

103^D CONGRESS
2^D SESSION

H. R. 3920

To provide for the licensing of all new Federal nuclear facilities by the Nuclear Regulatory Commission, and to establish a Federal Nuclear Facilities Regulatory Review Commission to recommend an approach to subjecting existing Federal nuclear facilities to independent regulation.

IN THE HOUSE OF REPRESENTATIVES

FEBURARY 28, 1994

Mr. MILLER of California (for himself, Mr. LEHMAN, Mr. SHARP, and Mr. DEFAZIO) introduced the following bill; which was referred jointly to the Committees on Natural Resources, Energy and Commerce, Armed Services, and Science, Space, and Technology

A BILL

To provide for the licensing of all new Federal nuclear facilities by the Nuclear Regulatory Commission, and to establish a Federal Nuclear Facilities Regulatory Review Commission to recommend an approach to subjecting existing Federal nuclear facilities to independent regulation.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Nuclear Facili-
5 ties Licensing and Regulation Act”.

1 **TITLE I—NRC LICENSING OF**
2 **NEW DEPARTMENT OF EN-**
3 **ERGY NUCLEAR FACILITIES**

4 **SEC. 101. AMENDMENT TO ENERGY REORGANIZATION ACT**
5 **OF 1974.**

6 Section 202 of the Energy Reorganization Act of
7 1974 (42 U.S.C. 5842) is amended—

8 (1) by inserting after the section designation
9 the following: “(a) CERTAIN SPECIFIC FACILI-
10 TIES.—” ; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(b) NEW DEPARTMENT OF ENERGY NUCLEAR FA-
14 CILITIES.—

15 “(1) LICENSING REQUIREMENTS.—

16 “(A) IN GENERAL.—No person may con-
17 struct or operate any new Department of En-
18 ergy nuclear facility except under and in ac-
19 cordance with a license issued by the Nuclear
20 Regulatory Commission pursuant to—

21 “(i) standards issued by the Adminis-
22 trator of the Environmental Protection
23 Agency under paragraph (2); and

24 “(ii) requirements and procedures es-
25 tablished by the Commission by rule.

1 “(B) REQUIREMENTS AND PROCEDURES.—

2 The requirements and procedures established
3 under subparagraph (A) shall—

4 “(i) implement the standards issued
5 by the Administrator of the Environmental
6 Protection Agency under paragraph (2);

7 “(ii) provide for extensive participa-
8 tion by the States and the public; and

9 “(iii) include necessary protections for
10 the national security.

11 “(2) STANDARDS FOR PROTECTION FROM RA-
12 DIOACTIVE RELEASES.—The Administrator of the
13 Environmental Protection Agency shall, by rule and
14 pursuant to the authority under Reorganization Plan
15 No. 3 of 1970 (5 U.S.C. App.), issue standards for
16 the protection of the public health and safety and
17 the environment from radioactive releases from new
18 Department of Energy nuclear facilities. The Admin-
19 istrator shall issue the 1st such standards not later
20 than 2 years after the date of the enactment of this
21 subsection.

22 “(3) PRESIDENTIAL WAIVER.—

23 “(A) IN GENERAL.—The President may
24 waive any licensing requirement or standard im-
25 posed on the Secretary of Energy pursuant to

1 this subsection if the President determines that
2 the waiver is necessary for national security
3 reasons.

4 “(B) SCOPE AND DURATION.—Any waiver
5 granted under subparagraph (A) shall be lim-
6 ited in scope and duration to that required for
7 national security reasons.

8 “(C) NOTIFICATION OF CONGRESS AND
9 PUBLIC.—The President shall provide written
10 notification to the Speaker of the House of
11 Representatives and the President pro tempore
12 of the Senate, and shall make a public an-
13 nouncement, of any waiver granted under sub-
14 paragraph (A) and the reasons therefor.

15 “(4) COORDINATION OF PROVISIONS.—The pro-
16 visions of this subsection—

17 “(A) shall not apply to any facility subject
18 to regulation under subsection (a);

19 “(B) shall apply notwithstanding section
20 110 a. of the Atomic Energy Act of 1954 (42
21 U.S.C. 2140(a)) or any other provision of such
22 Act; and

23 “(C) shall apply subject to section 110 b.
24 of the Atomic Energy Act of 1954 (42 U.S.C.
25 2140(b)).

1 “(5) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) The term ‘Department of Energy nu-
4 clear facility’ means a facility that—

5 “(i) is a production facility or utiliza-
6 tion facility, or a facility for the process-
7 ing, storage, or disposal of source material,
8 byproduct material, or special nuclear ma-
9 terial, as such terms are defined in section
10 11 of the Atomic Energy Act of 1954 (42
11 U.S.C. 2014);

12 “(ii) is under the control or jurisdic-
13 tion of the Department of Energy, or of
14 any successor in interest to Department of
15 Energy nuclear facilities; and

16 “(iii) is not covered by Executive
17 Order 12344 (42 U.S.C. 7158 note; relat-
18 ing to Naval Nuclear Propulsion Program).

19 “(B) The term ‘new Department of Energy
20 nuclear facility’ means a Department of Energy
21 nuclear facility that is not in existence, or
22 under construction, on the date of the enact-
23 ment of this subsection.”.

1 **TITLE II—FEDERAL NUCLEAR**
2 **FACILITIES REGULATORY RE-**
3 **VIEW COMMISSION**

4 **SEC. 201. ESTABLISHMENT.**

5 There is established a commission to be known as the
6 Federal Nuclear Facilities Regulatory Review Commis-
7 sion. The Commission shall be considered to be an advi-
8 sory committee subject to the provisions of the Federal
9 Advisory Committee Act (5 U.S.C. App.).

10 **SEC. 202. MEMBERSHIP.**

11 (a) NUMBER AND APPOINTMENT.—The Commission
12 shall be composed of 13 members as follows:

13 (1) The Secretary of Energy (or a designee).

14 (2) The Chairman of the Nuclear Regulatory
15 Commission (or a designee).

16 (3) The Administrator of the Environmental
17 Protection Agency (or a designee).

18 (4) The Chairman of the Defense Nuclear Fa-
19 cilities Safety Board (or a designee).

20 (5) The Secretary of Defense (or a designee).

21 (6) 8 individuals appointed by the President not
22 later than 90 days after the date of the enactment
23 of this Act, as follows:

24 (A) 2 Governors of host States for major
25 Department of Energy nuclear facilities (or

1 their designees), at least 1 of whom shall be
2 from an agreement State under section 274 of
3 the Atomic Energy Act of 1954 (42 U.S.C.
4 2021).

5 (B) 1 representative of a major Depart-
6 ment of Energy nuclear facility contractor.

7 (C) 2 representatives of environmental or-
8 ganizations active in oversight of Department of
9 Energy nuclear facilities, 1 of whom shall be a
10 representative of a national environmental orga-
11 nization and 1 of whom shall be a representa-
12 tive of a regional environmental organization.

13 (D) 1 tribal chairperson of an Indian tribe
14 affected by a Department of Energy nuclear fa-
15 cility (or a designee).

16 (E) 1 member of the Secretary of Energy's
17 former Advisory Committee on Nuclear Facility
18 Safety.

19 (F) 1 individual with expertise in health
20 physics.

21 (b) TERMS.—Each member shall be appointed for the
22 life of the Commission.

23 (c) COMPENSATION.—

24 (1) RATES OF PAY.—Except as provided in
25 paragraph (2), members of the Commission shall

1 each be entitled to receive the daily equivalent of the
2 annual rate of basic pay for level III of the Execu-
3 tive Schedule for each day (including travel time)
4 during which they are engaged in the actual per-
5 formance of duties vested in the Commission.

6 (2) PROHIBITION OF COMPENSATION OF FED-
7 ERAL EMPLOYEES.—Members of the Commission
8 who are full-time officers or employees of the United
9 States may not receive additional pay, allowances, or
10 benefits by reason of their service on the Commis-
11 sion.

12 (3) TRAVEL EXPENSES.—Each member of the
13 Commission shall receive travel expenses, including
14 per diem in lieu of subsistence, in accordance with
15 sections 5702 and 5703 of title 5, United States
16 Code.

17 (d) QUORUM.—A majority of the members of the
18 Commission shall constitute a quorum, but a lesser num-
19 ber may hold hearings.

20 (e) CHAIRPERSON.—The Chairperson of the Commis-
21 sion shall be designated by the President from among the
22 members appointed under subsection (a)(6) who are not
23 currently directly involved in the management or oversight
24 of any Department of Energy nuclear facility.

1 (f) MEETINGS.—The Commission shall meet at the
2 call of the Chairperson or a majority of its members.

3 **SEC. 203. DUTIES.**

4 (a) IN GENERAL.—The duties of the Commission
5 shall be to determine, and to recommend to the Congress,
6 an approach to subjecting existing Department of Energy
7 nuclear facilities to independent regulation.

8 (b) SPECIFIC ISSUES.—In making the determination
9 required by subsection (a), the Commission shall address
10 the following issues:

11 (1) The appropriate means of implementing
12 independent regulation of existing Department of
13 Energy nuclear facilities, including—

14 (A) the appropriate standard-setting agen-
15 cy or agencies;

16 (B) the appropriate enforcement agency or
17 agencies;

18 (C) the appropriate structure, procedures,
19 and scope of regulation;

20 (D) the most efficient means of transition
21 to a regulatory regime;

22 (E) the appropriate source for additional
23 funding required to carry out the new regula-
24 tion; and

1 (F) the appropriate role of the States, In-
2 dian tribes, and the public, in the regulatory
3 process.

4 (2) The appropriate manner of regulating
5 mixed radioactive and hazardous wastes and low-
6 level radioactive waste.

7 (3) Whether the authority to impose penalties
8 under the Price-Anderson civil penalty provisions of
9 section 234A of the Atomic Energy Act of 1954 (42
10 U.S.C. 2282a) should be transferred to the new reg-
11 ulator or regulators.

12 (4) Issues relating to enforcement powers, in-
13 cluding—

14 (A) shutdown authority;

15 (B) civil and criminal penalties;

16 (C) enforcement against the Department
17 of Energy as compared to enforcement against
18 the Department of Energy's contractors;

19 (D) elimination of exemptions for nonprofit
20 contractors such as universities;

21 (E) contractor liability for violations re-
22 sulting from Department of Energy require-
23 ments or from funding limitations;

24 (F) protection of national security and
25 safeguards information; and

1 (G) presidential exemption from require-
2 ments for national security reasons.

3 (5) Any recommendations for revisions to the
4 regulatory regime established for new Department of
5 Energy nuclear facilities by the amendments made
6 by title I.

7 (6) Issues relating to the classification and de-
8 classification of information by the Department of
9 Energy, including the designation and review of Re-
10 stricted Data and Unclassified Controlled Nuclear
11 Information under sections 142 and 148 of the
12 Atomic Energy Act of 1954 (42 U.S.C. 2163 and
13 2168), as such issues affect public participation in
14 the regulatory process.

15 (7) Any other issue considered by the Commis-
16 sion to be relevant to the determination required by
17 subsection (a).

18 (c) PUBLIC PARTICIPATION.—In carrying out its du-
19 ties under this section and throughout its deliberations,
20 the Commission shall actively solicit the views and partici-
21 pation of the States, Indian tribes, local governments,
22 businesses, citizens' organizations, and interested mem-
23 bers of the public.

1 **SEC. 204. DIRECTOR AND STAFF; EXPERTS AND CONSULT-**
2 **ANTS.**

3 (a) DIRECTOR.—The Commission shall have a Direc-
4 tor who shall be appointed by the Commission. The Direc-
5 tor shall be paid at the rate of basic pay for level V of
6 the Executive Schedule.

7 (b) STAFF.—With the approval of the Commission,
8 the Director may appoint and fix the pay of additional
9 personnel as the Director considers appropriate. Such ad-
10 ditional personnel shall be paid at a rate not to exceed
11 the maximum rate of basic pay payable for GS-15 of the
12 General Schedule.

13 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
14 LAWS.—The Director and staff of the Commission may
15 be appointed without regard to the provisions of title 5,
16 United States Code, governing appointments in the com-
17 petitive service, and may be paid without regard to the
18 provisions of chapter 51 and subchapter III of chapter 53
19 of such title relating to classification and General Schedule
20 pay rates.

21 (d) EXPERTS AND CONSULTANTS.—With the ap-
22 proval of the Commission, the Director may procure tem-
23 porary and intermittent services under section 3109(b) of
24 title 5, United States Code, but at rates for individuals
25 not to exceed the daily equivalent of the maximum annual

1 rate of basic pay payable for GS-15 of the General Sched-
2 ule.

3 (e) STAFF OF FEDERAL AGENCIES.—Upon request
4 of the Director, the head of any Federal department or
5 agency may detail, on a reimbursable basis, any of the
6 personnel of the department or agency to the Commission
7 to assist it in carrying out its duties under this title.

8 **SEC. 205. POWERS.**

9 (a) HEARINGS AND SESSIONS.—The Commission
10 may, for the purpose of carrying out this title, hold hear-
11 ings, sit and act at times and places, take testimony, and
12 receive evidence as the Commission considers appropriate.
13 The Commission may administer oaths or affirmations to
14 witnesses appearing before it.

15 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
16 ber or agent of the Commission may, if authorized by the
17 Commission, take any action which the Commission is au-
18 thorized to take by this section.

19 (c) OBTAINING OFFICIAL DATA.—

20 (1) IN GENERAL.—The Commission may secure
21 directly from any Federal department or agency in-
22 formation necessary to enable it to carry out this
23 title, including—

1 (A) Restricted Data, as defined in section
2 11 y. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2014(y));

4 (B) other classified information;

5 (C) safeguards information subject to sec-
6 tion 147 of the Atomic Energy Act of 1954 (42
7 U.S.C. 2167); and

8 (D) Unclassified Controlled Nuclear Infor-
9 mation subject to section 148 of the Atomic
10 Energy Act of 1954 (42 U.S.C. 2168).

11 (2) FURNISHING OF INFORMATION.—Upon a
12 request for information by the Chairperson of the
13 Commission under paragraph (1), the head of the
14 Federal department or agency shall furnish the in-
15 formation to the Commission.

16 (d) MAILS.—The Commission may use the United
17 States mails in the same manner and under the same con-
18 ditions as other Federal departments and agencies.

19 (e) ADMINISTRATIVE SUPPORT SERVICES.—Upon
20 the request of the Commission, the Administrator of Gen-
21 eral Services shall provide to the Commission, on a reim-
22 bursable basis, the administrative support services nec-
23 essary for the Commission to carry out its responsibilities
24 under this title.

25 (f) SUBPOENA POWER.—

1 (1) IN GENERAL.—The Commission may issue
2 subpoenas requiring the attendance and testimony of
3 witnesses and the production of any evidence relat-
4 ing to any matter under investigation by the Com-
5 mission. The attendance of witnesses and the pro-
6 duction of evidence may be required from any place
7 within the United States at any designated place of
8 hearing within the United States.

9 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
10 son refuses to obey a subpoena issued under para-
11 graph (1), the Commission may apply to a United
12 States district court for an order requiring that per-
13 son to appear before the Commission to give testi-
14 mony, produce evidence, or both, relating to the
15 matter under investigation. The application may be
16 made within the judicial district where the hearing
17 is conducted or where that person is found, resides,
18 or transacts business. Any failure to obey the order
19 of the court may be punished by the court as civil
20 contempt.

21 (3) SERVICE OF SUBPOENAS.—The subpoenas
22 of the Commission shall be served in the manner
23 provided for subpoenas issued by a United States
24 district court under the Federal Rules of Civil Pro-
25 cedure for the United States district courts.

1 (4) SERVICE OF PROCESS.—All process of any
2 court to which application is made under paragraph
3 (2) may be served in the judicial district in which
4 the person required to be served resides or may be
5 found.

6 (5) IMMUNITY.—The Commission is an agency
7 of the United States for the purpose of part V of
8 title 18, United States Code (relating to immunity
9 of witnesses).

10 **SEC. 206. REPORTS.**

11 (a) INTERIM REPORTS.—The Commission may sub-
12 mit to the Congress interim reports as the Commission
13 considers appropriate.

14 (b) FINAL REPORT.—The Commission shall transmit
15 a final report to the Congress not later than 18 months
16 after the date of the enactment of this Act. The final re-
17 port shall contain a detailed statement of the findings and
18 conclusions of the Commission, together with its rec-
19 ommendations for legislation and administrative actions.

20 **SEC. 207. DEFINITIONS.**

21 For purposes of this title:

22 (1) The term “Commission” means the Federal
23 Nuclear Facilities Regulatory Review Commission
24 established by section 201.

1 (2) The term “Department of Energy nuclear
2 facility” means a facility that—

3 (A) is a production facility or utilization
4 facility, or a facility for the processing, storage,
5 or disposal of source material, byproduct mate-
6 rial, or special nuclear material, as such terms
7 are defined in section 11 of the Atomic Energy
8 Act of 1954 (42 U.S.C. 2014);

9 (B) is under the control or jurisdiction of
10 the Department of Energy, or of any successor
11 in interest to Department of Energy nuclear fa-
12 cilities; and

13 (C) is not covered by Executive Order
14 12344 (42 U.S.C. 7158 note; relating to Naval
15 Nuclear Propulsion Program).

16 (3) The term “existing Department of Energy
17 nuclear facility” means a Department of Energy nu-
18 clear facility that is in existence, or under construc-
19 tion, on the date of the enactment of this Act.

20 (4) The term “independent regulation” means
21 regulation under the Atomic Energy Act of 1954 (42
22 U.S.C. 2011 et seq.) by 1 or more Federal agencies
23 that are not part of, or otherwise subject to the con-
24 trol of, the Department of Energy.

1 **SEC. 208. TERMINATION.**

2 The Commission shall terminate 60 days after sub-
3 mitting its final report pursuant to section 206.

4 **SEC. 209. AUTHORIZATION OF APPROPRIATIONS.**

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

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HR 3920 IH—2