

**AMENDMENT TO H.R. 1401, AS REPORTED
OFFERED BY MR. COX OF CALIFORNIA OR MR.
DICKS OF WASHINGTON**

At the end of division A (page 326, after line 16),
insert the following new title:

1 **TITLE** **XIV—PROLIFERATION**
2 **AND EXPORT CONTROL MAT-**
3 **TERS**

4 **SEC. 1401. REPORT ON COMPLIANCE BY THE PEOPLE'S RE-**
5 **PUBLIC OF CHINA AND OTHER COUNTRIES**
6 **WITH THE MISSILE TECHNOLOGY CONTROL**
7 **REGIME.**

8 (a) REPORT REQUIRED.—Not later than October 31,
9 1999, the President shall transmit to Congress a report
10 on the compliance, or lack of compliance (both as to ac-
11 quiring and transferring missile technology), by the Peo-
12 ple's Republic of China, with the Missile Technology Con-
13 trol Regime, and on any actual or suspected transfer by
14 Russia or any other country of missile technology to the
15 People's Republic of China in violation of the Missile
16 Technology Control Regime. The report shall include a list
17 specifying each actual or suspected violation of the Missile
18 Technology Control Regime by the People's Republic of
19 China, Russia, or other country and, for each such viola-

1 tion, a description of the remedial action (if any) taken
2 by the United States or any other country.

3 (b) MATTERS TO BE INCLUDED.—The report under
4 subsection (a) shall also include information concerning—

5 (1) actual or suspected use by the People's Re-
6 public of China of United States missile technology;

7 (2) actual or suspected missile proliferation ac-
8 tivities by the People's Republic of China;

9 (3) actual or suspected transfer of missile tech-
10 nology by Russia or other countries to the People's
11 Republic of China: and

12 (4) United States actions to enforce the Missile
13 Technology Control Regime with respect to the Peo-
14 ple's Republic of China, including actions to prevent
15 the transfer of missile technology from Russia and
16 other countries to the People's Republic of China.

17 **SEC. 1402. ANNUAL REPORT ON TECHNOLOGY TRANSFERS**
18 **TO THE PEOPLE'S REPUBLIC OF CHINA.**

19 (a) ANNUAL REPORT.—The President shall transmit
20 to Congress an annual report on transfers to the People's
21 Republic of China by the United States and other coun-
22 tries of technology with potential military applications,
23 during the 1-year period preceding the transmittal of the
24 report.

1 (b) INITIAL REPORT.—The initial report under this
2 section shall be transmitted not later than October 31,
3 1999.

4 **SEC. 1403. REPORT ON IMPLEMENTATION OF TRANSFER OF**
5 **SATELLITE EXPORT CONTROL AUTHORITY.**

6 Not later than August 31, 1999, the President shall
7 transmit to Congress a report on the implementation of
8 subsection (a) of section 1513 of the Strom Thurmond
9 National Defense Authorization Act for Fiscal Year 1999
10 (Public Law 105–261; 112 Stat. 2174; 22 U.S.C. 2778
11 note), transferring satellites and related items from the
12 Commerce Control List of dual-use items to the United
13 States Munitions List. The report shall update the infor-
14 mation provided in the report under subsection (d) of that
15 section.

16 **SEC. 1404. SECURITY IN CONNECTION WITH SATELLITE EX-**
17 **PORT LICENSING.**

18 (a) SECURITY AT FOREIGN LAUNCHES.—As a condi-
19 tion of the export license for any satellite to be launched
20 outside the jurisdiction of the United States, the Secretary
21 of State shall require the following:

22 (1) That the technology transfer control plan
23 required by section 1514(a)(1) of the Strom Thur-
24 mond National Defense Authorization Act for Fiscal
25 Year 1999 (Public Law 105–261; 112 Stat. 2175;

1 22 U.S.C. 2778 note) be prepared by the Depart-
2 ment of Defense, and agreed to by the licensee, and
3 that the plan set forth the security arrangements for
4 the launch of the satellite, both before and during
5 launch operations, and include enhanced security
6 measures if the launch site is within the jurisdiction
7 of the People's Republic of China or any other coun-
8 try that is subject to section 1514 of the Strom
9 Thurmond National Defense Authorization Act for
10 Fiscal Year 1999.

11 (2) That each person providing security for the
12 launch of that satellite—

13 (A) be employed by, or under a contract
14 with, the Department of Defense;

15 (B) have received appropriate training in
16 the regulations prescribed by the Secretary of
17 State known as the International Trafficking in
18 Arms Regulations (hereafter in this section re-
19 ferred to as "ITAR");

20 (C) have significant experience and exper-
21 tise with satellite launches; and

22 (D) have been investigated in a manner at
23 least as comprehensive as the investigation re-
24 quired for the issuance of a security clearance
25 at the level designated as "Secret".

1 (3) That the number of such persons providing
2 security for the launch of the satellite shall be suffi-
3 cient to maintain 24-hour security of the satellite
4 and related launch vehicle and other sensitive tech-
5 nology.

6 (4) That the licensee agree to reimburse the
7 Department of Defense for all costs associated with
8 the provision of security for the launch of the sat-
9 ellite.

10 (b) DEFENSE DEPARTMENT MONITORS.—The Sec-
11 retary of Defense shall—

12 (1) ensure that persons assigned as space
13 launch campaign monitors are provided sufficient
14 training and have adequate experience in the ITAR
15 and have significant experience and expertise with
16 satellite technology, launch vehicle technology, and
17 launch operations technology;

18 (2) ensure that adequate numbers of such mon-
19 itors are assigned to space launch campaigns so that
20 24-hour, 7-day per week coverage is provided;

21 (3) take steps to ensure, to the maximum ex-
22 tent possible, the continuity of service by monitors
23 for the entire space launch campaign period (from
24 satellite marketing to launch and, if necessary, com-
25 pletion of a launch failure analysis); and

1 (4) adopt measures designed to make service as
2 a space launch campaign monitor an attractive ca-
3 reer opportunity.

4 **SEC. 1405. REPORTING OF TECHNOLOGY PASSED TO PEO-**
5 **PLE'S REPUBLIC OF CHINA AND OF FOREIGN**
6 **LAUNCH SECURITY VIOLATIONS.**

7 (a) MONITORING OF INFORMATION.—The Secretary
8 of Defense shall require that space launch monitors of the
9 Department of Defense assigned to monitor launches in
10 the People's Republic of China maintain records of all in-
11 formation authorized to be transmitted to the People's Re-
12 public of China, including copies of any documents author-
13 ized for such transmission, and reports on launch-related
14 activities.

15 (b) TRANSMISSION TO OTHER AGENCIES.—The Sec-
16 retary of Defense shall ensure that records under sub-
17 section (a) are transmitted on a current basis to appro-
18 priate elements of the Department of Defense and to the
19 Department of State, the Department of Commerce, and
20 the Central Intelligence Agency.

21 (c) RETENTION OF RECORDS.—Records described in
22 subsection (a) shall be retained for at least the period of
23 the statute of limitations for violations of the Arms Export
24 Control Act.

1 (d) GUIDELINES.—The Secretary of Defense shall
2 prescribe guidelines providing space launch monitors of
3 the Department of Defense with the responsibility and the
4 ability to report serious security violations, problems, or
5 other issues at an overseas launch site directly to the head-
6 quarters office of the responsible Department of Defense
7 component.

8 **SEC. 1406. REPORT ON NATIONAL SECURITY IMPLICATIONS**
9 **OF EXPORTING HIGH-PERFORMANCE COM-**
10 **PUTERS TO THE PEOPLE'S REPUBLIC OF**
11 **CHINA.**

12 (a) REVIEW.—The Secretary of Energy, the Sec-
13 retary of Defense, and the Secretary of State, in consulta-
14 tion with other appropriate departments and agencies,
15 shall conduct a comprehensive review of the national secu-
16 rity implications of exporting high-performance computers
17 to the People's Republic of China. As part of the review,
18 the Secretary shall conduct empirical testing of the extent
19 to which national security-related operations can be per-
20 formed using clustered, massively-parallel processing or
21 other combinations of computers.

22 (b) REPORT.—The Secretary of Energy shall submit
23 to Congress a report on the results of the review under
24 subsection (a). The report shall be submitted not later
25 than six months after the date of the enactment of this

1 Act and shall be updated not later than the end of each
2 subsequent 1-year period.

3 **SEC. 1407. END-USE VERIFICATION FOR USE BY PEOPLE'S**
4 **REPUBLIC OF CHINA OF HIGH-PERFORM-**
5 **ANCE COMPUTERS.**

6 (a) REVISED HPC VERIFICATION SYSTEM.—The
7 President shall seek to enter into an agreement with the
8 People's Republic of China to revise the existing
9 verification system with the People's Republic of China
10 with respect to end-use verification for high-performance
11 computers exported or to be exported to the People's Re-
12 public of China so as to provide for an open and trans-
13 parent system providing for effective end-use verification
14 for such computers and, at a minimum, providing for on-
15 site inspection of the end-use and end-user of such com-
16 puters, without notice, by United States nationals des-
17 igned by the United States Government. The President
18 shall transmit a copy of the agreement to Congress.

19 (b) DEFINITION.—As used in this section and section
20 1406, the term “high performance computer” means a
21 computer which, by virtue of its composite theoretical per-
22 formance level, would be subject to section 1211 of the
23 National Defense Authorization Act for Fiscal Year 1998
24 (50 U.S.C. App. 2404 note).

1 (c) ADJUSTMENT OF COMPOSITE THEORETICAL
2 PERFORMANCE LEVELS FOR POST-SHIPMENT
3 VERIFICATION.—Section 1213 of the National Defense
4 Authorization Act for Fiscal Year 1998 is amended by
5 adding at the end the following:

6 “(e) ADJUSTMENT OF PERFORMANCE LEVELS.—
7 Whenever a new composite theoretical performance level
8 is established under section 1211(d), that level shall apply
9 for purposes of subsection (a) of this section in lieu of
10 the level set forth in that subsection.”.

11 **SEC. 1408. PROCEDURES FOR REVIEW OF EXPORT OF CON-**
12 **TROLLED TECHNOLOGIES AND ITEMS.**

13 (a) RECOMMENDATIONS FOR PRIORITIZATION OF
14 NATIONAL SECURITY CONCERNS.—The President shall
15 submit to Congress the President’s recommendations for
16 the establishment of a mechanism to identify, on a con-
17 tinuing basis, those controlled technologies and items the
18 export of which is of greatest national security concern
19 relative to other controlled technologies and items.

20 (b) RECOMMENDATIONS FOR EXECUTIVE DEPART-
21 MENT APPROVALS FOR EXPORTS OF GREATEST NA-
22 TIONAL SECURITY CONCERN.—With respect to controlled
23 technologies and items identified under subsection (a), the
24 President shall submit to Congress the President’s rec-
25 ommendations for the establishment of a mechanism to

1 identify procedures for export of such technologies and
2 items so as to provide—

3 (1) that the period for review by an executive
4 department or agency of a license application for
5 any such export shall be extended to a period longer
6 than that otherwise required when such longer pe-
7 riod is considered necessary by the head of that de-
8 partment or agency for national security purposes;
9 and

10 (2) that a license for such an export may be ap-
11 proved only with the agreement of each executive de-
12 partment or agency that reviewed the application for
13 the license, subject to appeal procedures to be estab-
14 lished by the President.

15 (c) RECOMMENDATIONS FOR STREAMLINED LICENS-
16 ING PROCEDURES FOR OTHER EXPORTS.—With respect
17 to controlled technologies and items other than those iden-
18 tified under subsection (a), the President shall submit to
19 Congress the President's recommendations for modifica-
20 tions to licensing procedures for export of such tech-
21 nologies and items so as to streamline the licensing proc-
22 ess and provide greater transparency, predictability, and
23 certainty.

1 **SEC. 1409. NOTICE OF FOREIGN ACQUISITION OF UNITED**
2 **STATES FIRMS IN NATIONAL SECURITY IN-**
3 **DUSTRIES.**

4 Section 721(b) of the Defense Production Act of
5 1950 (50 U.S.C. 2170(b)) is amended—

6 (1) by inserting “(1)” before “The President”;

7 (2) by redesignating paragraphs (1) and (2) as
8 subparagraphs (A) and (B), respectively; and

9 (3) by adding at the end the following:

10 “(2) Whenever a person engaged in interstate com-
11 merce in the United States is the subject of a merger,
12 acquisition, or takeover described in paragraph (1), that
13 person shall promptly notify the President, or the Presi-
14 dent’s designee, of such planned merger, acquisition, or
15 takeover. Whenever any executive department or agency
16 becomes aware of any such planned merger, acquisition,
17 or takeover, the head of that department or agency shall
18 promptly notify the President, or the President’s designee,
19 of such planned merger, acquisition, or takeover.”.

20 **SEC. 1410. FIVE-AGENCY INSPECTORS GENERAL EXAMINA-**
21 **TION OF COUNTERMEASURES AGAINST AC-**
22 **QUISITION BY THE PEOPLE’S REPUBLIC OF**
23 **CHINA OF MILITARILY SENSITIVE TECH-**
24 **NOLOGY.**

25 Not later than January 1, 2000, the Inspectors Gen-
26 eral of the Departments of State, Defense, the Treasury,

1 and Commerce and the Inspector General of the Central
2 Intelligence Agency shall submit to Congress a report on
3 the adequacy of current export controls and counterintel-
4 lligence measures to protect against the acquisition by the
5 People's Republic of China of militarily sensitive United
6 States technology. Such report shall include a description
7 of measures taken to address any deficiencies found in
8 such export controls and counterintelligence measures.

9 **SEC. 1411. OFFICE OF TECHNOLOGY SECURITY IN DEPART-**
10 **MENT OF DEFENSE.**

11 (a) ENHANCED MULTILATERAL EXPORT CON-
12 TROLS.—

13 (1) NEW INTERNATIONAL CONTROLS.—The
14 President shall work (in the context of the scheduled
15 1999 review of the Wassenaar Arrangement and
16 otherwise) to establish new binding international
17 controls on technology transfers that threaten inter-
18 national peace and United States national security.

19 (2) IMPROVED SHARING OF INFORMATION.—
20 The President shall take appropriate actions (in the
21 context of the scheduled 1999 review of the
22 Wassenaar Arrangement and otherwise) to improve
23 the sharing of information by nations that are major
24 exporters of technology so that the United States

1 can track movements of technology and enforce tech-
2 nology controls and re-export requirements.

3 (b) OFFICE OF TECHNOLOGY SECURITY.—(1) There
4 is hereby established in the Department of Defense an Of-
5 fice of Technology Security. The Office shall support
6 United States Government efforts to—

7 (1) establish new binding international controls
8 on technology transfers that threaten international
9 peace and United States national security; and

10 (2) improve the sharing of information by na-
11 tions that are major exporters of technology so that
12 the United States can track movements of tech-
13 nology and enforce technology controls and re-export
14 requirements.

At the end of subtitle A of title XXXI (page 419,
after line 3), insert the following new section:

15 **SEC. 3106. DEPARTMENT OF ENERGY COUNTERINTEL-**
16 **LIGENCE CYBER SECURITY PROGRAM.**

17 (a) INCREASED FUNDS FOR COUNTERINTELLIGENCE
18 CYBER SECURITY.—The amounts provided in section
19 3103 in the matter preceding paragraph (1) and in para-
20 graph (3) are each hereby increased by \$8,600,000, to be
21 available for Counterintelligence Cyber Security programs.

22 (b) OFFSETTING REDUCTIONS DERIVED FROM CON-
23 TRACTOR TRAVEL.—(1) The amount provided in section

1 3101 in the matter preceding paragraph (1) (for weapons
2 activities in carrying out programs necessary for national
3 security) is hereby reduced by \$4,700,000.

4 (2) The amount provided in section 3102 in the mat-
5 ter preceding paragraph (1) of subsection (a) (for environ-
6 mental restoration and waste management in carrying out
7 programs necessary for national security) is hereby re-
8 duced by \$1,900,000.

9 (3) The amount provided in section 3103 in the mat-
10 ter preceding paragraph (1) is hereby reduced by
11 \$2,000,000.

At the end of title XXXI (page 453, after line 15),
insert the following new subtitle:

12 **Subtitle F—Protection of National**
13 **Security Information**

14 **SEC. 3181. SHORT TITLE.**

15 This subtitle may be cited as the “National Security
16 Information Protection Improvement Act”.

17 **SEC. 3182. SEMI-ANNUAL REPORT BY THE PRESIDENT ON**

18 **ESPIONAGE BY THE PEOPLE’S REPUBLIC OF**

19 **CHINA.**

20 (a) **REPORTS REQUIRED.**—The President shall trans-
21 mit to Congress a report, not less often than every six
22 months, on the steps being taken by the Department of
23 Energy, the Department of Defense, the Federal Bureau

1 of Investigation, the Central Intelligence Agency, and all
2 other relevant executive departments and agencies to re-
3 spond to espionage and other intelligence activities by the
4 People's Republic of China, particularly with respect to
5 the theft of sophisticated United States nuclear weapons
6 design information and the targeting by the People's Re-
7 public of China of United States nuclear weapons codes
8 and other national security information of strategic con-
9 cern.

10 (b) INITIAL REPORT.—The first report under this
11 section shall be transmitted not later than January 1,
12 2000.

13 **SEC. 3183. REPORT ON WHETHER DEPARTMENT OF EN-**
14 **ERGY SHOULD CONTINUE TO MAINTAIN NU-**
15 **CLEAR WEAPONS RESPONSIBILITY.**

16 Not later than January 1, 2000, the President shall
17 transmit to Congress a report regarding the feasibility of
18 alternatives to the current arrangements for controlling
19 United States nuclear weapons development, testing, and
20 maintenance within the Department of Energy, including
21 the reestablishment of the Atomic Energy Commission as
22 an independent nuclear agency. The report shall describe
23 the benefits and shortcomings of each such alternative, as
24 well as the current system, from the standpoint of pro-
25 tecting such weapons and related research and technology

1 from theft and exploitation. The President shall include
2 with such report the President's recommendation for the
3 appropriate arrangements for controlling United States
4 nuclear weapons development, testing, and maintenance
5 outside the Department of Energy if it should be deter-
6 mined that the Department of Energy should no longer
7 have that responsibility.

8 **SEC. 3184. DEPARTMENT OF ENERGY OFFICE OF FOREIGN**
9 **INTELLIGENCE AND OFFICE OF COUNTER-**
10 **INTELLIGENCE.**

11 (a) IN GENERAL.—The Department of Energy Orga-
12 nization Act is amended by inserting after section 212 (42
13 U.S.C. 7143) the following new sections:

14 “OFFICE OF FOREIGN INTELLIGENCE

15 “SEC. 213. (a) There shall be within the Department
16 an Office of Foreign Intelligence, to be headed by a Direc-
17 tor, who shall report directly to the Secretary.

18 “(b) The Director shall be responsible for the pro-
19 grams and activities of the Department relating to the
20 analysis of intelligence with respect to nuclear weapons
21 and materials, other nuclear matters, and energy security.

22 “(c) The Secretary may delegate to the Deputy Sec-
23 retary of Energy the day-to-day supervision of the Direc-
24 tor.

1 “OFFICE OF COUNTERINTELLIGENCE

2 “SEC. 214. (a) There shall be within the Department
3 an Office of Counterintelligence, to be headed by a Direc-
4 tor, who shall report directly to the Secretary.

5 “(b) The Director shall carry out all counterintel-
6 ligence activities in the Department relating to the defense
7 activities of the Department.

8 “(c) The Secretary may delegate to the Deputy Sec-
9 retary of Energy the day-to-day supervision of the Direc-
10 tor.

11 “(d)(1) The Director shall keep the intelligence com-
12 mittees fully and currently informed of all significant secu-
13 rity breaches at any of the national laboratories.

14 “(2) For purposes of this subsection, the term ‘intel-
15 ligence committees’ means the Permanent Select Com-
16 mittee of the House of Representatives and the Select
17 Committee on Intelligence of the Senate.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
19 in the first section of that Act is amended by inserting
20 after the item relating to section 212 the following new
21 items:

“Sec. 213. Office of Foreign Intelligence.

“Sec. 214. Office of Counterintelligence.”.

1 **SEC. 3185. COUNTERINTELLIGENCE PROGRAM AT DEPART-**
2 **MENT OF ENERGY NATIONAL LABORATORIES.**

3 (a) PROGRAM REQUIRED.—The Secretary of Energy
4 shall establish and maintain at each national laboratory
5 a counterintelligence program for the defense-related ac-
6 tivities of the Department of Energy at such laboratory.

7 (b) HEAD OF PROGRAM.—The Secretary shall ensure
8 that, for each national laboratory, the head of the counter-
9 intelligence program of that laboratory—

10 (1) has extensive experience in counterintel-
11 ligence activities within the Federal Government;
12 and

13 (2) with respect to the counterintelligence pro-
14 gram, is responsible directly to, and is hired with the
15 concurrence of, the Director of Counterintelligence
16 of the Department of Energy and the director of the
17 national laboratory.

18 **SEC. 3186. COUNTERINTELLIGENCE ACTIVITIES AT OTHER**
19 **DEPARTMENT OF ENERGY FACILITIES.**

20 (a) ASSIGNMENT OF COUNTERINTELLIGENCE PER-
21 SONNEL.—(1) The Secretary of Energy shall assign to
22 each Department of Energy facility, other than a national
23 laboratory, at which Restricted Data is located an indi-
24 vidual who shall assess security and counterintelligence
25 matters at that facility.

1 (2) An individual assigned to a facility under this
2 subsection shall be stationed at the facility.

3 (b) SUPERVISION.—Each individual assigned under
4 subsection (a) shall report directly to the Director of the
5 Office of Counterintelligence of the Department of En-
6 ergy.

7 **SEC. 3187. DEPARTMENT OF ENERGY POLYGRAPH EXAMI-**
8 **NATIONS.**

9 (a) COUNTERINTELLIGENCE POLYGRAPH PROGRAM
10 REQUIRED.—The Secretary of Energy, acting through the
11 Director of Counterintelligence of the Department of En-
12 ergy, shall carry out a counterintelligence polygraph pro-
13 gram for the defense activities of the Department of En-
14 ergy. The program shall consist of the administration on
15 a regular basis of a polygraph examination to each covered
16 person who has access to a program that the Director of
17 Counterintelligence and the Assistant Secretary assigned
18 the functions under section 203(a)(5) of the Department
19 of Energy Organization Act determine requires special ac-
20 cess restrictions.

21 (b) COVERED PERSONS.—For purposes of subsection
22 (a), a covered person is any of the following:

23 (1) An officer or employee of the Department.

24 (2) An expert or consultant under contract to
25 the Department.

1 (3) An officer or employee of any contractor of
2 the Department.

3 (c) ADDITIONAL POLYGRAPH EXAMINATIONS.—In
4 addition to the polygraph examinations administered
5 under subsection (a), the Secretary, in carrying out the
6 defense activities of the Department—

7 (1) may administer a polygraph examination to
8 any employee of the Department or of any con-
9 tractor of the Department, for counterintelligence
10 purposes; and

11 (2) shall administer a polygraph examination to
12 any such employee in connection with an investiga-
13 tion of such employee, if such employee requests the
14 administration of a polygraph examination for excul-
15 patory purposes.

16 (d) REGULATIONS.—(1) The Secretary shall pre-
17 scribe any regulations necessary to carry out this section.
18 Such regulations shall include procedures, to be developed
19 in consultation with the Director of the Federal Bureau
20 of Investigation, for identifying and addressing “false
21 positive” results of polygraph examinations.

22 (2) Notwithstanding section 501 of the Department
23 of Energy Organization Act (42 U.S.C. 7191) or any other
24 provision of law, the Secretary may, in prescribing regula-
25 tions under paragraph (1), waive any requirement for no-

1 tice or comment if the Secretary determines that it is in
2 the national security interest to expedite the implementa-
3 tion of such regulations.

4 (e) NO CHANGE IN OTHER POLYGRAPH AUTHOR-
5 ITY.—This section shall not be construed to affect the au-
6 thority under any other provision of law of the Secretary
7 to administer a polygraph examination.

8 **SEC. 3188. CIVIL MONETARY PENALTIES FOR VIOLATIONS**
9 **OF DEPARTMENT OF ENERGY REGULATIONS**
10 **RELATING TO THE SAFEGUARDING AND SE-**
11 **CURITY OF RESTRICTED DATA.**

12 (a) IN GENERAL.—Chapter 18 of title I of the Atomic
13 Energy Act of 1954 (42 U.S.C. 2271 et seq.) is amended
14 by inserting after section 234A the following new section:

15 “SEC. 234B. CIVIL MONETARY PENALTIES FOR VIO-
16 LATIONS OF DEPARTMENT OF ENERGY REGULATIONS
17 REGARDING SECURITY OF CLASSIFIED OR SENSITIVE IN-
18 FORMATION OR DATA.—

19 “a. Any individual or entity that has entered into a
20 contract or agreement with the Department of Energy, or
21 a subcontract or subagreement thereto, and that commits
22 a gross violation or a pattern of gross violations of any
23 applicable rule, regulation, or order prescribed or other-
24 wise issued by the Secretary pursuant to this subtitle re-
25 lating to the safeguarding or security of Restricted Data

1 or other classified or sensitive information shall be subject
2 to a civil penalty of not to exceed \$500,000 for each such
3 violation.

4 “b. The Secretary shall include, in each contract en-
5 tered into after the date of the enactment of this section
6 with a contractor of the Department, provisions which
7 provide an appropriate reduction in the fees or amounts
8 paid to the contractor under the contract in the event of
9 a violation by the contractor or contractor employee of any
10 rule, regulation, or order relating to the safeguarding or
11 security of Restricted Data or other classified or sensitive
12 information. The provisions shall specify various degrees
13 of violations and the amount of the reduction attributable
14 to each degree of violation.

15 “c. The powers and limitations applicable to the as-
16 sessment of civil penalties under section 234A shall apply
17 to the assessment of civil penalties under this section.”.

18 (b) CLARIFYING AMENDMENT.—The section heading
19 of section 234A of that Act (42 U.S.C. 2282a) is amended
20 by inserting “SAFETY” before “REGULATIONS”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 in the first section of that Act is amended by inserting
23 after the item relating to section 234 the following new
24 items:

“234A. Civil Monetary Penalties for Violations of Department of Energy Safety
Regulations.

“234B. Civil Monetary Penalties for Violations of Department of Energy Regulations Regarding Security of Classified or Sensitive Information or Data.”.

1 **SEC. 3189. INCREASED PENALTIES FOR MISUSE OF RE-**
2 **STRICTED DATA.**

3 (a) COMMUNICATION OF RESTRICTED DATA.—Sec-
4 tion 224 of the Atomic Energy Act of 1954 (42 U.S.C.
5 2274) is amended—

6 (1) in clause a., by striking “\$20,000” and in-
7 serting “\$400,000”; and

8 (2) in clause b., by striking “\$10,000” and in-
9 serting “\$200,000”.

10 (b) RECEIPT OF RESTRICTED DATA.—Section 225 of
11 such Act (42 U.S.C. 2275) is amended by striking
12 “\$20,000” and inserting “\$400,000”.

13 (c) DISCLOSURE OF RESTRICTED DATA.—Section
14 227 of such Act (42 U.S.C. 2277) is amended by striking
15 “\$2,500” and inserting “\$50,000”.

16 **SEC. 3190. RESTRICTIONS ON ACCESS TO NATIONAL LAB-**
17 **ORATORIES BY FOREIGN VISITORS FROM**
18 **SENSITIVE COUNTRIES.**

19 (a) BACKGROUND REVIEW REQUIRED.—The Sec-
20 retary of Energy may not admit to any facility of a na-
21 tional laboratory any individual who is a citizen or agent
22 of a nation that is named on the current sensitive coun-
23 tries list unless the Secretary first completes a background
24 review with respect to that individual.

1 (b) MORATORIUM PENDING CERTIFICATION.—(1)
2 During the period described in paragraph (2), the Sec-
3 retary may not admit to any facility of a national labora-
4 tory any individual who is a citizen or agent of a nation
5 that is named on the current sensitive countries list.

6 (2) The period referred to in paragraph (1) is the
7 period beginning 30 days after the date of the enactment
8 of this Act and ending on the later of the following:

9 (A) The date that is 90 days after the date of
10 the enactment of this Act.

11 (B) The date that is 45 days after the date on
12 which the Secretary submits to Congress a certifi-
13 cation described in paragraph (3).

14 (3) A certification referred to in paragraph (2) is a
15 certification by the Director of Counterintelligence of the
16 Department of Energy, with the concurrence of the Direc-
17 tor of the Federal Bureau of Investigation, that all secu-
18 rity measures are in place that are necessary and appro-
19 priate to prevent espionage or intelligence gathering by or
20 for a sensitive country, including access by individuals re-
21 ferred to in paragraph (1) to classified information of the
22 national laboratory.

23 (c) WAIVER OF MORATORIUM.—(1) The Secretary of
24 Energy may waive the prohibition in subsection (b) on a
25 case-by-case basis with respect to any specific individual

1 or any specific delegation of individuals whose admission
2 to a national laboratory is determined by the Secretary
3 to be in the interest of the national security of the United
4 States.

5 (2) Not later than the seventh day of the month fol-
6 lowing a month in which a waiver is made, the Secretary
7 shall submit a report in writing providing notice of each
8 waiver made in that month to the following:

9 (A) The Committee on Armed Services and the
10 Select Committee on Intelligence of the Senate.

11 (B) The Committee on Armed Services and the
12 Permanent Select Committee on Intelligence of the
13 House of Representatives.

14 (3) Each such report shall be in classified form and
15 shall contain the identity of each individual or delegation
16 for whom such a waiver was made and, with respect to
17 each such individual or delegation, the following informa-
18 tion:

19 (A) A detailed justification for the waiver.

20 (B) For each individual with respect to whom
21 a background review was conducted, whether the
22 background review determined that negative infor-
23 mation exists with respect to that individual.

24 (C) The Secretary's certification that the ad-
25 mission of that individual or delegation to a national

1 laboratory is in the interest of the national security
2 of the United States.

3 (4) The authority of the Secretary under paragraph
4 (1) may be delegated only to the Director of Counterintel-
5 ligence of the Department of Energy.

6 (d) EXCEPTION TO MORATORIUM FOR CERTAIN IN-
7 DIVIDUALS.—The moratorium under subsection (b) shall
8 not apply to any person who—

9 (1) is, on the date of the enactment of this Act,
10 an employee or assignee of the Department of En-
11 ergy, or of a contractor of the Department; and

12 (2) has undergone a background review in ac-
13 cordance with subsection (a).

14 (e) EXCEPTION TO MORATORIUM FOR CERTAIN PRO-
15 GRAMS.—In the case of a program undertaken pursuant
16 to an international agreement between the United States
17 and a foreign nation, the moratorium under subsection (b)
18 shall not apply to the admittance to a facility that is im-
19 portant to that program of a citizen of that foreign nation
20 whose admittance is important to that program.

21 (f) SENSE OF CONGRESS REGARDING BACKGROUND
22 REVIEWS.—It is the sense of Congress that the Secretary
23 of Energy, the Director of the Federal Bureau of Inves-
24 tigation, and the Director of Central Intelligence should

1 ensure that background reviews carried out under this sec-
2 tion are completed in not more than 15 days.

3 (g) DEFINITIONS.—For purposes of this section:

4 (1) The term “background review”, commonly
5 known as an indices check, means a review of infor-
6 mation provided by the Director of Central Intel-
7 ligence and the Director of the Federal Bureau of
8 Investigation regarding personal background, includ-
9 ing information relating to any history of criminal
10 activity or to any evidence of espionage.

11 (2) The term “sensitive countries list” means
12 the list prescribed by the Secretary of Energy known
13 as the Department of Energy List of Sensitive
14 Countries.

15 **SEC. 3191. REQUIREMENTS RELATING TO ACCESS BY FOR-**
16 **EIGN VISITORS AND EMPLOYEES TO DEPART-**
17 **MENT OF ENERGY FACILITIES ENGAGED IN**
18 **DEFENSE ACTIVITIES.**

19 (a) SECURITY CLEARANCE REVIEW REQUIRED.—
20 The Secretary of Energy may not allow unescorted access
21 to any classified area, or access to classified information,
22 of any facility of the Department of Energy engaged in
23 the defense activities of the Department to any individual
24 who is a citizen of a foreign nation unless—

1 (1) the Secretary, acting through the Director
2 of Counterintelligence, first completes a security
3 clearance investigation with respect to that indi-
4 vidual in a manner at least as comprehensive as the
5 investigation required for the issuance of a security
6 clearance at the level required for such access under
7 the rules and regulations of the Department; or

8 (2) a foreign government first completes a secu-
9 rity clearance investigation with respect to that indi-
10 vidual in a manner that the Secretary of State, pur-
11 suant to an international agreement between the
12 United States and that foreign government, deter-
13 mines is equivalent to the investigation required for
14 the issuance of a security clearance at the level re-
15 quired for such access under the rules and regula-
16 tions of the Department.

17 (b) EFFECT ON CURRENT EMPLOYEES.—The Sec-
18 retary shall ensure that any individual who, on the date
19 of the enactment of this Act, is a citizen of a foreign na-
20 tion and an employee of the Department or of a contractor
21 of the Department is not discharged from such employ-
22 ment as a result of this section before the completion of
23 the security clearance investigation of such individual
24 under subsection (a) unless the Director of Counterintel-

1 ligenge determines that such discharge is necessary for the
2 national security of the United States.

3 **SEC. 3192. ANNUAL REPORT ON SECURITY AND COUNTER-**
4 **INTELLIGENCE STANDARDS AT NATIONAL**
5 **LABORATORIES AND OTHER DEFENSE FA-**
6 **CILITIES OF THE DEPARTMENT OF ENERGY.**

7 (a) REPORT ON SECURITY AND COUNTERINTEL-
8 LIGENCE STANDARDS AT NATIONAL LABORATORIES AND
9 OTHER DOE DEFENSE FACILITIES.—Not later than
10 March 1 of each year, the Secretary of Energy, acting
11 through the Director of Counterintelligence of the Depart-
12 ment of Energy, shall submit a report on the security and
13 counterintelligence standards at the national laboratories,
14 and other facilities of the Department of Energy engaged
15 in the defense activities of the Department, to the fol-
16 lowing:

17 (1) The Committee on Armed Services and the
18 Select Committee on Intelligence of the Senate.

19 (2) The Committee on Armed Services and the
20 Permanent Select Committee on Intelligence of the
21 House of Representatives.

22 (b) CONTENTS OF REPORT.—The report shall be in
23 classified form and shall contain, for each such national
24 laboratory or facility, the following information:

1 (1) A description of all security measures that
2 are in place to prevent access by unauthorized indi-
3 viduals to classified information of the national lab-
4 oratory or facility.

5 (2) A certification by the Director of Counter-
6 intelligence of the Department of Energy as to
7 whether—

8 (A) all security measures are in place to
9 prevent access by unauthorized individuals to
10 classified information of the national laboratory
11 or facility; and

12 (B) such security measures comply with
13 Presidential Decision Directives and other ap-
14 plicable Federal requirements relating to the
15 safeguarding and security of classified informa-
16 tion.

17 (3) For each admission of an individual under
18 section 3190 not described in a previous report
19 under this section, the identity of that individual,
20 and whether the background review required by that
21 section determined that information relevant to secu-
22 rity exists with respect to that individual.

1 **SEC. 3193. REPORT ON SECURITY VULNERABILITIES OF NA-**
2 **TIONAL LABORATORY COMPUTERS.**

3 (a) REPORT REQUIRED.—Not later than March 1 of
4 each year, the National Counterintelligence Policy Board
5 shall prepare a report, in consultation with the Director
6 of Counterintelligence of the Department of Energy, on
7 the security vulnerabilities of the computers of the na-
8 tional laboratories.

9 (b) PREPARATION OF REPORT.—In preparing the re-
10 port, the National Counterintelligence Policy Board shall
11 establish a so-called “red team” of individuals to perform
12 an operational evaluation of the security vulnerabilities of
13 the computers of the national laboratories, including by
14 direct experimentation. Such individuals shall be selected
15 by the National Counterintelligence Policy Board from
16 among employees of the Department of Defense, the Na-
17 tional Security Agency, the Central Intelligence Agency,
18 the Federal Bureau of Investigation, and of other agen-
19 cies, and may be detailed to the National Counterintel-
20 ligence Policy Board from such agencies without reim-
21 bursement and without interruption or loss of civil service
22 status or privilege.

23 (c) SUBMISSION OF REPORT TO SECRETARY OF EN-
24 ERGY AND TO FBI DIRECTOR.—Not later than March 1
25 of each year, the report shall be submitted in classified

1 and unclassified form to the Secretary of Energy and the
2 Director of the Federal Bureau of Investigation.

3 (d) FORWARDING TO CONGRESSIONAL COMMIT-
4 TEES.—Not later than 30 days after the report is sub-
5 mitted, the Secretary and the Director shall each sepa-
6 rately forward that report, with the recommendations in
7 classified and unclassified form of the Secretary or the Di-
8 rector, as applicable, in response to the findings of that
9 report, to the following:

10 (1) The Committee on Armed Services and the
11 Select Committee on Intelligence of the Senate.

12 (2) The Committee on Armed Services and the
13 Permanent Select Committee on Intelligence of the
14 House of Representatives.

15 **SEC. 3194. GOVERNMENT ACCESS TO CLASSIFIED INFOR-**
16 **MATION ON DEPARTMENT OF ENERGY DE-**
17 **FENSE-RELATED COMPUTERS.**

18 (a) PROCEDURES REQUIRED.—The Secretary of En-
19 ergy shall establish procedures to govern access to classi-
20 fied information on DOE defense-related computers.
21 Those procedures shall, at a minimum, provide that each
22 employee of the Department of Energy who requires ac-
23 cess to classified information shall be required as a condi-
24 tion of such access to provide to the Secretary written con-
25 sent which permits access by an authorized investigative

1 agency to any DOE defense-related computer used in the
2 performance of the defense-related duties of such em-
3 ployee during the period of that employee's access to clas-
4 sified information and for a period of three years there-
5 after.

6 (b) EXPECTATION OF PRIVACY IN DOE DEFENSE-
7 RELATED COMPUTERS.—Notwithstanding any other pro-
8 vision of law (including any provision of law enacted by
9 the Electronic Communications Privacy Act of 1986), no
10 user of a DOE defense-related computer shall have any
11 expectation of privacy in the use of that computer.

12 (c) DEFINITIONS.—For purposes of this section:

13 (1) The term “DOE defense-related computer”
14 means a computer of the Department of Energy or
15 a Department of Energy contractor that is used, in
16 whole or in part, for a Department of Energy de-
17 fense-related activity.

18 (2) The term “computer” means an electronic,
19 magnetic, optical, electrochemical, or other high-
20 speed data processing device performing logical,
21 arithmetic, or storage functions, and includes any
22 data storage facility or communications facility di-
23 rectly related to, or operating in conjunction with,
24 such device.

1 (3) The term “authorized investigative agency”
2 means an agency authorized by law or regulation to
3 conduct a counterintelligence investigation or inves-
4 tigations of persons who are proposed for access to
5 classified information to ascertain whether such per-
6 sons satisfy the criteria for obtaining and retaining
7 access to such information.

8 (4) The term “classified information” means
9 any information that has been determined pursuant
10 to Executive Order No. 12356 of April 2, 1982, or
11 successor orders, or the Atomic Energy Act of 1954,
12 to require protection against unauthorized disclosure
13 and that is so designated.

14 (5) The term “employee” includes any person
15 who receives a salary or compensation of any kind
16 from the Department of Energy, is a contractor of
17 the Department of Energy or an employee thereof,
18 is an unpaid consultant of the Department of En-
19 ergy, or otherwise acts for or on behalf of the De-
20 partment of Energy.

21 (d) ESTABLISHMENT OF PROCEDURES.—Not later
22 than 90 days after the date of the enactment of this Act,
23 the Secretary of Energy shall prescribe such regulations
24 as may be necessary to implement this section.

1 **SEC. 3195. DEFINITION OF NATIONAL LABORATORY.**

2 For purposes of this subtitle, the term “national lab-
3 oratory” means any of the following:

4 (1) The Lawrence Livermore National Labora-
5 tory, Livermore, California.

6 (2) The Los Alamos National Laboratory, Los
7 Alamos, New Mexico.

8 (3) The Sandia National Laboratories, Albu-
9 querque, New Mexico.

10 (4) The Oak Ridge National Laboratories, Oak
11 Ridge, Tennessee.