

1985—Subsec. (a). Pub. L. 99-64, §301(c)(1), struck out “2153(d),” after “submission of the President required by section”, struck out “”, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate,” after “Committee on Foreign Affairs of the House of Representatives”, and struck out in proviso “and if, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution” after “consideration of such submission”.

Subsec. (g). Pub. L. 99-64, §301(c)(2), designated existing provisions of subsec. (g) as par. (1), substituted “Except as provided in paragraph (2), for” for “For”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (i). Pub. L. 99-64, §301(c)(2)(B), added subsec. (i).

#### EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-64 applicable to any agreement for cooperation entered into after July 12, 1985, see section 301(d) of Pub. L. 99-64, set out as a note under section 2153 of this title.

#### EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

### § 2160. Subsequent arrangements

#### (a) Consultation and concurrence; negotiations of a policy nature; notice of proposed subsequent arrangements; Nuclear Proliferation Assessment Statement; reprocessing of material

(1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title), 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. 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 Proliferation Assessment State-

ment 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.

(2) If in the view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission a proposed subsequent arrangement might significantly contribute to proliferation, the Secretary of State, in consultation with such Secretary or the Commission, shall prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term “subsequent arrangements” means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this chapter which is not subject to the procedures set forth in section 2141(b), section 2155, or section 2139(b) of this title;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this chapter, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 2153 of this title.

(4) All other statutory requirements under other sections of this chapter for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other

such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to paragraph (1).

**(b) Reports to Congressional committees; increase in risk of proliferation**

With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in section 2159(g) of this title) has elapsed: *Provided, however*, That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to March 10, 1978, or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to March 10, 1978, or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in his view, and that of the Secretary of State, satisfy the standards set forth in paragraph (2).

**(c) Procedures for consideration of requests for subsequent arrangements**

The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State shall so declare in his response to the Department of Energy. If the Secretary of State declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Secretary of State's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

**(d) Activities not prohibited, precluded, or limited**

Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 3224 of title 22; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other par-

icipation; nor to prejudice open and objective consideration of the results of the evaluation.

**(e) Jurisdiction of Secretary of Energy**

Notwithstanding section 7172(d) of this title, the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

**(f) Subsequent arrangements involving direct or indirect commitment of United States for storage or other disposition of foreign spent nuclear fuel in United States**

(1) With regard to any subsequent arrangement under subsection (a)(2)(E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions;

(B) The Secretary of Energy has complied with subsection (a); and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this chapter, under sections 2074 and 2075 of this title and any other applicable sections, and any other requirements of law.

(2) Paragraph (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 2074 or 2075 of this title of the United States for storage or other disposition of such limited quantities in the United

States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign Affairs and Science, Space, and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under paragraph (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

(Aug. 1, 1946, ch. 724, title I, § 131, as added Pub. L. 95-242, title III, § 303(a), Mar. 10, 1978, 92 Stat. 127; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103-437, § 15(f)(6), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 105-277, div. G, title XII, § 1225(d)(6), (7), Oct. 21, 1998, 112 Stat. 2681-774.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(C), (3), (4) and (f)(1)(C), was in the original "this Act", meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-277, § 1225(d)(6)(A), in first sentence, struck out "the Director," after "shall consult with" and, in third sentence, substituted "the Secretary of State is required" for "the Director declares that he intends" and "the requirement to prepare a Nuclear Proliferation Assessment Statement" for "the Director's declaration".

Subsec. (a)(2). Pub. L. 105-277, § 1225(d)(6)(B), substituted "view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission" for "Director's view" and "the Secretary of State, in consultation with such Secretary or the Commission, shall prepare" for "he may prepare".

Subsec. (c). Pub. L. 105-277, § 1225(d)(7), struck out "the Director of the Arms Control and Disarmament Agency," before "and the Nuclear" in first sentence and substituted "Secretary of State" for "Director" in sixth and seventh sentences and "Secretary of State's" for "Director's" in seventh sentence.

1994—Subsecs. (b)(1), (c), (f)(1)(A). Pub. L. 103-437, § 15(f)(6)(A), substituted "Foreign Affairs" for "International Relations" wherever appearing.

Subsec. (f)(2). Pub. L. 103-437 substituted "Foreign Affairs and Science, Space, and Technology" for "International Relations and Science and Technology".

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22.

## EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

## DELEGATION OF FUNCTIONS

Delegation or assignment to Secretary of Energy of functions vested in President under subsecs. (a)(2)(G), (b)(1), and (f)(2) of this section, and of function vested in President under subsec. (f)(1)(A)(ii) of this section to extent that such function relates to preparation of a detailed generic plan, see section 1(b) and (c) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Secretary of State responsible for performing function vested in President under subsec. (c) of this section, except that Secretary of State may not waive 60-day requirement for preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without approval of President, see section 2(e) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22.

## LIMITATIONS ON RECEIPT AND STORAGE OF SPENT NUCLEAR FUEL FROM FOREIGN RESEARCH REACTORS

Pub. L. 103-160, div. C, title XXXI, §3151, Nov. 30, 1993, 107 Stat. 1949, provided that:

“(a) PURPOSE.—It is the purpose of this section to regulate the receipt and storage of spent nuclear fuel at the Department of Energy defense nuclear facility located at the Savannah River Site, South Carolina (in this section referred to as the ‘Savannah River Site’).

“(b) RECEIPT IN EMERGENCY CIRCUMSTANCES.—When the Secretary of Energy determines that emergency circumstances make it necessary to receive spent nuclear fuel, the Secretary shall submit a notification of that determination to the Congress. The Secretary may not receive spent nuclear fuel at the Savannah River Site until the expiration of the 30-day period beginning on the date on which the Congress receives the notification.

“(c) LIMITATION ON STORAGE IN NON-EMERGENCY CIRCUMSTANCES.—The Secretary of Energy may not, under other than emergency circumstances, receive and store at the Savannah River Site any spent nuclear fuel in excess of the amount that (as of the date of the enactment of this Act [Nov. 30, 1993]) the Savannah River Site is capable of receiving and storing, until, with respect to the receipt and storage of any such spent nuclear fuel—

“(1) the completion of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

“(2) the expiration of the 90-day period (as prescribed by regulation pursuant to such Act [42 U.S.C. 4321 et seq.]) beginning on the date of such completion; and

“(3) the signing by the Secretary of a record of decision following such completion.

“(d) LIMITATIONS ON RECEIPT.—The Secretary of Energy may not, under emergency or non-emergency circumstances, receive spent nuclear fuel if the spent nuclear fuel—

“(1) cannot be transferred in an expeditious manner from its port of entry in the United States to a storage facility that is located at a Department of Energy facility and is capable of receiving and storing the spent nuclear fuel; or

“(2) will remain on a vessel in the port of entry for a period that exceeds the period necessary to unload the fuel from the vessel pursuant to routine unloading procedures.

“(e) CRITERIA FOR PORT OF ENTRY.—The Secretary of Energy shall, if economically feasible and to the maximum extent practicable, provide for the receipt of spent nuclear fuel under this section at a port of entry in the United States which, as determined by the Secretary and compared to each other port of entry in the United States that is capable of receiving the spent nuclear fuel—

“(1) has the lowest human population in the area surrounding the port of entry;

“(2) is closest in proximity to the facility which will store the spent nuclear fuel; and

“(3) has the most appropriate facilities for, and experience in, receiving spent nuclear fuel.

“(f) DEFINITION.—In this section, the term ‘spent nuclear fuel’ means nuclear fuel that—

“(1) was originally exported to a foreign country from the United States in the form of highly enriched uranium; and

“(2) was used in a research reactor by the Government of a foreign country or by a foreign-owned or foreign-controlled entity.”

## PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

**§ 2160a. Review of Nuclear Proliferation Assessment Statements**

No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement, or any annexes thereto, called for in this Act or in the 1954 Act.

(Pub. L. 95-242, title IV, §406, Mar. 10, 1978, 92 Stat. 148; Pub. L. 105-277, div. G, title XII, §1225(e)(5), Oct. 21, 1998, 112 Stat. 2681-775.)

## REFERENCES IN TEXT

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

## CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

## AMENDMENTS

1998—Pub. L. 105-277 inserted “, or any annexes thereto,” before “called for in”.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22.