRANSFERS TO
4 INDIA.—

5 (A) IN GENERAL.—Notwithstanding the
6 entry into force of an agreement for cooperation
7 with India arranged pursuant to section 123 of
8 the Atomic Energy Act of 1954 (42 U.S.C.
9 2153) and pursuant to this title, and except as
10 provided under subparagraph (B), exports of
11 nuclear and nuclear-related material, equip-
12 ment, or technology to India shall be termi-
13 nated if there is any materially significant
14 transfer by an Indian person of—

15 (i) nuclear or nuclear-related material,
16 equipment, or technology that is not con-
17 sistent with NSG guidelines or decisions,
18 or

19 (ii) ballistic missiles or missile-related
20 equipment or technology that is not con-
21 sistent with MTCR guidelines,

22 unless the President determines that cessation
23 of such exports would be seriously prejudicial to
24 the achievement of United States nonprolifera-

1 tion objectives or otherwise jeopardize the com-
2 mon defense and security.

3 (B) EXCEPTION.—The President may
4 choose not to terminate exports of nuclear and
5 nuclear-related material, equipment, and tech-
6 nology to India under subparagraph (A) if—

7 (i) the transfer covered under such
8 subparagraph was made without the
9 knowledge of the Government of India;

10 (ii) at the time of the transfer, either
11 the Government of India did not own, con-
12 trol, or direct the Indian person that made
13 the transfer or the Indian person that
14 made the transfer is a natural person who
15 acted without the knowledge of any entity
16 described in subparagraph (B) or (C) of
17 section 110(5); and

18 (iii) the President certifies to the ap-
19 propriate congressional committees that
20 the Government of India has taken or is
21 taking appropriate judicial or other en-
22 forcement actions against the Indian per-
23 son with respect to such transfer.

1 (4) EXPORTS, REEXPORTS, TRANSFERS, AND
2 RETRANSFERS TO INDIA RELATED TO ENRICHMENT,
3 REPROCESSING, AND HEAVY WATER PRODUCTION.—

4 (A) IN GENERAL.—

5 (i) NUCLEAR REGULATORY COMMIS-
6 SION.—The Nuclear Regulatory Commis-
7 sion may only issue licenses for the export
8 or reexport to India of any equipment,
9 components, or materials related to the en-
10 richment of uranium, the reprocessing of
11 spent nuclear fuel, or the production of
12 heavy water if the requirements of sub-
13 paragraph (B) are met.

14 (ii) SECRETARY OF ENERGY.—The
15 Secretary of Energy may only issue au-
16 thorizations for the transfer or retransfer
17 to India of any equipment, materials, or
18 technology related to the enrichment of
19 uranium, the reprocessing of spent nuclear
20 fuel, or the production of heavy water (in-
21 cluding under the terms of a subsequent
22 arrangement under section 131 of the
23 Atomic Energy Act of 1954 (42 U.S.C.
24 2160)) if the requirements of subpara-
25 graph (B) are met.

1 (B) REQUIREMENTS FOR APPROVALS.—

2 Exports, reexports, transfers, and retransfers
3 referred to in subparagraph (A) may only be
4 approved if—

5 (i) the end user—

6 (I) is a multinational facility par-
7 ticipating in an IAEA-approved pro-
8 gram to provide alternatives to na-
9 tional fuel cycle capabilities; or

10 (II) is a facility participating in,
11 and the export, reexport, transfer, or
12 retransfer is associated with, a bilat-
13 eral or multinational program to de-
14 velop a proliferation-resistant fuel
15 cycle;

16 (ii) appropriate measures are in place
17 at any facility referred to in clause (i) to
18 ensure that no sensitive nuclear tech-
19 nology, as defined in section 4(5) of the
20 Nuclear Nonproliferation Act of 1978 (22
21 U.S.C. 3203(5)), will be diverted to any
22 person, site, facility, location, or program
23 not under IAEA safeguards; and

24 (iii) the President determines that
25 the export, reexport, transfer, or retransfer

1 will not assist in the manufacture or acqui-
2 sition of nuclear explosive devices or the
3 production of fissile material for military
4 purposes.

5 (5) NUCLEAR EXPORT ACCOUNTABILITY PRO-
6 GRAM.—

7 (A) IN GENERAL.—The President shall en-
8 sure that all appropriate measures are taken to
9 maintain accountability with respect to nuclear
10 materials, equipment, and technology sold,
11 leased, exported, or reexported to India so as to
12 ensure—

13 (i) full implementation of the protec-
14 tions required under section 123 a.(1) of
15 the Atomic Energy Act of 1954 (42 U.S.C.
16 2153 (a)(1)); and

17 (ii) United States compliance with Ar-
18 ticle I of the NPT.

19 (B) MEASURES.—The measures taken pur-
20 suant to subparagraph (A) shall include the fol-
21 lowing:

22 (i) Obtaining and implementing assur-
23 ances and conditions pursuant to the ex-
24 port licensing authorities of the Nuclear
25 Regulatory Commission and the Depart-

1 ment of Commerce and the authorizing au-
2 thorities of the Department of Energy, in-
3 cluding, as appropriate, conditions regard-
4 ing end-use monitoring.

5 (ii) A detailed system of reporting and
6 accounting for technology transfers, includ-
7 ing any retransfers in India, authorized by
8 the Department of Energy pursuant to
9 section 57 b. of the Atomic Energy Act of
10 1954 (42 U.S.C. 2077(b)). Such system
11 shall be capable of providing assurances
12 that—

13 (I) the identified recipients of the
14 nuclear technology are authorized to
15 receive the nuclear technology;

16 (II) the nuclear technology iden-
17 tified for transfer will be used only for
18 peaceful safeguarded nuclear activities
19 and will not be used for any military
20 or nuclear explosive purpose; and

21 (III) the nuclear technology iden-
22 tified for transfer will not be retrans-
23 ferred without the prior consent of the
24 United States, and facilities, equip-
25 ment, or materials derived through

1 the use of transferred technology will
2 not be transferred without the prior
3 consent of the United States.

4 (iii) In the event the IAEA is unable
5 to implement safeguards as required by an
6 agreement for cooperation arranged pursu-
7 ant to section 123 of the Atomic Energy
8 Act of 1954 (42 U.S.C. 2153), appropriate
9 assurance that arrangements will be put in
10 place expeditiously that are consistent with
11 the requirements of section 123 a.(1) of
12 such Act (42 U.S.C. 2153(a)(1)) regarding
13 the maintenance of safeguards as set forth
14 in the agreement regardless of whether the
15 agreement is terminated or suspended for
16 any reason.

17 (C) IMPLEMENTATION.—The measures de-
18 scribed in subparagraph (B) shall be imple-
19 mented to provide reasonable assurances that
20 the recipient is complying with the relevant re-
21 quirements, terms, and conditions of any li-
22 censes issued by the United States regarding
23 such exports, including those relating to the
24 use, retransfer, safe handling, secure transit,
25 and storage of such exports.

1 (e) JOINT RESOLUTION OF APPROVAL REQUIRE-
2 MENT.—Section 123 d. of the Atomic Energy Act of 1954
3 (42 U.S.C. 2153(d)) is amended in the second proviso by
4 inserting after “that subsection” the following: “, or an
5 agreement exempted pursuant to section 104(a)(1) of the
6 Henry J. Hyde United States-India Peaceful Atomic En-
7 ergy Cooperation Act of 2006,”.

8 (f) SUNSET.—The authority provided under sub-
9 section (a)(1) to exempt an agreement shall terminate
10 upon the enactment of a joint resolution under section 123
11 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d))
12 approving such an agreement.

13 (g) REPORTING TO CONGRESS.—

14 (1) INFORMATION ON NUCLEAR ACTIVITIES OF
15 INDIA.—The President shall keep the appropriate
16 congressional committees fully and currently in-
17 formed of the facts and implications of any signifi-
18 cant nuclear activities of India, including—

19 (A) any material noncompliance on the
20 part of the Government of India with—

21 (i) the nonproliferation commitments
22 undertaken in the Joint Statement of July
23 18, 2005, between the President of the
24 United States and the Prime Minister of
25 India;

1 (ii) the separation plan presented in
2 the national parliament of India on March
3 7, 2006, and in greater detail on May 11,
4 2006;

5 (iii) a safeguards agreement between
6 the Government of India and the IAEA;

7 (iv) an Additional Protocol between
8 the Government of India and the IAEA;

9 (v) an agreement for cooperation be-
10 tween the Government of India and the
11 United States Government arranged pur-
12 suant to section 123 of the Atomic Energy
13 Act of 1954 (42 U.S.C. 2153) or any sub-
14 sequent arrangement under section 131 of
15 such Act (42 U.S.C. 2160);

16 (vi) the terms and conditions of any
17 approved licenses regarding the export or
18 reexport of nuclear material or dual-use
19 material, equipment, or technology; and

20 (vii) United States laws and regula-
21 tions regarding such licenses;

22 (B) the construction of a nuclear facility in
23 India after the date of the enactment of this
24 title;

1 (C) significant changes in the production
2 by India of nuclear weapons or in the types or
3 amounts of fissile material produced; and

4 (D) changes in the purpose or operational
5 status of any unsafeguarded nuclear fuel cycle
6 activities in India.

7 (2) IMPLEMENTATION AND COMPLIANCE RE-
8 PORT.—Not later than 180 days after the date on
9 which an agreement for cooperation with India ar-
10 ranged pursuant to section 123 of the Atomic En-
11 ergy Act of 1954 (42 U.S.C. 2153) enters into force,
12 and annually thereafter, the President shall submit
13 to the appropriate congressional committees a report
14 including—

15 (A) a description of any additional nuclear
16 facilities and nuclear materials that the Govern-
17 ment of India has placed or intends to place
18 under IAEA safeguards;

19 (B) a comprehensive listing of—

20 (i) all licenses that have been ap-
21 proved by the Nuclear Regulatory Commis-
22 sion and the Secretary of Energy for ex-
23 ports and reexports to India under parts
24 110 and 810 of title 10, Code of Federal
25 Regulations;

1 (ii) any licenses approved by the De-
2 partment of Commerce for the export or
3 reexport to India of commodities, related
4 technology, and software which are con-
5 trolled for nuclear nonproliferation reasons
6 on the Nuclear Referral List of the Com-
7 merce Control List maintained under part
8 774 of title 15, Code of Federal Regula-
9 tion, or any successor regulation;

10 (iii) any other United States author-
11 izations for the export or reexport to India
12 of nuclear materials and equipment; and

13 (iv) with respect to each such license
14 or other form of authorization described in
15 clauses (i), (ii), and (iii)—

16 (I) the number or other identi-
17 fying information of each license or
18 authorization;

19 (II) the name or names of the
20 authorized end user or end users;

21 (III) the name of the site, facil-
22 ity, or location in India to which the
23 export or reexport was made;

1 (IV) the terms and conditions in-
2 cluded on such licenses and authoriza-
3 tions;

4 (V) any post-shipment
5 verification procedures that will be ap-
6 plied to such exports or reexports; and

7 (VI) the term of validity of each
8 such license or authorization;

9 (C) a description of any significant nuclear
10 commerce between India and other countries,
11 including any such trade that—

12 (i) is not consistent with applicable
13 guidelines or decisions of the NSG; or

14 (ii) would not meet the standards ap-
15 plied to exports or reexports of such mate-
16 rial, equipment, or technology of United
17 States origin;

18 (D) either—

19 (i) an assessment that India is in full
20 compliance with the commitments and obli-
21 gations contained in the agreements and
22 other documents referenced in clauses (i)
23 through (vi) of paragraph (1)(A); or

24 (ii) an identification and analysis of
25 all compliance issues arising with regard to

1 the adherence by India to its commitments
2 and obligations, including—

3 (I) the measures the United
4 States Government has taken to rem-
5 edy or otherwise respond to such com-
6 pliance issues;

7 (II) the responses of the Govern-
8 ment of India to such measures;

9 (III) the measures the United
10 States Government plans to take to
11 this end in the coming year; and

12 (IV) an assessment of the impli-
13 cations of any continued noncompli-
14 ance, including whether nuclear com-
15 merce with India remains in the na-
16 tional security interest of the United
17 States;

18 (E)(i) an assessment of whether India is
19 fully and actively participating in United States
20 and international efforts to dissuade, isolate,
21 and, if necessary, sanction and contain Iran for
22 its efforts to acquire weapons of mass destruc-
23 tion, including a nuclear weapons capability (in-
24 cluding the capability to enrich uranium or re-
25 process nuclear fuel), and the means to deliver

1 weapons of mass destruction, including a de-
2 scription of the specific measures that India has
3 taken in this regard; and

4 (ii) if India is not assessed to be fully and
5 actively participating in such efforts, a descrip-
6 tion of—

7 (I) the measures the United States
8 Government has taken to secure India's
9 full and active participation in such efforts;

10 (II) the responses of the Government
11 of India to such measures; and

12 (III) the measures the United States
13 Government plans to take in the coming
14 year to secure India's full and active par-
15 ticipation;

16 (F) an analysis of whether United States
17 civil nuclear cooperation with India is in any
18 way assisting India's nuclear weapons program,
19 including through—

20 (i) the use of any United States
21 equipment, technology, or nuclear material
22 by India in an unsafeguarded nuclear facil-
23 ity or nuclear-weapons related complex;

24 (ii) the replication and subsequent use
25 of any United States technology by India

1 in an unsafeguarded nuclear facility or
2 unsafeguarded nuclear weapons-related
3 complex, or for any activity related to the
4 research, development, testing, or manu-
5 facture of nuclear explosive devices; and

6 (iii) the provision of nuclear fuel in
7 such a manner as to facilitate the in-
8 creased production by India of highly en-
9 riched uranium or plutonium in
10 unsafeguarded nuclear facilities;

11 (G) a detailed description of—

12 (i) United States efforts to promote
13 national or regional progress by India and
14 Pakistan in disclosing, securing, limiting,
15 and reducing their fissile material stock-
16 piles, including stockpiles for military pur-
17 poses, pending creation of a worldwide
18 fissile material cut-off regime, including
19 the institution of a Fissile Material Cut-off
20 Treaty;

21 (ii) the responses of India and Paki-
22 stan to such efforts; and

23 (iii) assistance that the United States
24 is providing, or would be able to provide,
25 to India and Pakistan to promote the ob-

- 1 jectives in clause (i), consistent with its ob-
2 ligations under international law and exist-
3 ing agreements;
4 (H) an estimate of—
5 (i) the amount of uranium mined and
6 milled in India during the previous year;
7 (ii) the amount of such uranium that
8 has likely been used or allocated for the
9 production of nuclear explosive devices;
10 and
11 (iii) the rate of production in India
12 of—
13 (I) fissile material for nuclear ex-
14 plosive devices; and
15 (II) nuclear explosive devices;
16 (I) an estimate of the amount of electricity
17 India’s nuclear reactors produced for civil pur-
18 poses during the previous year and the propor-
19 tion of such production that can be attributed
20 to India’s declared civil reactors;
21 (J) an analysis as to whether imported
22 uranium has affected the rate of production in
23 India of nuclear explosive devices;

1 (K) a detailed description of efforts and
2 progress made toward the achievement of In-
3 dia's—

4 (i) full participation in the Prolifera-
5 tion Security Initiative;

6 (ii) formal commitment to the State-
7 ment of Interdiction Principles of such Ini-
8 tiative;

9 (iii) public announcement of its deci-
10 sion to conform its export control laws,
11 regulations, and policies with the Australia
12 Group and with the Guidelines, Proce-
13 dures, Criteria, and Controls List of the
14 Wassenaar Arrangement; and

15 (iv) effective implementation of the
16 decision described in clause (iii); and

17 (L) the disposal during the previous year
18 of spent nuclear fuel from India's civilian nu-
19 clear program, and any plans or activities relat-
20 ing to future disposal of such spent nuclear
21 fuel.

22 (3) SUBMITTAL WITH OTHER ANNUAL RE-
23 PORTS.—

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

1 paragraph (2) after the initial report may be
2 submitted together with the annual report on
3 proliferation prevention required under section
4 601(a) of the Nuclear Non-Proliferation Act of
5 1978 (22 U.S.C. 3281(a)).

6 (B) REPORT ON PROGRESS TOWARD RE-
7 GIONAL NONPROLIFERATION.—The information
8 required to be submitted under paragraph
9 (2)(F) after the initial report may be submitted
10 together with the annual report on progress to-
11 ward regional nonproliferation required under
12 section 620F(c) of the Foreign Assistance Act
13 of 1961 (22 U.S.C. 2376(c)).

14 (4) FORM.—Each report submitted under this
15 subsection shall be submitted in unclassified form,
16 but may contain a classified annex.

17 **SEC. 105. UNITED STATES COMPLIANCE WITH ITS NUCLEAR**
18 **NONPROLIFERATION TREATY OBLIGATIONS.**

19 Nothing in this title constitutes authority for any ac-
20 tion in violation of an obligation of the United States
21 under the NPT.

22 **SEC. 106. INOPERABILITY OF DETERMINATION AND WAIV-**
23 **ERS.**

24 A determination and any waiver under section 104
25 shall cease to be effective if the President determines that

1 India has detonated a nuclear explosive device after the
2 date of the enactment of this title.

3 **SEC. 107. MTCR ADHERENT STATUS.**

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

7 **SEC. 108. TECHNICAL AMENDMENT.**

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

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

17 (2) by redesignating subparagraph (C) as sub-
18 paragraph (D); and

19 (3) by inserting after subparagraph (B) the fol-
20 lowing new subparagraph:

21 “(C) so much of the reports required under
22 section 104 of the Henry J. Hyde United
23 States-India Peaceful Atomic Energy Coopera-
24 tion Act of 2006 as relates to verification or
25 compliance matters; and”.

1 **SEC. 109. UNITED STATES-INDIA SCIENTIFIC COOPERATIVE**
2 **NUCLEAR NONPROLIFERATION PROGRAM.**

3 (a) ESTABLISHMENT.—The Secretary of Energy, act-
4 ing through the Administrator of the National Nuclear Se-
5 curity Administration, is authorized to establish a coopera-
6 tive nuclear nonproliferation program to pursue jointly
7 with scientists from the United States and India a pro-
8 gram to further common nuclear nonproliferation goals,
9 including scientific research and development efforts, with
10 an emphasis on nuclear safeguards (in this section re-
11 ferred to as “the program”).

12 (b) CONSULTATION.—The program shall be carried
13 out in consultation with the Secretary of State and the
14 Secretary of Defense.

15 (c) NATIONAL ACADEMIES RECOMMENDATIONS.—

16 (1) IN GENERAL.—The Secretary of Energy
17 shall enter into an agreement with the National
18 Academies to develop recommendations for the im-
19 plementation of the program.

20 (2) RECOMMENDATIONS.—The agreement en-
21 tered into under paragraph (1) shall provide for the
22 preparation by qualified individuals with relevant ex-
23 pertise and knowledge and the communication to the
24 Secretary of Energy each fiscal year of—

25 (A) recommendations for research and re-
26 lated programs designed to overcome existing

1 technological barriers to nuclear nonprolifera-
2 tion; and

3 (B) an assessment of whether activities
4 and programs funded under this section are
5 achieving the goals of the activities and pro-
6 grams.

7 (3) PUBLIC AVAILABILITY.—The recommenda-
8 tions and assessments prepared under this sub-
9 section shall be made publicly available.

10 (d) CONSISTENCY WITH NUCLEAR NON-PROLIFERA-
11 TION TREATY.—All United States activities related to the
12 program shall be consistent with United States obligations
13 under the Nuclear Non-Proliferation Treaty.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as may be
16 necessary to carry out this section for each of fiscal years
17 2007 through 2011.

18 **SEC. 110. DEFINITIONS.**

19 In this title:

20 (1) The term “Additional Protocol” means a
21 protocol additional to a safeguards agreement with
22 the IAEA, as negotiated between a country and the
23 IAEA based on a Model Additional Protocol as set
24 forth in IAEA information circular (INFCIRC) 540.

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

5 (3) The term “dual-use material, equipment, or
6 technology” means material, equipment, or tech-
7 nology that may be used in nuclear or nonnuclear
8 applications.

9 (4) The term “IAEA safeguards” has the
10 meaning given the term in section 830(3) of the Nu-
11 clear Proliferation Prevention Act of 1994 (22
12 U.S.C. 6305(3)).

13 (5) The term “Indian person” means—

14 (A) a natural person that is a citizen of
15 India or is subject to the jurisdiction of the
16 Government of India;

17 (B) a corporation, business association,
18 partnership, society, trust, or any other non-
19 governmental entity, organization, or group,
20 that is organized under the laws of India or has
21 its principal place of business in India; and

22 (C) any Indian governmental entity, in-
23 cluding any governmental entity operating as a
24 business enterprise.

1 (6) The terms “Missile Technology Control Re-
2 regime”, “MTCR”, and “MTCR adherent” have the
3 meanings given the terms in section 74 of the Arms
4 Export Control Act (22 U.S.C. 2797c).

5 (7) The term “nuclear materials and equip-
6 ment” means source material, special nuclear mate-
7 rial, production and utilization facilities and any
8 components thereof, and any other items or mate-
9 rials that are determined to have significance for nu-
10 clear explosive purposes pursuant to subsection 109
11 b. of the Atomic Energy Act of 1954 (42 U.S.C.
12 2139(b)).

13 (8) The terms “Nuclear Non-Proliferation
14 Treaty” and “NPT” mean the Treaty on the Non-
15 Proliferation of Nuclear Weapons, done at Wash-
16 ington, London, and Moscow July 1, 1968, and en-
17 tered into force March 5, 1970 (21 UST 483).

18 (9) The terms “Nuclear Suppliers Group” and
19 “NSG” refer to a group, which met initially in 1975
20 and has met at least annually since 1992, of Partici-
21 pating Governments that have promulgated and
22 agreed to adhere to Guidelines for Nuclear Trans-
23 fers (currently IAEA INFCIRC/254/Rev.8/Part 1)
24 and Guidelines for Transfers of Nuclear-Related
25 Dual-Use Equipment, Materials, Software, and Re-

1 lated Technology (currently IAEA INFCIRC/254/
2 Rev.7/Part 2).

3 (10) The terms “nuclear weapon” and “nuclear
4 explosive device” mean any device designed to
5 produce an instantaneous release of an amount of
6 nuclear energy from special nuclear material that is
7 greater than the amount of energy that would be re-
8 leased from the detonation of one point of trinitro-
9 toluene (TNT).

10 (11) The term “process” includes the term “re-
11 process”.

12 (12) The terms “reprocessing” and “reprocess”
13 refer to the separation of irradiated nuclear mate-
14 rials and fission products from spent nuclear fuel.

15 (13) The term “sensitive nuclear technology”
16 means any information, including information incor-
17 porated in a production or utilization facility or im-
18 portant component part thereof, that is not available
19 to the public and which is important to the design,
20 construction, fabrication, operation, or maintenance
21 of a uranium enrichment or nuclear fuel reprocess-
22 ing facility or a facility for the production of heavy
23 water.

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

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

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

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

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

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

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

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

7 **SEC. 202. FINDINGS.**

8 Congress makes the following findings:

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

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

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

20 (4) Recent events emphasize the urgency of
21 strengthening the effectiveness and improving the ef-
22 ficiency of the safeguards system. This can best be
23 accomplished by providing IAEA inspectors with
24 more information about, and broader access to, nu-

1 clear activities within the territory of non-nuclear-
2 weapon State Parties.

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

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

21 (7) Implementation of the Additional Protocol
22 in the United States in a manner consistent with
23 United States obligations under the Nuclear Non-
24 Proliferation Treaty may encourage other parties to
25 the Nuclear Non-Proliferation Treaty, especially

1 non-nuclear-weapon State Parties, to conclude Addi-
2 tional Protocols and thereby strengthen the Nuclear
3 Non-Proliferation Treaty safeguards system and
4 help reduce the threat of nuclear proliferation, which
5 is of direct and substantial benefit to the United
6 States.

7 (8) Implementation of the Additional Protocol
8 by the United States is not required and is com-
9 pletely voluntary given its status as a nuclear-weap-
10 on State Party, but the United States has acceded
11 to the Additional Protocol to demonstrate its com-
12 mitment to the nuclear nonproliferation regime and
13 to make United States civil nuclear activities avail-
14 able to the same IAEA inspections as are applied in
15 the case of non-nuclear-weapon State Parties.

16 (9) In accordance with the national security ex-
17 clusion contained in Article 1.b of its Additional
18 Protocol, the United States will not allow any in-
19 spection activities, nor make any declaration of any
20 information with respect to, locations, information,
21 and activities of direct national security significance
22 to the United States.

23 (10) Implementation of the Additional Protocol
24 will conform to the principles set forth in the letter
25 of April 30, 2002, from the United States Perma-

1 nent Representative to the International Atomic En-
2 ergy Agency and the Vienna Office of the United
3 Nations to the Director General of the International
4 Atomic Energy Agency.

5 **SEC. 203. DEFINITIONS.**

6 In this title:

7 (1) **ADDITIONAL PROTOCOL.**—The term “Addi-
8 tional Protocol”, when used in the singular form,
9 means the Protocol Additional to the Agreement be-
10 tween the United States of America and the Inter-
11 national Atomic Energy Agency for the Application
12 of Safeguards in the United States of America, with
13 Annexes, signed at Vienna June 12, 1998 (T. Doc.
14 107–7).

15 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
16 **TEES.**—The term “appropriate congressional com-
17 mittees” means the Committee on Armed Services,
18 the Committee on Foreign Relations, and the Com-
19 mittee on Appropriations of the Senate and the
20 Committee on Armed Services, the Committee on
21 International Relations, the Committee on Science,
22 and the Committee on Appropriations of the House
23 of Representatives.

24 (3) **COMPLEMENTARY ACCESS.**—The term
25 “complementary access” means the exercise of the

1 IAEA's access rights as set forth in Articles 4 to 6
2 of the Additional Protocol.

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

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

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

11 (7) JUDGE OF THE UNITED STATES.—The term
12 “judge of the United States” means a United States
13 district judge, or a United States magistrate judge
14 appointed under the authority of chapter 43 of title
15 28, United States Code.

16 (8) LOCATION.—The term “location” means
17 any geographic point or area declared or identified
18 by the United States or specified by the Inter-
19 national Atomic Energy Agency.

20 (9) NUCLEAR NON-PROLIFERATION TREATY.—
21 The term “Nuclear Non-Proliferation Treaty”
22 means the Treaty on the Non-Proliferation of Nu-
23 clear Weapons, done at Washington, London, and
24 Moscow July 1, 1968, and entered into force March
25 5, 1970 (21 UST 483).

1 (10) NUCLEAR-WEAPON STATE PARTY AND
2 NON-NUCLEAR-WEAPON STATE PARTY.—The terms
3 “nuclear-weapon State Party” and “non-nuclear-
4 weapon State Party” have the meanings given such
5 terms in the Nuclear Non-Proliferation Treaty.

6 (11) PERSON.—The term “person”, except as
7 otherwise provided, means any individual, corpora-
8 tion, partnership, firm, association, trust, estate,
9 public or private institution, any State or any polit-
10 ical subdivision thereof, or any political entity within
11 a State, any foreign government or nation or any
12 agency, instrumentality, or political subdivision of
13 any such government or nation, or other entity lo-
14 cated in the United States.

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

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

24 (A) the territorial sea and the overlying
25 airspace;

1 (B) any civil aircraft of the United States
2 or public aircraft, as such terms are defined in
3 paragraphs (17) and (41), respectively, of sec-
4 tion 40102(a) of title 49, United States Code;
5 and

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

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

14 **SEC. 204. SEVERABILITY.**

15 If any provision of this title, or the application of
16 such provision to any person or circumstance, is held in-
17 valid, the remainder of this title, or the application of such
18 provision to persons or circumstances other than those as
19 to which it is held invalid, shall not be affected thereby.

20 **Subtitle A—General Provisions**

21 **SEC. 211. AUTHORITY.**

22 (a) IN GENERAL.—The President is authorized to
23 implement and carry out the provisions of this title and
24 the Additional Protocol and shall designate through Exec-
25 utive order which executive agency or agencies of the

1 United States, which may include but are not limited to
2 the Department of State, the Department of Defense, the
3 Department of Justice, the Department of Commerce, the
4 Department of Energy, and the Nuclear Regulatory Com-
5 mission, shall issue or amend and enforce regulations in
6 order to implement this title and the provisions of the Ad-
7 ditional Protocol.

8 (b) INCLUDED AUTHORITY.—For any executive agen-
9 cy designated under subsection (a) that does not currently
10 possess the authority to conduct site vulnerability assess-
11 ments and related activities, the authority provided in sub-
12 section (a) includes such authority.

13 (c) EXCEPTION.—The authority described in sub-
14 section (b) does not supersede or otherwise modify any
15 existing authority of any Federal department or agency
16 already having such authority.

17 **Subtitle B—Complementary Access**

18 **SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT**

19 **COMPLEMENTARY ACCESS.**

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

25 (b) AUTHORITY.—

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

5 (2) UNITED STATES REPRESENTATIVES.—

6 (A) RESTRICTIONS.—In the event of com-
7plementary access to a privately owned or oper-
8ated location, no employee of the Environ-
9mental Protection Agency or of the Mine Safety
10and Health Administration or the Occupational
11Safety and Health Administration of the De-
12partment of Labor may participate in the ac-
13cess.

14 (B) NUMBER.—The number of designated
15United States representatives accompanying
16IAEA inspectors shall be kept to the minimum
17necessary.

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

19 (a) IN GENERAL.—Each instance of complementary
20access to a location in the United States under the Addi-
21tional Protocol shall be conducted in accordance with this
22subtitle.

23 (b) NOTICE.—

24 (1) IN GENERAL.—Complementary access re-
25ferred to in subsection (a) may occur only upon the

1 issuance of an actual written notice by the United
2 States Government to the owner, operator, occupant,
3 or agent in charge of the location to be subject to
4 complementary access.

5 (2) TIME OF NOTIFICATION.—The notice under
6 paragraph (1) shall be submitted to such owner, op-
7 erator, occupant, or agent as soon as possible after
8 the United States Government has received notifica-
9 tion that the IAEA seeks complementary access. No-
10 tices may be posted prominently at the location if
11 the United States Government is unable to provide
12 actual written notice to such owner, operator, occu-
13 pant, or agent.

14 (3) CONTENT OF NOTICE.—

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

17 (i) the purpose for the complementary
18 access;

19 (ii) the basis for the selection of the
20 facility, site, or other location for the com-
21plementary access sought;

22 (iii) the activities that will be carried
23 out during the complementary access;

24 (iv) the time and date that the com-
25plementary access is expected to begin, and

1 the anticipated period covered by the com-
2 plementary access; and

3 (v) the names and titles of the inspec-
4 tors.

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

8 (c) CREDENTIALS.—The complementary access team
9 of the IAEA and representatives or designees of the
10 United States Government shall display appropriate iden-
11 tifying credentials to the owner, operator, occupant, or
12 agent in charge of the location before gaining entry in con-
13 nection with complementary access.

14 (d) SCOPE.—

15 (1) IN GENERAL.—Except as provided in a war-
16 rant issued under section 223, and subject to the
17 rights of the United States Government under the
18 Additional Protocol to limit complementary access,
19 complementary access to a location pursuant to this
20 title may extend to all activities specifically per-
21 mitted for such locations under Article 6 of the Ad-
22 ditional Protocol.

23 (2) EXCEPTION.—Unless required by the Addi-
24 tional Protocol, no inspection under this title shall
25 extend to—

1 (A) financial data (other than production
2 data);

3 (B) sales and marketing data (other than
4 shipment data);

5 (C) pricing data;

6 (D) personnel data;

7 (E) patent data;

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

11 (G) research data.

12 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECU-
13 RITY.—In carrying out their activities, members of the
14 IAEA complementary access team and representatives or
15 designees of the United States Government shall observe
16 applicable environmental, health, safety, and security reg-
17 ulations established at the location subject to complemen-
18 tary access, including those for protection of controlled en-
19 vironments within a facility and for personal safety.

20 **SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY**
21 **ACCESS.**

22 (a) IN GENERAL.—

23 (1) PROCEDURE.—

24 (A) CONSENT.—Except as provided in
25 paragraph (2), an appropriate official of the

1 United States Government shall seek or have
2 the consent of the owner, operator, occupant, or
3 agent in charge of a location prior to entering
4 that location in connection with complementary
5 access pursuant to sections 221 and 222. The
6 owner, operator, occupant, or agent in charge of
7 the location may withhold consent for any rea-
8 son or no reason.

9 (B) ADMINISTRATIVE SEARCH WAR-
10 RANT.—In the absence of consent, the United
11 States Government may seek an administrative
12 search warrant from a judge of the United
13 States under subsection (b). Proceedings re-
14 garding the issuance of an administrative
15 search warrant shall be conducted ex parte, un-
16 less otherwise requested by the United States
17 Government.

18 (2) EXPEDITED ACCESS.—For purposes of ob-
19 taining access to a location pursuant to Article
20 4b.(ii) of the Additional Protocol in order to satisfy
21 United States obligations under the Additional Pro-
22 tocol when notice of two hours or less is required,
23 the United States Government may gain entry to
24 such location in connection with complementary ac-
25 cess, to the extent such access is consistent with the

1 Fourth Amendment to the United States Constitu-
2 tion, without obtaining either a warrant or consent.

3 (b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-
4 PLEMENTARY ACCESS.—

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

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

22 (A) stating that the Additional Protocol is
23 in force;

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

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

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

10 (E) containing assurances that the scope
11 of the IAEA's complementary access, as well as
12 what it may collect, shall be limited to the ac-
13 cess provided for in Article 6 of the Additional
14 Protocol;

15 (F) listing the items, documents, and areas
16 to be searched and seized;

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

22 (H) stating that the location to which
23 entry in connection with complementary access
24 is sought was selected either—

1 (i) because there is probable cause, on
2 the basis of specific evidence, to believe
3 that information required to be reported
4 regarding a location pursuant to regula-
5 tions promulgated under this title is incor-
6 rect or incomplete, and that the location to
7 be accessed contains evidence regarding
8 that violation; or

9 (ii) pursuant to a reasonable general
10 administrative plan based upon specific
11 neutral criteria.

12 (3) CONTENT OF WARRANTS.—A warrant
13 issued under paragraph (2) shall specify the same
14 matters required of an affidavit under that para-
15 graph. In addition, each warrant shall contain the
16 identities of the representatives of the IAEA on the
17 complementary access team and the identities of the
18 representatives or designees of the United States
19 Government required to display identifying creden-
20 tials under section 222(c).

21 **SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMEN-**
22 **TARY ACCESS.**

23 It shall be unlawful for any person willfully to fail
24 or refuse to permit, or to disrupt, delay, or otherwise im-

1 pede, a complementary access authorized by this subtitle
2 or an entry in connection with such access.

3 **Subtitle C—Confidentiality of**
4 **Information**

5 **SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMA-**
6 **TION.**

7 Information reported to, or otherwise acquired by, the
8 United States Government under this title or under the
9 Additional Protocol shall be exempt from disclosure under
10 section 552 of title 5, United States Code.

11 **Subtitle D—Enforcement**

12 **SEC. 241. RECORDKEEPING VIOLATIONS.**

13 It shall be unlawful for any person willfully to fail
14 or refuse—

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

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

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

24 **SEC. 242. PENALTIES.**

25 (a) CIVIL.—

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

9 (2) NOTICE AND HEARING.—

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

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

1 (C) ISSUANCE OF ORDERS.—If the admin-
2 istrative judge determines, upon the preponder-
3 ance of the evidence received, that a person
4 named in the complaint has violated section
5 224 or section 241, the administrative judge
6 shall state the findings of fact and conclusions
7 of law, and issue and serve on such person an
8 order described in paragraph (1).

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

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

1 (i) set forth the time, date, and spe-
2 cific nature of the alleged violation or vio-
3 lations; and

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

9 (3) ADMINISTRATIVE APPELLATE REVIEW.—

10 The decision and order of an administrative judge
11 shall be the recommended decision and order and
12 shall be referred to the head of the designated exec-
13 utive agency for final decision and order. If, within
14 60 days, the head of the designated executive agency
15 does not modify or vacate the decision and order, it
16 shall become a final agency action under this sub-
17 section.

18 (4) JUDICIAL REVIEW.—A person adversely af-
19 fected by a final order may, within 30 days after the
20 date the final order is issued, file a petition in the
21 Court of Appeals for the District of Columbia Cir-
22 cuit or in the Court of Appeals for the district in
23 which the violation occurred.

24 (5) ENFORCEMENT OF FINAL ORDERS.—

1 (A) IN GENERAL.—If a person fails to
2 comply with a final order issued against such
3 person under this subsection and—

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

7 (ii) a court in an action brought under
8 paragraph (4) has entered a final judg-
9 ment in favor of the designated executive
10 agency,

11 the head of the designated executive agency
12 shall commence a civil action to seek compliance
13 with the final order in any appropriate district
14 court of the United States.

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

18 (C) INTEREST.—Payment of penalties as-
19 sessed in a final order under this section shall
20 include interest at currently prevailing rates
21 calculated from the date of expiration of the 60-
22 day period referred to in paragraph (3) or the
23 date of such final order, as the case may be.

24 (b) CRIMINAL.—Any person who violates section 224
25 or section 241 may, in addition to or in lieu of any civil

1 penalty which may be imposed under subsection (a) for
2 such violation, be fined under title 18, United States Code,
3 imprisoned for not more than five years, or both.

4 **SEC. 243. SPECIFIC ENFORCEMENT.**

5 (a) JURISDICTION.—The district courts of the United
6 States shall have jurisdiction over civil actions brought by
7 the head of an executive agency designated under section
8 211(a)—

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

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

13 (b) CIVIL ACTIONS.—

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

16 (A) in the case of a civil action described
17 in paragraph (1) of such subsection, in the
18 United States district court for the judicial dis-
19 trict in which any act, omission, or transaction
20 constituting a violation of section 224 or section
21 241 occurred or in which the defendant is
22 found or transacts business; or

23 (B) in the case of a civil action described
24 in paragraph (2) of such subsection, in the
25 United States district court for the judicial dis-

1 trict in which the defendant is found or trans-
2 acts business.

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

6 **Subtitle E—Environmental** 7 **Sampling**

8 **SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD AP-** 9 **PROVAL OF WIDE-AREA ENVIRONMENTAL** 10 **SAMPLING.**

11 (a) IN GENERAL.—Not later than 30 days after the
12 date on which the Board of Governors of the IAEA ap-
13 proves wide-area environmental sampling for use as a safe-
14 guards verification tool, the President shall notify the ap-
15 propriate congressional committees.

16 (b) CONTENT.—The notification under subsection (a)
17 shall contain—

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

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

1 (3) an assessment of the ability of the approved
2 methods and sampling techniques to detect, identify,
3 and determine the conduct, type, and nature of nu-
4 clear activities.

5 **SEC. 252. APPLICATION OF NATIONAL SECURITY EXCLU-**
6 **SION TO WIDE-AREA ENVIRONMENTAL SAM-**
7 **PLING.**

8 In accordance with Article 1(b) of the Additional Pro-
9 tocol, the United States shall not permit any wide-area
10 environmental sampling proposed by the IAEA to be con-
11 ducted at a specified location in the United States under
12 Article 9 of the Additional Protocol unless the President
13 has determined and reported to the appropriate congres-
14 sional committees with respect to that proposed use of en-
15 vironmental sampling that—

16 (1) the proposed use of wide-area environmental
17 sampling is necessary to increase the capability of
18 the IAEA to detect undeclared nuclear activities in
19 the territory of a non-nuclear-weapon State Party;

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

24 (3) the United States—

1 (A) has been provided sufficient oppor-
2 tunity for consultation with the IAEA if the
3 IAEA has requested complementary access in-
4 volving wide-area environmental sampling; or

5 (B) has requested under Article 8 of the
6 Additional Protocol that the IAEA engage in
7 complementary access in the United States that
8 involves the use of wide-area environmental
9 sampling.

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

13 In accordance with Article 1(b) of the Additional Pro-
14 tocol, the United States shall not permit any location-spe-
15 cific environmental sampling in the United States under
16 Article 5 of the Additional Protocol unless the President
17 has determined and reported to the appropriate congres-
18 sional committees with respect to that proposed use of en-
19 vironmental sampling that—

20 (1) the proposed use of location-specific envi-
21 ronmental sampling is necessary to increase the ca-
22 pability of the IAEA to detect undeclared nuclear
23 activities in the territory of a non-nuclear-weapon
24 State Party;

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

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

7 (A) has been provided sufficient oppor-
8 tunity for consultation with the IAEA if the
9 IAEA has requested complementary access in-
10 volving location-specific environmental sam-
11 pling; or

12 (B) has requested under Article 8 of the
13 Additional Protocol that the IAEA engage in
14 complementary access in the United States that
15 involves the use of location-specific environ-
16 mental sampling.

17 **SEC. 254. RULE OF CONSTRUCTION.**

18 As used in this subtitle, the term “necessary to in-
19 crease the capability of the IAEA to detect undeclared nu-
20 clear activities in the territory of a non-nuclear-weapon
21 State Party” shall not be construed to encompass pro-
22 posed uses of environmental sampling that might assist
23 the IAEA in detecting undeclared nuclear activities in the
24 territory of a non-nuclear-weapon State Party by—

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

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

6 **Subtitle F—Protection of National** 7 **Security Information and Activities**

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

9 (a) LOCATIONS AND FACILITIES OF DIRECT NA-
10 TIONAL SECURITY SIGNIFICANCE.—No current or former
11 Department of Defense or Department of Energy location,
12 site, or facility of direct national security significance shall
13 be declared or be subject to IAEA inspection under the
14 Additional Protocol.

15 (b) INFORMATION OF DIRECT NATIONAL SECURITY
16 SIGNIFICANCE.—No information of direct national secu-
17 rity significance regarding any location, site, or facility as-
18 sociated with activities of the Department of Defense or
19 the Department of Energy shall be provided under the Ad-
20 ditional Protocol.

21 (c) RESTRICTED DATA.—Nothing in this title shall
22 be construed to permit the communication or disclosure
23 to the IAEA or IAEA employees of restricted data con-
24 trolled by the provisions of the Atomic Energy Act of 1954
25 (42 U.S.C. 2011 et seq.), including in particular “Re-

1 stricted Data” as defined under paragraph (1) of section
2 11 y. of such Act (42 U.S.C. 2014(y)).

3 (d) CLASSIFIED INFORMATION.—Nothing in this Act
4 shall be construed to permit the communication or disclo-
5 sure to the IAEA or IAEA employees of national security
6 information and other classified information.

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

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

16 (b) PRESENCE OF UNITED STATES GOVERNMENT
17 PERSONNEL.—IAEA inspectors shall be accompanied at
18 all times by United States Government personnel when in-
19 specting sites, locations, facilities, or activities in the
20 United States under the Additional Protocol.

21 (c) VULNERABILITY AND RELATED ASSESSMENTS.—
22 The President shall conduct vulnerability, counterintel-
23 ligence, and related assessments not less than every 5
24 years to ensure that information of direct national security
25 significance remains protected at all sites, locations, facili-

1 ties, and activities in the United States that are subject
2 to IAEA inspection under the Additional Protocol.

3 **Subtitle G—Reports**

4 **SEC. 271. REPORT ON INITIAL UNITED STATES DECLARA-** 5 **TION.**

6 Not later than 60 days before submitting the initial
7 United States declaration to the IAEA under the Addi-
8 tional Protocol, the President shall submit to Congress a
9 list of the sites, locations, facilities, and activities in the
10 United States that the President intends to declare to the
11 IAEA, and a report thereon.

12 **SEC. 272. REPORT ON REVISIONS TO INITIAL UNITED** 13 **STATES DECLARATION.**

14 Not later than 60 days before submitting to the
15 IAEA any revisions to the United States declaration sub-
16 mitted under the Additional Protocol, the President shall
17 submit to Congress a list of any sites, locations, facilities,
18 or activities in the United States that the President in-
19 tends to add to or remove from the declaration, and a re-
20 port thereon.

21 **SEC. 273. CONTENT OF REPORTS ON UNITED STATES DEC-** 22 **LARATIONS.**

23 The reports required under section 271 and section
24 272 shall present the reasons for each site, location, facil-

1 ity, and activity being declared or being removed from the
2 declaration list and shall certify that—

3 (1) each site, location, facility, and activity in-
4 cluded in the list has been examined by each agency
5 with national security equities with respect to such
6 site, location, facility, or activity; and

7 (2) appropriate measures have been taken to
8 ensure that information of direct national security
9 significance will not be compromised at any such
10 site, location, facility, or activity in connection with
11 an IAEA inspection.

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

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

17 (1) measures that have been or should be taken
18 to achieve the adoption of additional protocols to ex-
19 isting safeguards agreements signed by non-nuclear-
20 weapon State Parties; and

21 (2) assistance that has been or should be pro-
22 vided by the United States to the IAEA in order to
23 promote the effective implementation of additional
24 protocols to existing safeguards agreements signed
25 by non-nuclear-weapon State Parties and the

1 verification of the compliance of such parties with
2 IAEA obligations, with a plan for providing any
3 needed additional funding.

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

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

8 **Subtitle H—Authorization of**
9 **Appropriations**

10 **SEC. 281. AUTHORIZATION OF APPROPRIATIONS.**

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