

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 22, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

D.C. Cir. No. 14-1210 (consolidated with D.C. Cir. Nos. 14-1212, 14-1216,
14-1217)

STATE OF NEW YORK, *et al.*,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED
STATES OF AMERICA,
Respondents

COMMONWEALTH OF MASSACHUSETTS, *et al.*,
Intervenors.

Petition for Review of Final Administrative Action of the United States Nuclear
Regulatory Commission

**SUPPLEMENTAL BRIEF FOR PETITIONERS NATURAL RESOURCES
DEFENSE COUNCIL, INC., BEYOND NUCLEAR, BLUE RIDGE
ENVIRONMENTAL DEFENSE LEAGUE, MISSOURI COALITION FOR
THE ENVIRONMENT, NEW ENGLAND COALITION, NUCLEAR
INFORMATION & RESOURCE SERVICE, RIVERKEEPER, INC., SAN
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February 12, 2016

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GLOSSARY

GEIS	Generic Environmental Impact Statement
JA	Joint Appendix
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission

INTRODUCTION

The Court ordered the parties to brief the question of whether it has jurisdiction “over a petition for review of a final rule by the Nuclear Regulatory Commission, as opposed to a ‘final order . . . made reviewable by section 2239 of title 42’” Petitioners respectfully submit that under Supreme Court and court of appeals precedents and standard principles of statutory interpretation, the Administrative Orders Review Act (also known as the “Hobbs Act”) grants this Court jurisdiction over the final Nuclear Regulatory Commission (“NRC”) rule on appeal.

PROCEDURAL BACKGROUND

In this consolidated case, petitioners seek review of NRC’s Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, JA263-1560 (the “GEIS”), and NRC’s Continued Storage of Spent Nuclear Fuel Rule, JA59-85 (the “Rule”). The GEIS evaluates the environmental impacts of continued storage of spent fuel after reactor license termination; the Rule codifies the GEIS’ findings for application in individual reactor licensing and re-licensing decisions. The NRC issued the Rule and GEIS in response to this Court’s decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”).

The separate briefs filed by the different petitioner groups in this case address different violations of the National Environmental Policy Act (“NEPA”) in

the GEIS and Rule. The environmental petitioners challenge the GEIS for its failure to comply with NEPA and *New York I* in analyzing the environmental impacts of storing spent nuclear fuel for an extended period. The States and Tribe argue that the GEIS violates NEPA and *New York I* by failing to adequately analyze, among other things, the environmental impacts of fires and leaks in spent-fuel pools. All petitioners challenge the Rule for codifying the conclusions of the inadequate GEIS.

Briefing was completed in November 2015 and an oral argument is scheduled for February 22, 2016.

RELEVANT PROVISIONS OF THE HOBBS ACT AND ATOMIC ENERGY ACT

Section 2342 of the Hobbs Act of 1966, 28 U.S.C. §§ 2341-2351, gives the court of appeals:

exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of –

- (1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 46;
- (2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;
- (3) all rules, regulations, or final orders of –
 - (A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101-56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and
 - (B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;

- (4) *all final orders of the Atomic Energy Commission¹ made reviewable by section 2239 of title 42;*
- (5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;
- (6) all final orders under section 812 of the Fair Housing Act; and
- (7) all final agency actions described in section 20114(c) of title 49.

28 U.S.C. §2342 (emphasis added).

The final orders of the Atomic Energy Commission (*i.e.*, NRC) “made reviewable by section 2239 of title 42” consist of “[a]ny final [NRC] order entered in any proceeding of the kind specified in subsection (a) of this section.” 42 U.S.C. § 2239(b). Section 2239(a), in turn, describes the “proceedings” for which NRC orders are reviewable under Section 2239(b): proceedings for “the granting, suspending, revoking or amending of any license or construction permit, or application to transfer control;” proceedings for “the issuance or modification of rules and regulations dealing with the activities of licensees;” and proceedings for “the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c), or 2238 of this title.”

¹ Congress transferred the functions of the Atomic Energy Commission to the newly-established NRC in 1975.

**THIS COURT HAS JURISDICTION OVER
PETITIONERS' APPEAL OF THE RULE AND GEIS.**

This Court has consistently asserted “jurisdiction to review final NRC rules dealing with the activities of licensees.” *Reyblatt v NRC*, 105 F.3d 715, 720 (D.C. Cir. 1997). Most recently, this Court exercised its jurisdiction over an NRC rule in *New York I.*² This Court’s assertion of direct jurisdiction over NRC rulemakings is consistent with the Supreme Court’s holding in *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985) (“*Lorion*”), and with standard principles of statutory interpretation.

**A. This Court’s Initial Jurisdiction Over NRC Rulemakings is
Consistent With Governing Judicial Precedent.**

As noted above, this Court has consistently taken direct jurisdiction over NRC rulemakings. Nevertheless, internally inconsistent language in Section 2342 of the Hobbs Act raises the question of whether the Hobbs Act’s grant of jurisdiction over NRC’s “final orders” encompasses NRC rulemaking decisions as well as adjudications. Section 2342(4) refers only to reviewability of “final orders” of the Atomic Energy Commission (*i.e.*, NRC), while other provisions refer to

² Other cases in which this Court has exercised its jurisdiction to take initial review of NRC rules include *Calvert Cliffs Coord. Comm. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971); *Natural Res. Def. Council, Inc. v. NRC*, 680 F.2d 810 (D.C. Cir. 1982); *Connecticut Light and Power Co. v. NRC*, 673 F.2d 525 (D.C. Cir. 1982); *Union of Concerned Scientists v. NRC*, 711 F.2d 370 (D.C. Cir. 1983); *Union of Concerned Scientists v. NRC*, 735 F.3d 1437 (D.C. Cir. 1984); and *Nuclear Information and Resource Serv. v. NRC*, 918 F.2d 189 (D.C. Cir. 1990).

reviewability of “rules, regulations, or final orders” of other agencies (Sections 2342(3) and (5)) and “final agency actions” of other agencies (Section 2342(7)).

Petitioners respectfully submit that the First Circuit correctly analyzed this question in *Citizens Awareness Network*, 391 F.3d 338 (1st Cir. 2004), where it concluded that inconsistencies in the Hobbs Act must be interpreted in light of the Supreme Court’s holding in *Lorion* that “original jurisdiction in the courts of appeals is proper to review any NRC action that could be cognizable in a petition for review from a proceeding under section 2239” of the Atomic Energy Act. 391 F.3d at 347. In *Lorion*, the Supreme Court found the legislative history of the Section 2239 of the Atomic Energy Act “strongly suggest[s] that Congress intended to define the scope of initial court of appeals review according to the subject matter of the Commission action and not according to whether the Commission held a hearing.” 470 U.S at 737. Accordingly, the Court concluded that the court of appeals had jurisdiction over NRC licensing decisions, regardless of whether NRC had conducted a hearing. *Id. See also Honeywell Internat., Inc. v. NRC*, 628 F.3d 568, 575 (D.C. Cir. 2010).

The principles of *Lorion* apply equally to the question raised by this Court regarding whether the Hobbs Act gives the court of appeals direct jurisdiction over NRC rulemakings. As the First Circuit explained in *Citizens Awareness Network*, the court’s assertion of initial jurisdiction over NRC rules:

is consistent with the *Lorion* Court's instruction that jurisdictional statutes should be construed so that agency actions will always be subject to initial review in the same court, regardless of the procedural package in which they are wrapped. *Lorion*, 470 U.S. at 742. By like token, an affirmation of jurisdiction in this case is consistent with the *Lorion* Court's conclusion that judicial efficiency is best served by limiting the layers of review. *Id.* at 744-45.

391 F.3d at 347.

The court's reasoning in *Citizens Awareness Network* is especially applicable here, where the "procedural package" used by NRC to address the subject matter of continued spent fuel storage could just as easily have been a set of individual adjudications as a rulemaking. *See* GEIS at 1-5 - 1-10, JA337-42 (NEPA "alternatives analysis" of whether to proceed by rulemaking versus individual licensing action). Indeed, the Rule incorporates the findings of the GEIS into each individual reactor licensing proceeding. 10 C.F.R. § 51.23, JA64, JA81.

Given that the Rule is both legislative and adjudicatory in its effect, neither judicial efficiency nor logic would be served by arbitrarily subjecting the Rule to review by two courts (district court followed by court of appeals), while providing for only court of appeals review had NRC chosen to proceed by conducting individual reactor adjudications. 391 F.3d at 347. A court's statutory

interpretations should not yield inconsistent or illogical results. *City of Columbus*, 536 U.S. at 436.³

B. This Court’s Initial Jurisdiction Over NRC Rulemakings Is Consistent with Standard Principles of Statutory Interpretation.

Nor does the application of standard principles of statutory interpretation to the internally inconsistent language of Section 2342 deprive this Court of initial jurisdiction over NRC rules. The presumption that Congress acts “intentionally and purposely” when it uses different words in the same statute, *Russello v. U.S.*, 464 U.S. 16, 23 (1983), does not apply where the differing words at issue have essentially the same meaning. *Pub. Citizen, Inc. v. U.S. Dep’t. of Health and Human Servs.*, 332 F.3d 654, 664-65 (D.C. Cir. 2003); *All Party Parliamentary Grp. on Extraordinary Rendition v. U.S. Dep’t. of Def.*, 754 F.3d 1047, 1051 (D.C. Cir. 2014). Here, the term “order,” as defined in *Black’s Law Dictionary* (10th ed. 2014), encompasses decisions in both adjudications and rulemakings. The term “order” is broadly defined as:

³ Other court of appeals decisions have recognized the overlap between NRC rulemakings and adjudications. In *Union of Concerned Scientists v. NRC*, the rule on appeal incorporated a regulatory compliance deadline into every operating license. This Court concluded that the rule had the characteristics of both a reactor license amendment proceeding and a rulemaking, and reversed the rule for its failure to provide for either a hearing or opportunity for comment. 711 F.2d at 380. In *Kelley v. Selin*, 42 F.3d 1501 (6th Cir. 1995), the petitioners appealed NRC regulations that had the effect of issuing licenses for dry spent fuel storage casks. 42 F.3d at 1504. The Sixth Circuit affirmed NRC’s use of notice-and-comment rulemaking rather than adjudications to make the licensing determinations. *Id.* at 1514.

A written direction or command delivered by a government official, esp. a court or judge. The word generally embraces final decrees as well as interlocutory directions or commands.

Id. Similarly, “administrative order” is defined as “[a]n order issued by a government agency after an adjudicatory hearing” or “[a]n agency regulation that interprets or applies a statutory provision.” *Id.* Thus, the *Russello* presumption does not apply to Section 2342 of the Hobbs Act because the words “order” and “rule” have essentially the same meaning in common legal usage.⁴

In addition, “[t]he *Russello* presumption . . . grows weaker with each difference in the formulation of the provisions under inspection.” *City of Columbus v. Ours Garage & Wrecker Serv.*, 536 U.S. 424, 436 (2002). As originally passed in 1966, Section 2342 solely provided for review of “all final orders” of the Federal Communications Commission, the Secretary of Agriculture, the Federal Maritime Commission, and the Atomic Energy Commission. Hobbs Act of 1966, Pub. L. No. 89-554, 80 Stat. 622. Congress inserted or substituted the terms “rules and regulations” and “agency decisions” in piecemeal fashion over the course of

⁴ On the other hand, the Administrative Procedure Act defines “order” as “the whole or a part of a final disposition . . . of an agency in a matter *other than rule making* but including licensing.” 5 U.S.C. § 551(6) (emphasis added). But the Hobbs Act does not incorporate the Administrative Procedure Act or include a definition of “order.” And while the Atomic Energy Act applies the Administrative Procedure Act in 42 U.S.C. § 2231, it “uses the terms ‘order’ and ‘rule’ inconsistently,” thus “render[ing] the meaning of ‘order’ [as used in the Atomic Energy Act] uncertain.” *Citizens Awareness Network*, 391 F.3d at 347.

several decades when it created new Hobbs Act agencies, changed the names of agencies, or modified agencies' organic statutes to create appealable actions.⁵ The Hobbs Act gives no indication that by adding the terms "rules and regulations" and "agency decision" at any of these junctures, Congress intended to make new jurisdictional distinctions between the various Hobbs Act agencies covered by Section 2342. Given the absence of "countervailing indicia of congressional intent," the Hobbs Act's provisions for direct review of "final orders" must be read to "encompass challenges to rules." *See NY Rep. State Comm. v. SEC*, 799 F.3d 1126, 1129 (D.C. Cir. 2015).

C. The Rule and GEIS Are Final.

"An [agency] order is final if it 'imposes an obligation, denies a right, or fixes some legal relationship, usually at the consummation of an administrative process.'" *Natural Res. Def. Council, Inc. v. NRC*, 680 F.2d 810, 815 (D.C. Cir. 1982) (citing *Honicker v. NRC*, 590 F.2d 1207, 1209 (D.C. Cir. 1978); *Ill. Citizens Comm. for Broadcasting v. FCC*, 515 F.2d 397 (D.C. Cir. 1975)). Here, there is no question that the Rule is a final agency decision, because it conclusively precludes consideration, in individual licensing proceedings, of any spent fuel storage

⁵ Section 2342 has been amended thirteen times since 1966: 88 Stat. 1917 (1975); 92 Stat. 1144 (1978); 94 Stat. 2021 (1980); 96 Stat. 41 (1982); 98 Stat. 2852 (1984); 100 Stat. 638 (1986); 102 Stat. 1635 (1988); 106 Stat. 975 (1992); 108 Stat. 1375 (1994); 109 Stat. 945 (1995); 110 Stat. 3399 (1996); 119 Stat. 1738 (2005); 120 Stat. 1708 (2006).

impacts addressed in the GEIS. *Calvert Cliffs 3 Nuclear Project, LLC, et al.*, 80 N.R.C. 71, 75 n.8 (2014). The GEIS is also final by virtue of its incorporation into the Rule. 10 C.F.R. § 51.23(a), JA81. Final impact determinations in the Rule and GEIS include the assumptions supporting those impact determinations, such as the GEIS' assumption of "reasonable confidence that the wastes can and will in due course be disposed of safely." *Detroit Edison, et al.*, 81 N.R.C. 221, 237-39 (2015).

CONCLUSION

For the foregoing reasons, the Court should take initial jurisdiction over petitioners' appeal of the Rule and GEIS.

Dated: February 12, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure Rule 32(a)(7)(C) and Circuit Rule 32(a)(2)(C), I certify that the attached corrected Initial Reply Brief for Petitioners Natural Resources Defense Council, et al. is proportionately spaced, has a typeface of Times New Roman, 14 points, and contains 2,339 words. This figure includes footnotes and citations, but excludes the signature block, the Cover Page, Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service. I have relied on Microsoft Word's calculation feature for his calculation.

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CERTIFICATE OF SERVICE

I, Diane Curran, certify that on February 12, 2016, I served the foregoing Supplemental Brief for Petitioners Natural Resources Defense Council, et al. on the following by posting it on the Court's Electronic Case Filing system:

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ADDENDUM OF STATUTES, RULES AND REGULATIONS

This Addendum contains statutes, rules, and regulations cited by Petitioners’ Supplemental Brief that are not already included in the Addendum to Petitioners’ Opening and Reply Briefs.

STATUTES

5 U.S.C. § 551(6)ADD-2

42 U.S.C. § 2231ADD-4

expenses in the same manner as the payment of final judgments as provided in this Act [probably should be “this title”, see Short Title note above] would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts, was repealed by Pub. L. 99-80, § 4, Aug. 5, 1985, 99 Stat. 186.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

SHORT TITLE

The provisions of this subchapter and chapter 7 of this title were originally enacted by act June 11, 1946, ch. 324, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into this subchapter and chapter 7 hereof.

§ 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) “rule making” means agency process for formulating, amending, or repealing a rule;

(6) “order” means the whole or a part of a final disposition, whether affirmative, nega-

tive, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) “adjudication” means agency process for the formulation of an order;

(8) “license” includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) “licensing” includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) “sanction” includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) “relief” includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) “agency proceeding” means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) “agency action” includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) “ex parte communication” means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub. L. 94-409, § 4(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, § 5(a)(2), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1)	5 U.S.C. 1001(a).	June 11, 1946, ch. 324, §2(a), 60 Stat. 237. Aug. 8, 1946, ch. 870, §302, 60 Stat. 918. Aug. 10, 1946, ch. 951, §601, 60 Stat. 993. Mar. 31, 1947, ch. 30, §6(a), 61 Stat. 37. June 30, 1947, ch. 163, §210, 61 Stat. 201.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(2)–(13)	5 U.S.C. 1001 (less (a)).	Mar. 30, 1948, ch. 161, §301, 62 Stat. 99. June 11, 1946, ch. 324, §2 (less (a)), 60 Stat. 237.

In paragraph (1), the sentence “Nothing in this Act shall be construed to repeal delegations of authority as provided by law,” is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In paragraph (1)(G), the words “or naval” are omitted as included in “military”.

In paragraph (1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87–256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87–256.

In paragraph (2), the words “of any character” are omitted as surplusage.

In paragraph (3), the words “and a person or agency admitted by an agency as a party for limited purposes” are substituted for “but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes”.

In paragraph (9), a comma is supplied between the words “limitation” and “amendment” to correct an editorial error of omission.

In paragraph (10)(C), the words “of any form” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 551 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2242 of Title 7, Agriculture.

AMENDMENTS

2011—Par. (1)(H). Pub. L. 111–350 struck out “chapter 2 of title 41;” after “title 12;”.

1994—Par. (1)(H). Pub. L. 103–272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”

1976—Par. (14). Pub. L. 94–409 added par. (14).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

STUDY AND REPORTS ON ADMINISTRATIVE SUBPOENAS

Pub. L. 106–544, §7, Dec. 19, 2000, 114 Stat. 2719, provided that:

“(a) STUDY ON USE OF ADMINISTRATIVE SUBPOENAS.—Not later than December 31, 2001, the Attorney General, in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—

“(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;

“(2) a description of applicable subpoena enforcement mechanisms;

“(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;

“(4) a description of the standards governing the issuance of administrative subpoenas; and

“(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.

“(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—

“(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.

“(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of the enactment of this section [Dec. 19, 2000].”

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

§ 2223. Patent application disclosures

In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the United States Court of Federal Claims or in any district court of the United States for the district in which such claimant is a resident in a manner provided by section 1346 of title 28 to recover such further sum as added to such 75 per centum will constitute just compensation.

(Aug. 1, 1946, ch. 724, title I, §173, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953; amended Pub. L. 97-164, title I, §160(a)(16), Apr. 2, 1982, 96 Stat. 48; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 2224. Attorney General approval of title

All real property acquired under this chapter shall be subject to the provisions of sections 3111 and 3112 of title 40: *Provided, however*, That real property acquired by purchase or donation, or other means of transfer may also be occupied, used, and improved for the purposes of this chapter prior to approval of title by the Attorney General in those cases where the President determines that such action is required in the interest of the common defense and security.

(Aug. 1, 1946, ch. 724, title I, §174, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

In text, “sections 3111 and 3112 of title 40” substituted for “section 355 of the Revised Statutes, as amended”

on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1813(b) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

SUBCHAPTER XV—JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

§ 2231. Applicability of administrative procedure provisions; definitions

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all agency action taken under this chapter, and the terms “agency” and “agency action” shall have the meaning specified in section 551 of title 5: *Provided, however*, That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 2167 of this title or information protected from dissemination under the authority of section 2168 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title were not involved.

(Aug. 1, 1946, ch. 724, title I, §181, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953; amended Pub. L. 96-295, title II, §207(b), June 30, 1980, 94 Stat. 789; Pub. L. 97-90, title II, §210(b), Dec. 4, 1981, 95 Stat. 1170; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

“Subchapter II of chapter 5, and chapter 7, of title 5” substituted in text for the first reference to the Administrative Procedure Act on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. “Section 551 of title 5” substituted for the second reference to the Administrative Procedure Act to reflect the codification of the definitions of “agency” and “agency action” in that section. Prior to the enactment of Title 5, the Administrative Procedure Act was classified to sections 1001 to 1011 of Title 5.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1814(a), (c) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1981—Pub. L. 97-90, in proviso, substituted “involve Restricted Data, defense information, safeguards information protected from disclosure under the authority of section 2167 of this title or information protected from dissemination under the authority of section 2168 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2168 of this title to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, such safeguards information, or information protected from dissemination under the authority of section 2167 of this title were not involved” for “involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of section 2167 of this title, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such safeguards information, to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, or such safeguards information, were not involved”.

1980—Pub. L. 96-295 inserted references and made provisions applicable to safeguards information.

§ 2232. License applications**(a) Contents and form**

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 2133 and 2134 of this title shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

(b) Review of applications by Advisory Committee on Reactor Safeguards; report

The Advisory Committee on Reactor Safeguards shall review each application under section 2133 or section 2134(b) of this title for a construction permit or an operating license for a facility, any application under section 2134(c) of this title for a construction permit or an operating license for a testing facility, any application under subsection (a) or (c) of section 2134 of this title specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 2133 or 2134(a), (b), or (c) of this title specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

(c) Commercial power; publication

The Commission shall not issue any license under section 2133 of this title for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

(d) Preferred consideration

The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 2133 of this title, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.

(Aug. 1, 1946, ch. 724, title I, §182, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 953; amended Aug. 6, 1956, ch. 1015, §5, 70 Stat. 1069; Pub. L. 85-256, §6, Sept. 2, 1957, 71 Stat. 579; Pub. L. 87-615, §3, Aug. 29, 1962, 76 Stat. 409; Pub. L. 91-560, §9, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-560 substituted provisions requiring notification by publication giving reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility, for provisions requiring notice in writing to municipalities, private utilities, public bodies and cooperatives within transmission distance authorized to engage in the distribution of electric energy.