

**U.S. ATOMIC ENERGY ACT**

***Section 123. Cooperation With Other Nations***

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed 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 subsection 91c., 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 subsection 91c. 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

subsection 91c., 144b., 144c., or 144d.,<sup>1</sup> 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 subsection 91c., 144b., 144c., or 144d.,<sup>2</sup> 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 subsection 91c., 144b., 144c., or 144d.,<sup>3</sup> a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and
- (9) except in the case of agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d.,<sup>4</sup> 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 subsection 91c., 144b., 144c., or 144d.)<sup>5</sup> from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d.,<sup>6</sup> 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<sup>7</sup> after consultation with the Commission shall be submitted to the President jointly by the Secretary of

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1. As amended by Public Law 103-337 (108 Stat. 2663), 5 October, 1994.

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4. As amended by Public Law 103-337 (108 Stat. 2663), 5 October 1994.

5. As amended by Public Law 103-337 (108 Stat. 3092), 5 October 1994.

6. As amended by Public Law 103-337 (108 Stat. 3092), 5 October 1994.

7. Public law 105-277 (112 Stat. 2681-774), 21 October 1998 struck "and in consultation with the Director of the Arms Control and Disarmament Agency ('the Director')".

State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy and the Nuclear Regulatory Commission. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. The Secretary of State shall also provide to the president an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)<sup>8</sup> 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 subsection 91c., 144b., 144c., or 144d.,<sup>9</sup> any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91c., or 144b., which are to be implemented by the Department of Defense, by the Secretary of Defense;

b. the President has submitted text of the proposed agreement for cooperation, except an agreement arranged pursuant to section 91c., 144b., 144c., or 144d. of section 144,<sup>10</sup> together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and<sup>11</sup> 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. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs<sup>12</sup> of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91c., 144b., 144c., or 144d., or if entailing implementation of sections 53, 54a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d., 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

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8. As amended by Public Law 99-64, section 301 (a)(1).

9. As amended by Public Law 103-337 (108 Stat. 3092), 5 October 1994.

10. As amended by Public Law 103-337 (108 Stat. 32092), 5 October 1994.

11. As amended by Public Law 99-64, section 301(a)(2).

12. Public Law 103-437 (108 Stat. 4581) (1994), section 15 (f)(5) struck "International Relations" and substituted "Foreign Affairs" throughout section.

sixty-day period the Congress adopts, and there is enacted, a joint resolution<sup>13</sup> stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided*, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto,<sup>14</sup> when required by subsection 123a., have been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006,<sup>15</sup> shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.<sup>16</sup> During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved.<sup>17</sup> Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130i. of this Act.<sup>18</sup>

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

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123a.(2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128b.(3) for purposes of the Commission's consideration of applications and requests under section 126a.(2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.<sup>19</sup>

e. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d., or an amendment thereto).<sup>20</sup>

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13. As amended by Public Law 99-64, section 301(a)(1).

14. Public Law 105-277 (112 Stat. 774), 21 October 1998, struck "Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency".

15. Public law 109-401 (120 Stat. 2734) (2006) amended section to include exemption clause from Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006.

16. As amended by Public Law 99-64, section 301(b)(2).

17. As amended by Public Law 99-64, section 301(a)(3).

18. As amended by Public Law 99-64, section 301(b)(3).

19. [...] editor chose not to include the footnote.

20. Public Law 110-369 (122 Stat. 4028) (2008), added sub-section e.