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2/27/85
THE WHITE HOUSE
WASHINGTON

TO:

JBR

FROM: Richard A. Hauser *RAH*
Deputy Counsel to the President

FYI: _____

COMMENT: _____

ACTION: ☒ _____

plz call Ron Bettaner
(DOS) 632-0495 and
advise on the results
of your analysis.
DOWNS. JBR

H. R. 28

To reauthorize the Export Administration Act of 1979, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. ROTH introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To reauthorize the Export Administration Act of 1979, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

SECTION 1. Titles I and II of this Act may be cited as the “Export Administration Amendments Act of 1985”.

6 TITLE I—AMENDMENTS TO EXPORT

7 ADMINISTRATION ACT OF 1979

8 REFERENCE TO THE ACT

9 SEC. 101. For purposes of this title, the Export Admin-
10 istration Act of 1979 shall be referred to as “the Act”.

1 jectives or would otherwise jeopardize the common de-
2 fense and security; and

3 “(2) at least sixty days before the export, re-
4 transfer, or activity or initial export, retransfer, or ac-
5 tivity is carried out, the President submits that deter-
6 mination, together with the reasons for that determina-
7 tion, to the Congress.

8 “e. With respect to any authorization described in sub-
9 section a. (1)(D) which is made after August 1, 1983, the
10 restrictions set forth in that subparagraph shall apply to any
11 contract executed under that authorization after the date of
12 the enactment of the Export Administration Amendments
13 Act of 1985.”.

14 (b) The table of contents of the Atomic Energy Act of
15 1954 is amended by inserting after the item relating to sec-
16 tion 131 the following new item:

“Sec. 132. Restrictions on certain exports.”.

17 **AGREEMENTS FOR COOPERATION**

18 SEC. 402. (a) Section 123 of the Atomic Energy Act of
19 1954 (42 U.S.C. 2153) is amended—

20 (1) in subsection a. by inserting “the consistency
21 of the text of the agreement for cooperation with all
22 the requirements of this Act,” after “Assessment
23 Statement regarding”;

24 (2) in subsection b. by inserting before “the Presi-
25 dent” the following: “after the submission of the text

1 of the proposed agreement for cooperation together
2 with the accompanying nonclassified nuclear prolifera-
3 tion assessment to the Committee on Foreign Relations
4 of the Senate and the Committee on Foreign Affairs of
5 the House of Representatives, and after consultation
6 with such Committees for a period of not less than
7 thirty days of continuous session (as defined in section
8 130 g. of this Act) concerning the consistency of the
9 terms of the proposed agreement with all the require-
10 ments of this Act,"; and

11 (3) in subsection d. by inserting before the sen-
12 tence which begins "Any such proposed agreement"
13 the following: "During the sixty-day period the Com-
14 mittee on Foreign Affairs of the House of Representa-
15 tives and the Committee on Foreign Relations of the
16 Senate shall each hold hearings on the proposed agree-
17 ment for cooperation and submit a report to their re-
18 spective bodies recommending whether it should be ap-
19 proved or disapproved".

20 (b) Subsection d. of section 123 of the Atomic Energy
21 Act of 1954 (42 U.S.C. 2153(d)) is amended—

22 (1) by striking out "adopts a concurrent resolu-
23 tion" and inserting in lieu thereof "adopts, and there is
24 enacted, a joint resolution";

1 (2) by striking out the period at the end of the
2 first proviso and inserting in lieu thereof “: *Provided*
3 *further*, That an agreement for cooperation exempted
4 by the President pursuant to subsection a. from any re-
5 quirement contained in that subsection shall not
6 become effective unless the Congress adopts, and there
7 is enacted, a joint resolution stating that the Congress
8 does favor such agreement.”; and

9 (3) by striking out “130 of this Act for the consid-
10 eration of Presidential submissions” and inserting in
11 lieu thereof “130 i. of this Act”.

12 (c) Section 130 a. of the Atomic Energy Act of 1954
13 (42 U.S.C. 2159(a)) is amended—

14 (1) in the first sentence—

15 (A) by striking out “123 d.”; and

16 (B) by striking out “, and in addition, in the
17 case of a proposed agreement for cooperation ar-
18 ranged pursuant to subsection 91 c., 144 b., or
19 144 c., the Committee on Armed Services of the
20 House of Representatives and the Committee on
21 Armed Services of the Senate,”; and

22 (2) in the proviso, by striking out “and if, in the
23 case of a proposed agreement for cooperation arranged
24 pursuant to subsection 91 c., 144 b., or 144 c. of this
25 Act, the other relevant committee of that House has

1 reported such a resolution, such committee shall be
2 deemed discharged from further consideration of that
3 resolution”.

4 (d) Section 130 of the Atomic Energy Act of 1954 is
5 amended by adding at the end thereof the following:

6 “i. (1) For the purposes of this subsection, the term
7 ‘joint resolution’ means a joint resolution, the matter after
8 the resolving clause of which is as follows: ‘That the Con-
9 gress (does or does not) favor the proposed agreement for
10 cooperation transmitted to the Congress by the President on
11 .’, with the date of the transmission of the proposed
12 agreement for cooperation inserted in the blank, and the af-
13 firmative or negative phrase within the parenthetical appro-
14 priately selected.

15 “(2) On the day on which a proposed agreement for co-
16 operation is submitted to the House of Representatives and
17 the Senate under section 123 d., a joint resolution with re-
18 spect to such agreement for cooperation shall be introduced
19 (by request) in the House by the chairman of the Committee
20 on Foreign Affairs, for himself and the ranking minority
21 member of the Committee, or by Members of the House des-
22 ignated by the chairman and ranking minority member; and
23 shall be introduced (by request) in the Senate by the majority
24 leader of the Senate, for himself and the minority leader of
25 the Senate, or by Members of the Senate designated by the

1 majority leader and minority leader of the Senate. If either
2 House is not in session on the day on which such an agree-
3 ment for cooperation is submitted, the joint resolution shall
4 be introduced in that House, as provided in the preceding
5 sentence, on the first day thereafter on which that House is
6 in session.

7 “(3) All joint resolutions introduced in the House of
8 Representatives shall be referred to the appropriate commit-
9 tee or committees and all joint resolutions introduced in the
10 Senate shall be referred to the Committee on Foreign Rela-
11 tions and any other appropriate committee.

12 “(4) If the committee of either House to which a joint
13 resolution has been referred has not reported it at the end of
14 45 days after its introduction, the committee shall be dis-
15 charged from further consideration of the joint resolution or
16 of any other joint resolution introduced with respect to the
17 same matter; except that, in the case of a joint resolution
18 which has been referred to more than one committee, if
19 before the end of that 45-day period one such committee has
20 reported the joint resolution, any other committee to which
21 the joint resolution was referred shall be discharged from fur-
22 ther consideration of the joint resolution or of any other joint
23 resolution introduced with respect to the same matter.

24 “(5) A joint resolution under this subsection shall be
25 considered in the Senate in accordance with the provisions of

THE WHITE HOUSE
WASHINGTON

LRMS

February 26, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Amendments to the Atomic Energy Act of 1954

Attached at Tab A is a copy of Section 402 of H.R. 28, which would amend those portions of the Atomic Energy Act of 1954 concerning nuclear cooperation with other nations. Current law (Tab B) specifies that proposed nuclear cooperation agreements must meet certain substantive requirements, and must be submitted to the President along with an unclassified "Nuclear Proliferation Assessment Statement" from the Director of the Arms Control and Disarmament Agency. 42 U.S.C. § 2153(a). The President is required to certify that the agreement will promote the common defense and security. 42 U.S.C. § 2153(b). Certain agreements become effective thirty days after submission to the Foreign Affairs and Foreign Relations Committees; others sixty days after submission of the agreement and the Statement to Congress (provided Congress does not adopt a concurrent resolution to the contrary). 42 U.S.C. § 2153(c), 2153(d).

H.R. 28 would require the President to submit the agreement and Statement to the Foreign Affairs and Foreign Relations Committees and wait thirty days before issuing the certification required by 42 U.S.C. § 2153(b). The other report and wait provisions would remain in effect, with "concurrent resolution" in 42 U.S.C. § 2153(d) appropriately changed to "joint resolution."

Some might view this change as giving Congress "two bites" at a proposed agreement (before and after certification required by 42 U.S.C. § 2153(b)). Another way of looking at it is that the amendment would simply lengthen the "wait" period from sixty to ninety days. From either perspective I see no constitutional infirmity. These are merely "report and wait" provisions explicitly recognized in INS v. Chadha to comply with the Constitution.

1 section 601(b)(4) of the International Security Assistance and
2 Arms Export Control Act of 1976. For the purpose of expe-
3 diting the consideration and passage of joint resolutions under
4 this subsection, it shall be in order for the Committee on
5 Rules of the House of Representatives (notwithstanding the
6 provisions of clause 4(b) of rule XI of the Rules of the House
7 of Representatives) to present for immediate consideration,
8 on the day reported, a resolution of the House of Representa-
9 tives providing procedures for the consideration of a joint res-
10 olution under this subsection similar to the procedures set
11 forth in section 601(b)(4) of the International Security Assist-
12 ance and Arms Export Control Act of 1976.

13 “(6) In the case of a joint resolution described in para-
14 graph (1), if prior to the passage by one House of a joint
15 resolution of that House, that House receives a joint resolu-
16 tion with respect to the same matter from the other House,
17 then—

18 “(A) the procedure in that House shall be the
19 same as if no joint resolution had been received from
20 the other House; but

21 “(B) the vote on final passage shall be on the
22 joint resolution of the other House.”.

23 (c) The amendments made by this section shall apply to
24 any agreement for cooperation which is entered into after the
25 date of the enactment of this Act.



B

obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after March 10, 1978, and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 2156 of this title or their equivalent and any applicable criteria in section 2157 of this title are met, and that the proposed distribution would not be inimical to the common defense and security.

(Aug. 1, 1946, c. 724, § 111, as added Mar. 10, 1978, Pub.L. 95-242, Title III, § 301(c), 92 Stat. 125.)

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.

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. 12508, May 11, 1978, 43 F.R. 20947, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

Legislative History. For legislative history and purpose of Pub.L. 95-242, see 1978 U.S. Code Cong. and Adm. News, p. 326.

Library References

Licenses § 11(1).
C.J.S. Licenses § 26 et seq.

SUBCHAPTER X—INTERNATIONAL ACTIVITIES

§§ 2151, 2152

Transfer of Functions. All functions of the Nuclear Regulatory Commission, including those pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, are transferred to the Chairman of the Nuclear Regulatory Commission, with the exception of those functions relating to policy formation, rulemaking, and orders and adjudications, which are to be retained by the Commission, pursuant to Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Abolition of the Atomic Energy Commission. The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the offi-

cers and components of the Commission were transferred to and vested in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub.L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of this title. The functions vested by law in the Energy Research and Development Administration or in the Administrator, officers, and components of the Energy Research and Development Administration were transferred to and vested in the Secretary of Energy, unless otherwise specifically provided, as part of the creation of the Department of Energy by Pub.L. 95-91, Aug. 4, 1977, 91 Stat. 565. See section 7151 of this title.

§ 2153. Cooperation with other nations

No cooperation with any nation, group of nations or regional defense organization pursuant to sections 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164 of this title shall be undertaken until—

- (a) Terms, conditions, duration, nature, scope, and other requirements of proposed agreements for cooperation; Presidential exemptions; negotiations; Nuclear Proliferation Assessment Statement

the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

- (1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title, a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

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

(7) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) from any of the requirements of the foregoing sentence if he deter-

mines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to section 2121(c) or 2164(b) of this title, which are to be implemented by the Department of Defense, by the Secretary of Defense;

(b) Presidential approval and authorization for execution of proposed agreements for cooperation

the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

(c) Submittal of proposed agreements for cooperation to Congressional Committees

the proposed agreement for cooperation (if not an agreement subject to subsection (d) of this section), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in section 2159(g) of this title): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

(d) Congressional action

the proposed agreement for cooperation (if arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, or if entailing implementation of section 2073, 2074(a), 2133, or 2134 of this title in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to 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, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection (a) of this section, has been submitted to the Congress. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) to the Committee on Foreign Affairs of the House of Representatives and the

Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection (a)(2) of this section, such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to section 2157(b)(3) of this title for purposes of the Commission's consideration of applications and requests under section 2155(a)(2) of this title and there shall be no congressional review pursuant to section 2157 of this title of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

(As amended Aug. 17, 1974, Pub.L. 93-377, § 5, 88 Stat. 475; Oct. 26, 1974, Pub.L. 93-485, § 1, 88 Stat. 1460; Mar. 10, 1978, Pub.L. 95-242, Title IV, § 401, 92 Stat. 142.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in subsec. (d) of this section.

1978 Amendment. Subsec. (a). Pub.L. 95-242 amended and carried forward into pars. (3), (5), and (6) the existing provisions relating to the terms and conditions required for inclusion in all new agreements for cooperation, added new terms and conditions set out in pars. (1), (2), (4), (7), (8), and (9), added provisions empowering the President to exempt proposed agreements from any of the requirements if he determines that inclusion of the requirement would be seriously prejudicial to the achievement of United States nonproliferation objectives or jeopardize the common defense and security for any other reason, provided for Congressional rejection of any such Presidential exemption, and provided that agreements be negotiated by the Department of State, with an exception for defense related agreements.

Subsec. (b). Pub.L. 95-242 re-enacted existing provisions with only minor changes in punctuation.

Subsec. (c). Pub.L. 95-242 inserted "(if not an agreement subject to subsection (d) of this section)" following "the proposed agreement for cooperation", substituted "submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations for a period of thirty days of continuous session (as defined in section 2159(g) of this title)" for "submitted to the Joint Committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of the adjournment of more than three days)", and substituted reference to "these committees" for reference to "the Joint Committee" in the proviso.

Subsec. (d). Pub.L. 95-242 provided that proposed agreements be laid before the Committees on International Relations and Foreign Relations rather than the Joint Committee on Atomic Ener-

gy and that for major agreements the Nuclear Proliferation Assessment Statement, if any, prepared in conjunction with the President's review of the proposed agreement, also be submitted to the committees, and added unlettered paragraphs following subsec. (d) relating to the submission of agency views to Congressional committees and the failure of the Congress to act on agreements which exempt the recipient nation from the requirements of subsec. (a)(2).

1974 Amendments. Opening par. Pub.L. 93-377 substituted reference to section 2074(a) of this title for reference to section 2074 of this title.

Subsec. (d). Pub.L. 93-485 added reference to proposed agreements entailing implementation of sections 2073, 2074, 2133, or 2134 of this title, or in relation to reactors capable of producing more than five thermal megawatts or special nuclear material in connection therewith, added provision requiring the Joint Committee to submit a report to Congress of its views and recommendations respecting the proposed agreement and an accompanying proposed concurrent resolution favoring or otherwise of such agreement within the first thirty days of the sixty day period and providing that such concurrent resolution so reported shall become the pending business of the House in question within twenty five days and shall be voted on within five days thereafter unless such House determined otherwise, and struck out the proviso that during the 85th Congress the waiting period shall be thirty days.

Change of Name. The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless

of any requirement 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.

Effective Date of 1974 Amendment. Section 2 of Pub.L. 93-485 provided that: "This Act [amending subsec. (d) of this section] shall apply to proposed agreements for cooperation and to proposed amendments to agreements for cooperation hereafter [Oct. 26, 1974] submitted to the Congress."

Transfer of Functions. All functions of the Nuclear Regulatory Commission, including those pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, are transferred to the Chairman of the Nuclear Regulatory Commission, with the exception of those functions relating to policy formation, rulemaking, and orders and adjudications, which are to be retained by the Commission, pursuant to Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Fuel Cycle Evaluations; Report to Congress. Pub.L. 95-601, § 9, Nov. 6, 1978, 92 Stat. 2951, provided that: "The Commission shall monitor and assist, as requested, the International Fuel Cycle Evaluation and the studies and evaluations of the various nuclear fuel cycle systems by the Department of Energy in progress as of the date of enactment, [Nov. 6, 1978], and report to the Congress semiannually through calendar year 1980 and annually through calendar year 1982 on the status of domestic and international evaluations of nuclear fuel cycle systems. This report shall include, but not be limited to, a summary of the information developed by and available to the Commission on the health, safety and safeguards implications of the leading fuel cycle technologies."

Presidential Review and Report to Congress on Adequacy of Laws and Regulations Governing Export and Re-Export of Nuclear Materials, Etc., and Domestic and International Nuclear Safeguards Preventing Proliferation, Diversion, or Theft of Nuclear Materials. Pub.L. 93-500, § 14, Oct. 29, 1974, 88 Stat. 1557, provided that: "The President is directed to review all laws, regulations issued thereunder by the Atomic Energy Commission, the Department of Commerce, and other Government agencies, governing the export and re-export of materials, supplies, articles, technical data or other information relating to the design, fabrication, development, supply, repair or replacement of any nuclear facility or any part thereof, and to report within six months to the Congress on the adequacy of such regulations to prevent the proliferation of nuclear capability for nonpeaceful purposes. The President is

also directed to review domestic and international nuclear safeguards and to report [within six months] to the Congress on the adequacy of such safeguards to prevent the proliferation, diversion or theft of all such nuclear materials and on efforts by the United States and other countries to strengthen international nuclear safeguards in anticipation of the Review Conference scheduled to be held in February 1975 pursuant to Article VIII, section 3 of the Treaty on the Non-Proliferation of Nuclear Weapons."

Abolition of the Atomic Energy Commission. The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the officers and components of the Commission were transferred to and vested in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub.L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of this title. The functions vested by law in the Energy Research and Development Administration or in the Administrator, officers, and components of the Energy Research and Development Administration were transferred to and vested in the Secretary of Energy, unless otherwise specifically provided, as part of the creation of the Department of Energy by Pub.L. 95-91, Aug. 4, 1977, 91 Stat. 565. See section 7151 of this title.

Cooperation with Berlin. Act Aug. 1, 1946, c. 724, § 125, as added by Pub.L. 85-14, Apr. 12, 1957, 71 Stat. 11, and amended by Pub.L. 93-377, § 5, Aug. 17, 1974, 88 Stat. 475, provided that: "The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123 [this section], on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54a, 57, 64, 82, 103, or 104 [sections 2074(a), 2077, 2094, 2112, 2133, or 2134 of this title]: *Provided*, That the guaranties required by section 123 [this section] shall be made by Berlin with the approval of the allied commandants."

Legislative History. For legislative history and purpose of Pub.L. 93-377, see 1974 U.S. Code Cong. and Adm. News, p. 4050. See, also, Pub.L. 93-485, 1974 U.S. Code Cong. and Adm. News, p. 5998; Pub.L. 95-242, 1978 U.S. Code Cong. and Adm. News, p. 326.

Library References

International Law § 10.19.
C.J.S. International Law §§ 40, 41.

§ 2153a. Approval for enrichment after export of source or special nuclear material; export of major critical components of enrichment facilities

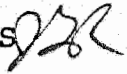
(a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided*, That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 2160 of this title, and any commitments from the recipient which the Secretary of Energy

THE WHITE HOUSE

WASHINGTON

February 26, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Amendments to the Atomic Energy Act of 1954

Attached at Tab A is a copy of Section 402 of H.R. 28, which would amend those portions of the Atomic Energy Act of 1954 concerning nuclear cooperation with other nations. Current law (Tab B) specifies that proposed nuclear cooperation agreements must meet certain substantive requirements, and must be submitted to the President along with an unclassified "Nuclear Proliferation Assessment Statement" from the Director of the Arms Control and Disarmament Agency. 42 U.S.C. § 2153(a). The President is required to certify that the agreement will promote the common defense and security. 42 U.S.C. § 2153(b). Certain agreements become effective thirty days after submission to the Foreign Affairs and Foreign Relations Committees; others sixty days after submission of the agreement and the Statement to Congress (provided Congress does not adopt a concurrent resolution to the contrary). 42 U.S.C. § 2153(c), 2153(d).

H.R. 28 would require the President to submit the agreement and Statement to the Foreign Affairs and Foreign Relations Committees and wait thirty days before issuing the certification required by 42 U.S.C. § 2153(b). The other report and wait provisions would remain in effect, with "concurrent resolution" in 42 U.S.C. § 2153(d) appropriately changed to "joint resolution."

Some might view this change as giving Congress "two bites" at a proposed agreement (before and after certification required by 42 U.S.C. § 2153(b)). Another way of looking at it is that the amendment would simply lengthen the "wait" period from sixty to ninety days. From either perspective I see no constitutional infirmity. These are merely "report and wait" provisions explicitly recognized in INS v. Chadha to comply with the Constitution.