

*Atomic Energy act
Sec 274*

NUREG-0980
Vol. 1, No.6

Nuclear Regulatory Legislation

107th Congress; 1st Session

Date Published: June 2002

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001



TABLE OF CONTENTS

VOLUME I

1. Atomic Energy Act of 1954, as Amended (P.L. 83-703)
2. Energy Reorganization Act of 1974, as Amended (P.L. 93-438)
 - Reorganization Plan No. 3 of 1970 (EPA)
 - Reorganization Plan No. 1 of 1980 (NRC)
 - Executive Order No. 11834, Activation of the NRC
3. Low-Level Radioactive Waste Policy Amendments of 1985 (Title I)
(P.L. 99-240) (Title II-Compacts: See Volume II)
4. High-Level Radioactive Waste
 - Nuclear Waste Policy Act, as amended (P.L. 97-425)
 - Energy Policy Act of 1992 Provisions
5. Uranium Mill Tailings (P.L. 95-604)
 - MOAB Site
6. Hazardous Materials Transportation Act, as Amended (P.L. 101-615)
 - Transportation of Plutonium (Miscellaneous provisions)
7. NRC User Fees (P.L. 101-508)
8. Administrative Law Statutes
 - Subchapter II-Administrative Procedures
 - FOIA
 - Privacy Act
 - Government in the Sunshine Act
 - Negotiated Rulemaking Act of 1990
 - Administrative Dispute Resolution Act, as Amended (P.L. 101-552)
 - Chapter 6-The Analysis of Regulatory Functions
 - Chapter 7-Judicial Review
 - Chapter 8-Congressional Review of Agency Rulemaking
 - Federal Advisory Committee Act (P.L. 92-463)
 - Federal Vacancies Reform Act of 1998 (P.L. 105-277)
 - Truth in Regulating Act of 2000 (P.L. 106-312)
 - Alternative Resolution Act of 1998 (P.L. 105-315)
 - Federal Civil Penalties Inflation Adjustment Act of 1990,
as Amended (P.L. 101-410)
9. MISCELLANEOUS
 - Antiterrorism (P.L. 107-56)
 - Homeland Security (P.L. 107-107)
 - DOE Workers Protection (P.L. 106-398; sec. 3611)
 - Tritium (P.L. 106-65; sec. 3134)
 - MOX Fuels (P.L. 105-261)

THE ATOMIC ENERGY ACT OF 1954

Public Law 83-703

68 Stat. 919

August 30, 1954

TITLE I—ATOMIC ENERGY

CHAPTER 1—DECLARATION, FINDINGS, AND PURPOSE

Sec. 1. Declaration

42 USC 2011.
Declaration.

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that¹—

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Sec. 2. Findings.

42 USC 2012.
Findings.

The Congress of the United States hereby makes the following findings concerning the development, use and control of atomic energy:²

a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

c.³ The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

¹Added by Public Law 102-486 (106 Stat. 2943); Oct. 24, 1992.

²Sec. 20 Public Law 88-489 (78 Stat. 602)(1964), the Private Ownership of Special Nuclear Materials Act reads as follows:

Nothing in this Act shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended to regulate source, byproduct, and special nuclear material and production and utilization facilities or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives.

³Public Law 88-489 (78 Stat. 602)(1964), sec. 1, deleted subsec. 2b. Subsec. 2b read as follows:

b. In permitting the property of the United States to be used by others such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

construction project is within the limit of cost of the construction project for which substitution is to be made; and the Commission certifies that—

(1) the substituted project is essential to the common defense and security;

(2) the substituted project is required by changes in weapon characteristics or weapon logistics operations; and

(3) the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.

Sec. 271. Agency Jurisdiction.

42 USC 2018.
Agency
jurisdiction.

Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or Local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.²⁷⁰

Sec. 272. Applicability Of Federal Power Act.

42 USC 2019.
Applicability of
Federal Power Act.

Every licensee under this Act who holds a license from the Commission for a utilization of production facility for the generation of commercial electric energy under section 103 and who transmits such electric energy in interstate commerce or sells it as wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act.

Sec. 273. Licensing Of Government Agencies.

42 USC 2020.
Licensing of
Government
agencies.

Nothing in this Act shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under section 103, if qualified under the provisions of section 103, for the construction and operation of production or utilization facilities for the primary purpose of producing electric energy for disposition for ultimate public consumption.

Sec. 274. Cooperation With States.

42 USC 2021.
Cooperation with
States.

a.²⁷¹ It is the purpose of this section—

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to

²⁷⁰Public Law 89-135 (79 Stat. 551) (1965), amended sec. 271. Prior to amendment this section read as follows:

Sec. 271. AGENCY JURISDICTION—Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power.

²⁷¹Public Law 86-373 (73 Stat. 688) (1959), sec. 1, added sec. 274.

byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

Agreements with States.

b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

(1) byproduct materials as defined in section 11e.(1);²⁷²

(2) byproduct materials as defined in section 11e.(2);²⁷³

(3) source materials;

(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;²⁷⁴

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission. The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11e.(2).²⁷⁵

42 USC 2014.

Conditions.

Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer

²⁷²Public Law 95-604 (92 Stat. 3036) (1978), sec. 204(a), amended sec. 274(b)(1) by adding "as defined in section 11e. (1)" after the words "byproduct materials."

²⁷³Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(a), renumbered paragraphs (2) and (3) as paragraphs (3) and (4), and added a new paragraph (2).

²⁷⁴Public Law 102-486 (106 Stat. 2944), Oct. 24, 1992.

²⁷⁵Public Law 95-604 (92 Stat. 3038) (1978), sec. 204(f), added a new sentence after paragraph (4).

possession or control of such product except pursuant to a license issued by the Commission.

d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects²⁷⁶ compatible with the Commission's program for regulation of such materials; and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

Publication in F.R.

e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

Exemptions.
Licensing
requirements.

f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

Federal Radiation
Council.

h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting

²⁷⁶Public Law 95-604 (92 Stat. 3037) (1978), sec. 904(b), amended sec. 274(d)(2) by inserting the words "in accordance with the requirements of subsection o, and in all other respects" before the word "compatible."

health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

Inspections.

i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

Termination of agreement.

j. (1)²⁷⁷ The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of²⁷⁸ its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1)²⁷⁹ such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of this section.²⁸⁰

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize

²⁷⁷Public Law 96-295 (94 Stat. 787) (1980), sec. 205, inserted "(1)" after j.

²⁷⁸Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(1), amended sec. 274j by adding the words "all or part of" after "suspend."

²⁷⁹Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(2), amended sec. 274j by inserting "(1)" after "finds that."

²⁸⁰Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(3), amended sec. 274j by adding at the end before the period:

or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.²⁸¹

k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

Notice of filing.

l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i. it issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

Definition.

n. As used in this section, the term "State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.²⁸²

Agreement.

o. In the licensing and regulation of byproduct material, as defined in section 11e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

Ante, p. 3033.

Post, p. 3039.

(1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, and

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence

²⁸¹Public Law 96-295 (94 Stat. 787) (1980), sec. 205 added new subsec. j. (2).

²⁸²Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(c), added last sentence to sec. 274n.

presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11e.(2); and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

Ante, p. 3033.

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161x. of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission.²⁴³

42 USC 2201.

42 USC 2014.

In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more

²⁴³Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(e), added a new subsec. o.

stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.²⁵⁴
Sec. 275. Health And Environmental Standards for Uranium Mill Tailings.

42 USC 2022.
42 USC 2022.
Rule. a. As soon as practicable, but not later than October 1, 1982,²⁵⁵ the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.²⁵⁶ The Administrator may periodically revise any standard promulgated pursuant to this subsection.

42 USC 7911. After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.²⁵⁷

42 USC 2014.
42 USC 6901 note. b.(1) As soon as practicable, but not later than October 31, 1982, the Administrator shall, by rule, propose and within 11 months thereafter promulgate in final form,²⁵⁸ standards, general application for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11e.(2) of this Act, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material.

²⁵⁴Public Law 97-415 (96 Stat. 2067) (1983), sec. 19 added this paragraph.

²⁵⁵Public Law 97-415 (96 Stat. 2067) (1983), sec. 18 substituted "October 1, 1982" for "one year after the date of enactment of this section."

²⁵⁶Public Law 97-415 (96 Stat. 2067) (1983), sec. 22 added this language to sec. 275a.

²⁵⁷Public Law 97-415 (96 Stat. 2067) (1983), sec. 18 substituted this language for "one year after enactment of this section."

²⁵⁸Public Law 97-415 (96 Stat. 2067) (1983), sec. 22 added this language to sec. 275b(1).